California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, April 22, 2025
8:30 a.m. -- State Capitol, Room 126

Analysis Packet Part II
AB 848 (Soria) – 1071 (Kalra)

Date of Hearing: April 22, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

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

As Proposed to be Amended

SUMMARY: Makes the fact that a defendant, who is convicted of felony sexual battery, was employed at a hospital where the offense occurred and the victim was in the defendant's care or seeking medical care at the hospital a factor in aggravation at sentencing.

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) States that in the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).)

7) 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).)

8) 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).)

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

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

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 Law**: 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).

Subdivision (i) specifies that in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

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

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

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's DSL violated a defendant's right to trial by jury by placing sentence-elevating

fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the defendant's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

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

> "As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions." (*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code Sections 1170 and 1170.1, to make the choice of the lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Chapter 3, Statutes of 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removed the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term.

In 2021, the Legislature enacted SB 567 (Bradford), Chapter 731, Statutes of 2021 which requires that any aggravating factors, except for prior convictions, relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of facts and found to be true, or be admitted by the defendant.

This bill would add sexual battery when committed by a defendant who was employed at a hospital where the offense occurred and the victim was in the defendant's care or seeking medical care at the hospital as a factor in aggravation that would authorize imposition of the upper term if it is pled and proved beyond a reasonable doubt. This is analogous to the existing factor in aggravation specified in the sexual battery statute when the defendant was an employer and the victim was an employee of the defendant.

4) **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 as well as enhancements on each count.

   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]

5) **Longer Sentences Impact on Recidivism and Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime.[4] 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." [5] Rather, 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.[6]

6) **Argument in Support**: Not applicable.

7) **Argument in Opposition**: Not applicable.

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

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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] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [accessed Mar. 26, 2025].
[5] Ibid.
[6] D.M. Petrich, et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review* (2021).

fraudulently represented that the touching served a professional purpose, a sexual battery.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
County of Orange, Through its Office of The District Attorney/public Administrator
Crime Victims United of California
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association

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
Initiate Justice
LA Defensa
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

Amended Mock-up for 2025-2026 AB-848 (Soria (A))

Mock-up based on Version Number 98 - Amended Assembly 3/18/25
Submitted by: Staff Name, Office Name

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

~~**SECTION 1.** Section 1170.14 is added to the Penal Code, to read:~~

~~**1170.14.** (a) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of subdivision (c) of Section 243.4 if the crimes take place in a hospital, as defined in Section 243.2, and involve the same victim on the same occasion.~~

~~(b) (1) A full, separate, and consecutive term shall be imposed for each violation of subdivision (c) of Section 243.4 if the crimes take place in a hospital, as defined in Section 243.2, and involve separate victims or involve the same victim on separate occasions.~~

~~(2) In determining whether crimes against a single victim were committed on separate occasions under this subdivision, 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.~~

~~(3) The term imposed pursuant to this section 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. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.~~

SECTION 1. Section 243.4 of the Penal Code is amended to read:

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an 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. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by

imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and 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, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will 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 guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000).

(e) (1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, or any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars ($3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars ($2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Civil Rights Department for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars ($2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" 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.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section does not limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) In the case of a felony conviction for a violation of this section, the fact that the defendant was employed at a hospital where the offense occurred and the victim was in the defendant's care or seeking medical care at the hospital shall be a factor in aggravation in sentencing.

~~(j)~~ ***(k)*** A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars ($10,000).

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 22, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 879 (Patterson) – As Amended March 24, 2025

SUMMARY: Authorizes a peace officer employed by a county probation department to use an unsafe handgun as a service weapon as long as the county probation employee has satisfied defined training requirements. Specifically, **this bill**:

1) Exempts county probation department personnel from the prohibition on the sale or purchase of an unsafe handgun (i.e., a handgun not on the California Department of Justice's (DOJ) safe handgun roster) for use as a service weapon, if the handgun is sold to, or purchased by a county probation department for use by, or sold to or purchased by, sworn members of the department who have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST).

2) Requires that a county probation department member complete a live-fire qualification prescribed by their employing entity at least once every three months.

EXISTING LAW:

1) States that a person who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a)(1).)

2) Establishes that the prohibition on unsafe handguns shall not apply to the manufacture or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the DOJ to conduct an independent test to determine whether that handgun is prohibited and, if not, allowing DOJ to add the firearm to the roster of handguns that may be sold in this state. (Pen. Code 32000, subd. (b)(1).)

3) States that the prohibition on unsafe handguns shall not apply to the importation or lending of a handgun by employees or authorized agents of entities in determining whether the weapon is prohibited, as specified. (Pen. Code 32000, subd. (b)(2).)

4) Establishes that the prohibition on unsafe handguns shall not apply to the sale or purchase of a handgun, if the handgun is sold to, or purchased by, the DOJ, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not prohibit the sale to, or purchase by, sworn members of these agencies of a handgun. (Pen. Code 32000, subd. (b)(4).)

5) Exempts defined personnel from the prohibition on the sale or purchase of a handgun for use as a service weapon, if the handgun is sold to, or purchased by, any of the following entities for use by, or sold to or purchased by, sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months. (Pen. Code 32000, subd. (b)(6).)

6) Exempts defined personnel from the prohibition on the sale or purchase of a handgun, if the handgun is sold to, or purchased by, any of the following entities for use as a service weapon by the sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months. (Pen. Code 32000, subd. (b)(7).)

7) States that a licensed person shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption and a person who is not exempt. (Pen. Code 32000, subd. (c)(1).)

8) Requires the DOJ to maintain a database of unsafe handguns, as defined. (Pen. Code, § 32000, subd. (e)(1).)

9) States that a person or entity that is in possession of an unsafe handgun shall notify the DOJ of any sale or transfer of that handgun within 72 hours of the sale or transfer. This requirement shall be deemed satisfied if the sale or transfer is processed through a licensed firearms dealer. A sale or transfer accomplished through an exception to is not exempt from this reporting requirement. (Pen. Code, § 32000, subd. (e)(2).)

10) Establishes that the DOJ shall provide notification to persons or entities possessing an unsafe handgun regarding the prohibitions on the sale or transfer of that handgun. Thereafter, the DOJ shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred pursuant to those provisions. (Pen. Code, § 32000, subd. (e)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 879 restores and adds clarity around the ability for probation officers to be equipped with non-roster handguns, just like other law enforcement agencies, ensuring they have the same tools for officer and community safety, interoperability, and effective collaboration in emergency situations, task forces, and related duties. It's about making sure they have the tools to do their jobs and in their work alongside other officers to protect community safety."

2) **Effect of the Bill:** This bill would return to county probation officers who have satisfactorily completed the firearms portion of a POST-certified training course the ability to use a non-

rostered handgun.

There are understandable reasons for not allowing certain groups of people to access certain firearms. Even peace officers, who are subject to and complete comprehensive training before being authorized to carry a firearm, can make mistakes in handling firearms. They have lives outside of their lives on duty, where they are bringing firearms home, often to homes with children, where a single moment of forgetfulness or carelessness with a firearm can lead to tragic and deadly consequences. But, firearm ownership is a unique part of American life and certain roles create an understandable need for people in those roles to be sufficiently armed.

This bill would authorize county probation officers to access the same types of firearms as sworn members of similarly situated departments at the state and county levels. County probation officers had this authorization prior to AB 2699's (Santiago) passage in 2020. Given the lack of attention and analysis on this issue, it appears perhaps county probation officers were unintentionally carved out from the non-roster handgun exempt list as a result of how the training requirements were described in the bill. This bill would return the authorization county probation officers had just five years ago.

3) **"Unsafe Handguns": The California Roster of Handguns Certified for Sale:** This bill would exempt county probation officers from the prohibition against the purchase, use, transfer, or sale of, among other things, unsafe handguns. California's handgun roster was developed in an attempt to enforce commonsense product safety requirements for handguns and thereby, protect California consumers. (See Pen. Code, §§ 31900-31910 [for product safety requirements and testing].) California's handgun roster clearly directs which handguns are generally permitted for sale, but whether the roster is a truly accurate reflection of the relative safety of handguns is not as clear.

   Handguns that fail product safety tests are not rostered as certified safe and for sale to most consumers in California. These product safety tests, including installation of a safety device, drop tests, and firing tests (Pen. Code, §§ 31900-31905) present objective, measurable criteria against which any manufacturer who wishes to sell in California can design and modify its products. But not all provisions of the unsafe handgun statute are clearly tied to consumer safety. For example, handguns for which "the annual maintenance fee is not paid" can also be removed from the certified roster, and thereby be declared unsafe. (Cal. Code Regs., tit. 11, § 4070, subd. (c)(1).) A previously certified handgun can also be removed from the roster if a manufacturer goes out of business because the proprietor retired. (Cal. Code Regs., tit. 11, § 4070.)

   Even in cases where firearms pass all testing requirements, DOJ is authorized to mandate retesting for the same models, at a laboratory of its choosing, if it is has "reason to believe" that the model does not comply with the law. (Cal. Code Regs., tit. 11, § 4073.) If a model fails but a "similar" of that model has been approved, the similar model can be de-rostered without testing. (*Ibid.*) Relatedly, should the model that failed then get successfully restested and reinstated, DOJ is nevertheless permitted to keep the similar off the roster despite never testing it for safety. (*Ibid.*)

   Furthermore, while courts appear skeptical of microstamping, (see *Boland v. Bonta* (2023), 662 F.Supp.3d 1077, 1081), SB 452 (Blakespear) recently defined a semiautomatic pistol

without microstamping as an unsafe handgun beginning on January 1, 2028. The *Boland* court gutted almost exactly the same requirement from AB 2847 (Chiu), which became law in 2020. Decided four years prior to *Bruen, (New York State Rifle & Pistol Association Inc. v. Bruen* (2022) 597 U.S. 1) the Ninth Circuit Court of Appeals found California's handgun roster constitutional, applying intermediate scrutiny to the unsafe handgun law because the court found the law dealt with commercial sales of arms, not individual possession or use, which would have triggered strict scrutiny analysis at the time (and the "national historical tradition" test, following *Bruen*). (See *Pena v. Lindley* (2018) 898 F.3d 969.) Most laws, approximately 70% according to one study, do not survive constitutional review using a strict scrutiny analysis.[1]

As noted by the Chief Probation Officers Association of California (CPOC), probation personnel undergo a variety of training, including the firearms modules from POST Basic and a litany of additional modules from their Standards for Corrections and Training program (SCT), including Criminal Justice System and Process, Field Contacts, Legal Foundations and Liability, Crisis Communication and De-escalation, Field Searches, Booking and Evidence, Gangs, Community Supervision, Domestic Violence, Use of Restraints, Signs and Symptoms of Substance Abuse, Trauma, Interventions and Resources, among many others.

This bill would permit county probation officers, who all complete POST firearms training modules and POST-style training with quarterly live-fire tests before being authorized to carry a firearm anyway, to access these types of firearms.

4) **Legislative History:** SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

   a) Required Safety Device: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.

   b) Firing Test: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure

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[1] Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts* (2006) Vanderbilt Law Review, at p. 815 <https://scholarship.law.vanderbilt.edu/vlr/vol59/iss3/3/> [as of Apr. 16, 2025].

of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

c) Drop Test: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer. (Pen. Code, §§ 31900-31910.)

In 2016, AB 2165 (Bonta) exempted peace officers, including probation officers, who have completed the POST-prescribed firearms training from the state prohibition relating to the sale or purchase of a non-roster firearm.

In 2020, AB 2699 (Santiago) further modified California's rostering of handguns by adding additional limitations on their acquisition and usage by defined law enforcement agencies. Additional law enforcement entities were included on the list of agencies that could acquire and use non-rostered firearms but additional limitations were placed on all agencies that were authorized to use these handguns. These limitations included any sale of a non-rostered handgun to an agency is only authorized if the handgun is to be used as a service weapon by a peace officer who has successfully completed the basic course prescribed by POST and who qualifies with the handgun at least every six months.

Proponents of the bill, including CPOC, have noted that supporters of reauthorizing county probation personnel have consistently cited the potential cross-training opportunities being lost for county probation officers unable to handle a non-roster handgun, even during training exercises where multiple exempt entities are participating. Loss of those training opportunities could be a strain on smaller counties where these opportunities are not plentiful, but are otherwise essential, and in public safety preparedness in counties across the state.

Previous analyses have also noted the requirements detailed in AB 2699 failed to take into account that probation officers are not POST-certified.[2] Though they complete the same firearms modules as POST-certified officers, the Board of State and Community Corrections' (BSCC) SCT program operates the training requirements for county probation officers. This drafting oversight removed county probation officers from those defined as exempt from handling a non-roster handgun and this bill would undo that oversight.

5) **Unintentional Firearms Incidents:** From 2016-2022, in California, the incidence rate of firearms where the injury intent was noted as "unintentional" has stayed relatively stable, having remained between 7-12 injuries per 100,000 person-years during that time period.[3] Like many other public safety metrics, the unintentional firearm injury rate peaked at 12 injuries per 100,000 person-years during the pandemic in 2021, while it hit a low of 7.1

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[2] Senate Public Safety Committee, AB 669 (Lackey) Committee Analysis (2021).
[3] *California Firearm Injury Dashboard* (Feb. 2, 2024) California Department of Public Health <https://skylab4.cdph.ca.gov/firearm-injuries/> [as of Apr. 10, 2025].

injuries per 100,000 person-years in 2018.[4]

Intent is meant to capture the reason for the incident. Intent in these studies include unintentional (accidental), suicide/self-harm, homicide/assault, undetermined, and legal intervention/war operations.[5] Intent is recorded by coroners or medical examiners for fatal injuries and clinicians and hospital staff for non-fatal injuries.[6] Interestingly, for non-fatal injuries, coding guidelines from the Centers for Medicare and Medicaid Services state that when the injury intent is unknown, the *coders should default to unintentional intent.*[7]

It is reasonable to suggest that non-fatal unintentional firearm injuries are likely over-reported and non-fatal assault firearm injuries are likely under-reported due to this coding standard. With the relative stability of these incidents, specifically over the past 5-7 years, reauthorizing county probation personnel to carry non-roster handguns seems unlikely to negatively impact the rate of unintentional firearms incidents.

6) **Argument in Support**: According to one of the bill's sponsors, the *Chief Probation Officers of California*, "Penal Code 32000 sets forth the state exemptions for authorized peace officers to purchase non-roster handguns in their official capacity. Non-roster firearms are only available for purchase by law enforcement departments and are designed to address the needs and practices of a peace officer performing their duties including functionality around the most up to date technology, aspects that can be individualized to the officer, and other functions important in emergency situations.

"In 2016, AB 2165 (Bonta) was enacted and, among other provisions, authorized specified peace officers, which included probation, who have completed the Commission on Peace Officer Standards and Training (POST) prescribed firearms training course as required in Penal Code 832, to be exempt from the state prohibition relating to the sale or purchase of a non-roster firearm.

"As stated in the AB 2165 analysis…'These categories of peace officers participate in mutual aid situations, task forces, sting operations and arrests—all high-risk situations require that these officers be properly armed. It is imperative that we provide the statutory basis for the parity between agencies that has existed since the creation of the roster.'

"In 2020, AB 2699 (Santiago) was enacted which changed requirements for all peace officers to complete the POST basic course, rather than the longstanding requirements that peace officers complete the statutorily required POST certified PC 832 firearms and arrest course and inadvertently did not reflect the training that probation completes both through POST PC 832 but also training through the BSCC STC program. Probation officers undergo the same firearms training as other peace officers through PC 832, which includes the firearms and arrest modules from the POST Basic Academy."

7) **Related Legislation**:

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[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Id.*, at fn. 1.

a) SB 15 (Blakespear), would authorize the Department of Justice to remove a person from the centralized list who has willfully failed to comply with specified licensing requirements or who failed to remedy violations discovered as a result of an inspection. SB 15 is set to be heard in the Senate Appropriations Committee.

b) SB 248 (Rubio), would require the DOJ to mail to any person involved in a firearms transaction a letter that includes information relevant to firearm ownership, such as how to legally relinquish a firearm and resources regarding gun violence restraining orders. SB 248 is set to be heard in the Senate Appropriations Committee.

8) **Prior Legislation**:

a) AB 669 (Lackey), of the 2021-2022 Legislative Session, would have exempted sales to or purchases by to, or purchases by, a county probation department and sworn members thereof who have completed specified firearms training prescribed by POST and who complete the above-described live-fire qualification at least once every 3 months. AB 669 was held in the Senate Public Safety Committee.

b) AB 1478 (Chiu), of the 2021-2022 Legislative Session, would have required those microscopic characters to be imprinted in 2 one or more places on the interior of the pistol, provided that the department certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions. AB 1478 was held in the Assembly Public Safety Committee.

c) AB 2699 (Santiago), Chapter 289, Statutes of 2020, exempts from the prohibition on unsafe handguns, the sale of a handgun to, or the purchase of a handgun by, additional specified entities. AB 2699 would also provide that this training requirement would be satisfied by completion of other specified POST training before January 1, 2021.

d) AB 1794 (Jones-Sawyer), of the 2019-2020 Legislative Session, would have made the prohibitions on unsafe handguns inapplicable to the sale or purchase of a handgun if the handgun is sold to, or purchased by, additional specified entities or for use by sworn members of those entities, including the California Horse Racing Board and the State Department of Public Health. AB 1794 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers' of California (CPOC) (Sponsor)

Opposition

None submitted.

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

Date of Hearing: April 22, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 897 (DeMaio) – As Amended April 9, 2025

SUMMARY: Creates the misdemeanor of unlawful squatting punishable by up to one year in county jail. Specifically, **this bill**:

1) States that a person commits the offense of unlawful squatting when they enter upon the land or premises of another and reside on that land or premises for any period of time knowingly acting without the knowledge or consent of the owner, rightful occupant, or an authorized representative of the owner.

2) Requires a law enforcement agency that receives a complaint of unlawful squatting to issue a citation to the person accused requiring them to, within three business days, present the law enforcement agency with properly executed documentation that authorizes the person's entry on the land or premises, which may include a properly executed lease or rental agreement or proof of rental payments.

3) Establishes that a person who does not provide documentation demonstrating authorized, lawful presence on the land or premises shall be subject to arrest.

4) States that if a person provides documentation of authorized, lawful presence on the land or premises, a magistrate court shall set a hearing within seven days of the submission of that documentation to determine whether the documentation is properly executed or meritorious.

5) Requires the person, if the court determines that the documentation is improper or fraudulent, to be removed from the property and subject to fines to cover damages, back rent based on the property's fair market value, and shall be subject to specified punishment.

6) Provides that a violation for unlawful squatting shall be punishable as a misdemeanor by imprisonment in the county jail for up to one year.

7) Provides that unlawful squatting is intended to provide remedies for the unauthorized occupation of residential property by squatters.

8) Provides that unlawful squatting applies only to unauthorized persons, and does not apply to a tenant, former tenant who is in an active dispute with the owner, a holdover tenant, or a person with a bona fide claim of tenancy or title, including title by adverse possession.

9) States that "resides" means to inhabit or live on or within any land or premises.

EXISTING LAW:

1) Provides that any person is guilty of trespass who makes a credible threat to cause serious bodily injury to another person with the intent to place that other person in reasonable fear for their safety or the safety of their immediate family, as defined, and who does any of the following:

    a) Within 30 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

    b) Within 30 days of the threat, knowing that the place is the threatened person's workplace, unlawfully enters the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace without lawful purpose, and with the intent to execute the threat against the target of the threat. (Pen. Code, § 601, subd. (a).)

2) Makes a trespass violation, as defined, punishable as an alternate felony/misdemeanor. (Pen. Code, § 601, subd. (d).)

3) States that a person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

    a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

    b) Carrying away any kind of wood or timber lying on those lands.

    c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

    d) Digging, taking, or carrying away from a lot situated within the limits of an incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

    e) Digging, taking, or carrying away from land in a city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

    f) Maliciously tearing down, damaging, mutilating, or destroying a sign, signboard, or notice placed upon, or affixed to, a property belonging to the state, or to a city, county, city and county, town, or village, or upon the property of a person.

    g) Entering upon lands owned by another person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant.

    h) Entering upon lands or buildings owned by another person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption.

i) Willfully opening, tearing down, or otherwise destroying a fence on the enclosed land of another, or opening a gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying a sign, signboard, or other notice forbidding shooting on private property.

j) Building fires upon lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

k) Entering lands, whether unenclosed or enclosed by fence, for the purpose of injuring property or property rights or with the intention of interfering with, obstructing, or injuring a lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.

l) Entering lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land.

m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

n) Driving a vehicle upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

o) Refusing or failing to leave land, real property, or structures belonging to, or lawfully occupied by, another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that they are acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested.

i) A request for a peace officer's assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession.

ii) A request for a peace officer's assistance in dealing with a trespass may be submitted electronically. A local government may accept electronic submissions of requests pursuant to this subdivision.

p) Entering upon lands declared closed to entry, if the closed areas have been posted with notices declaring the closure.

q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchperson, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

r) Knowingly skiing in an area or on a ski trail that is closed to the public and that has signs posted indicating the closure.

s) Refusing or failing to leave a hotel or motel, where the person has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager.

t) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that the peace officer is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

u) Knowingly entering, by an unauthorized person, upon an airport operations area, passenger vessel terminal, or public transit facility if the area has been posted with notices restricting access to authorized personnel only.

i) A person convicted of a violation of paragraph (1) shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the person refuses to leave the airport or passenger vessel terminal after being requested to leave by a peace officer or authorized personnel.

(3) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, for a second or subsequent offense. (Pen. Code, § 602, subds. (a)-(u).)

4) States that any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent, is guilty of a misdemeanor punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to $400, or by both that imprisonment and fine. (Pen. Code, § 602.1, subd. (a).)

5) Establishes that a lodger, as defined, who remains on the premises of an owner-occupied dwelling unit after receipt of a notice terminating the hiring is guilty of an infraction and may be arrested for the offense by the owner, or in the event the owner is represented by a court-appointed conservator, executor, or administrator, by the owner's representative. (Pen. Code, § 602.3, subd. (a).)

6) Provides that every person other than a public officer or employee acting within the course and scope of their employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other residential place without consent of the owner, their agent, or the person in lawful possession thereof, is guilty of a misdemeanor. (Pen. Code, § 602.5, subd. (a).)

7) Provides that every person other than a public officer or an employee acting within the course and scope of their employment in performance of a duty imposed by law, who, without the consent of the owner, their agent, or the person in lawful possession thereof, enters or remains in any noncommercial dwelling house, apartment, or other residential place while a resident, or another person authorized to be in the dwelling, is present at any time during the course of the incident, is guilty of aggravated trespass punishable by imprisonment in a county jail for not more than one year or by a fine of not more than $1,000, or by both that fine and imprisonment. (Pen. Code, § 602.5, subd. (b).)

8) States that any person who without the written permission of the landowner, the owner's agent, or the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of a public offense. (Pen. Code, § 602.8, subd. (a).)

9) Provides that every person who maliciously defaces with graffiti or other inscribed material, damages or destroys any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism punishable as a misdemeanor or an alternative felony/misdemeanor depending on the amount of defacement, damage, or destruction. (Pen. Code, § 594, subds. (a) & (b).)

10) Provides that every person is guilty of a forcible entry who either:

    a) By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property.

    b) Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession. (Civ. Proc. Code, § 1159, subd. (a).)

11) Provides that every person is guilty of a forcible detainer who either:

    a) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.

    b) Who, in the night-time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the

period of five days, refuses to surrender the same to such former occupant. (Civ. Proc. Code, § 1160, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The squatter problem in California has continued to plague property owners, and there is currently not a timely enough process in order for squatters to be removed from homes. AB 897 would create a timely and cost-efficient process to allow property owners to evict squatters from their property, avoiding the lengthy and costly unlawful detainer process."

2) **Effect of the Bill Relative to Existing Law:** This bill would establish the offense of unlawful squatting, create a distinct process for ejecting those found to be squatting on another person's property, and make violation of the law punishable as a misdemeanor with up to a year in county jail.

   It is unclear whether this bill will provide genuinely new tools to law enforcement and prosecutors for managing squatters on private property. Several code sections already provide punishments for trespassing, which is slightly different than squatting in that squatters have the intent of settling or making the property their residence.[1] But, because in many ways squatters, by definition, must trespass on someone's property to establish themselves as squatters, combined with the number of acts that are penalized when done by trespassers, our trespassing statutes already appear to cover much of the conduct of squatters.

   Trespassing is generally punished as a misdemeanor (Pen. Code, § 602), although a felony is possible for aggravated trespass. (Pen. Code, § 602.5.) The language defining aggravated trespass in existing law is arguably quite similar to the language in this bill for unlawful squatting. Aggravated trespass is when any person enters or remains in any noncommercial dwelling house, apartment, or other residential place without consent of the owner while an authorized person is also in present. (Pen. Code, § 602.5, subd. (b).)

   More than 30 discrete acts constitute criminal trespassing under existing law, including 1) entering someone else's property with the intent to damage that property, 2) entering someone else's property with the intent to interfere with or obstruct the business activities conducted on the property, 3) entering and "occupying" another's property without permission, and 4) refusing to leave private property after being asked to do so. (See Pen. Code, § 602, subds. (a)-(o).) Under existing law, owners of private property may already request law enforcement assistance in ejecting trespassers from their property. (Pen. Code, § 602, subd. (o).)

   A range of other criminal laws prohibit varieties of trespass and unlawful presence. A trespass onto a person's residence or workplace, in which the trespasser also makes a credible threat to cause serious bodily injury to another, is punishable as an alternate misdemeanor/felony as long as the trespass occurred within 30 days of making the threat and

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[1] "Squatter" (2014) Black's Law Dictionary (10th ed.)

put the victim in reasonable fear for their safety. (Pen. Code, § 601.) A person who intentionally interferes with a business open to the public and who refuses to leave is guilty of a misdemeanor punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to $400, or by both that imprisonment and fine. (Pen. Code, § 602.1, subd. (a).) A person who enters a home with the intent to commit larceny is guilty of a burglary, which is punishable as a felony. (Pen. Code, § 459.) Any person who "damages, destroys, or defaces" real property is guilty of vandalism, which is punishable as an alternate misdemeanor/felony. (Pen. Code, § 594.) A squatter who forges a lease agreement or makes a false claim of ownership is already subject to a felony conviction and three years' imprisonment. (Pen. Code, § 115.) A squatter who unlawfully connects utilities while on the property is guilty of a misdemeanor or felony. (Pen. Code, § 498.)

Given the criminal laws and punishments already available to law enforcement and prosecutors, it is not clear whether this bill is needed.

3) **Proving and Punishing Squatting:** The difference between squatting and trespassing appears to be the intent of the person who is on the land without permission. Squatters can make a claim to property through adverse possession, which allows a person to claim title to property without formal paperwork if the person meets certain requirements (Civ. Proc. Code, § 325.) Adverse possession, however, does not ripen into title until five years have passed and the person has openly, continuously, exclusively, and hostilely occupied the property, while also timely having made tax payments. (*Ibid.*) Should adverse possession not be established and no trespass violations exist from the acts of a squatter, a squatter can nevertheless be ejected from the property through the unlawful detainer process.[2]

Squatting has received significant attention over the last several years.[3] As an attempt to address the problem, this bill establishes a new process for removing squatters from private property. Specifically, this bill authorizes law enforcement to issue a citation to the unauthorized person, then allows three business days for the person to "present law enforcement with properly executed documentation that authorizes the person's entry on the land," and then a hearing is set in a magistrate court within seven days to determine the authenticity of the person's claim to lawfully be on the premises. If the magistrate determines the documentation is insufficient, the person "shall be removed from the property and subject to fines to cover damages, back rent based on the property's fair market value, and subject to [misdemeanor] punishment." A person who does not provide properly executed documentation within three days shall be subject to arrest for unlawful squatting.

This bill purports to create a more streamlined process for ejecting persons unlawfully residing on private property. The process detailed in this bill, however, begs some questions. Using a magistrate to make a determination on whether documents are properly executed or authentic is likely valid, but whether the magistrate can then make a determination that the

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[2] *Eviction Cases in California*, Judicial Branch of California <https://selfhelp.courts.ca.gov/eviction> [as of Apr. 18, 2025].

[3] *See, e.g.,* Riegle et al., *Rise in homeowners vs. squatters incidents prompts action from lawmakers* (Mar. 29, 2024) ABC News https://www.abcnews.go.com/US/rise-homeowners-squatters-incidents-prompts-action-lawmakers/story?id=108503701 [as of Apr. 18, 2025]; Avila, *Squatters move into empty houses across San Diego* (Nov. 14, 2024) ABC News <https://www.10news.com/news/we-follow-through/squatters-move-into-empty-houses-across-san-deigo> [as of Apr. 18, 2025].

person with insufficient paperwork is also guilty of unlawful squatting is likely invalid. Magistrates lack the authority to determine the guilt or innocence of a defendant.[4] To secure criminal punishment of the unlawful squatter under this bill seemingly would require both the magistrate process and conventional criminal justice process (Pen. Code, § 1009.) Like the language of the statute, this process is arguably duplicative and superfluous.

Another concern with the process is the requirement that law enforcement would need to be involved through all of these judicial processes. While the statute requires the person accused to "present" the law enforcement agency with the documents, it is unclear from the bill's language what precisely would be the law enforcement agency's role with the submission of documentation beyond mere receipt of the documents.

It could be useful to establish a defined temporal element to this law as well. Currently, the bill allows for prosecution of unlawful squatting where the person enters upon the land or premises of another and resides there "for any period of time." Without clarification, the language here could be used to unfair and unjust ends, including allowing prosecution for someone who only for a very short period of time is on the premises. Defining "resides" is helpful, though not necessarily dispositive of this issue. This bill theoretically could allow for prosecution of a friend who was authorized to stay at the person's house for an indefinite period but was abruptly asked to leave "in the morning" following a disagreement the previous evening. Is that person unlawfully squatting as of 12:01am? The bill does not make this clear.

4) **Due Process Considerations:** The author of the bill suggests this bill implements a process for ejection of a person unlawfully squatting on another person's property that would operate more efficiently than California's current unlawful detainer process. Supporters of the bill advance constitutional arguments surrounding the right to property and due process.

As an initial matter, it is important to recognize that the constitution's protections of individual liberties generally apply only to government action.[5] Private conduct generally does not have to conform to the Constitution.[6] The Constitution generally does not apply to private actors or private entities.[7] This is referred to as the state action doctrine and while there are important exceptions to this doctrine, those exceptions are not implicated here.[8]

The Supreme Court has held that the government has no general duty to protect individuals from privately inflicted harms.[9] Justice Rehnquist wrote, "Nothing in the language of the Due Process Clause itself requires the State to protect the . . . property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of minimal levels of safety and security."[10] Thus, the Due Process Clause does not require the government to protect property owners from squatters.

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[4] *Subordinate Judicial Officers: Court Commissioners as Magistrates* (2016) Judicial Council of California <https://courts.ca.gov/system/files?file=itc/leg16-01.pdf> [as of Apr. 18, 2025].
[5] Chemerinsky, *Constitutional Law: Principles and Policies* (6th ed.), at p. 553.
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Id.* at p. 598
[10] *Ibid.*

However, squatters and trespassers inarguably have a right to not to be deprived of their liberty. The Supreme Court has long acknowledged that a core liberty right is the right to be free from physical or bodily restraint.[11] Physical or bodily restraint includes confinement, *i.e.,* jail or prison. Interestingly, in *Roth v. Board of Regents*, which supporters cite for one proposition, the Court also writes, "the term [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to . . . engage in any of the common occupations of life, [and] establish a home . . . ." (*Roth v. Board of Regents* (1972) 408 U.S. 564, 572.)

The Court in *Roth* states that deprivation of liberty under the Due Process Clause can include confinement and being prevented from establishing a home, but again, private actors are not bound by this mandate, so due process concerns are typically inapt as applied *to* the conduct of the squatters. Where these concerns more commonly apply is *against* the squatters, since the state would be attaching a misdemeanor penalty to the act of unlawful squatting. This potential penalty risks depriving someone of liberty through bodily restraint. There is also an argument that due process concerns could apply where a squatter has a potentially viable property interest, e.g., if the squatter is in adverse possession of the property.

Ultimately, the Due Process Clause is implicated here primarily because the government is prohibited from fining or incarcerating someone without notice, a hearing, and a ruling on the merits (*i.e.,* procedural due process), not due to an individual's right to property. The *Roth* Court does not suggest that in a case like this the squatters would need to establish a substantive property right to be protected by the guarantees due process (the property right implicated in that case was the possibility of tenureship, which makes its facts ill-suited here, anyway). The Court in *Roth* is saying that a person who makes a claim that a government actor or action has deprived them of life, liberty, or property without due process of law must first establish they had a property right for which deprivation by a government actor or action was even possible.

The due process concerns in these cases are not generally from squatters saying their property rights have been violated (unless there is a bona fide adverse possession claim), but instead that they cannot be deprived of money or freedom, by government actors or actions, through fines or incarceration without due process. Squatters have protected liberty interests, like all others, independent of whether they are property owners.

While this bill admittedly establishes a system for protecting the due process rights of the accused squatters, it remains unclear whether that process is necessary.

5) **Argument in Support**: According to *California Civil Liberties Advocacy*, "While tenants' rights undeniably implicate civil liberties—such as the right to due process and protection from unlawful eviction—property rights are no less fundamental to a free society. The right to own, possess, and exclude others from one's home is a core civil liberty enshrined in both the U.S. and California Constitutions.

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[11] *Id.* at 612.

"The California Constitution explicitly recognizes property rights as fundamental civil liberties. The relevant provision is Article I, Section 1, which states:
'All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.' (Cal. Const., art. I, § 1)

"This language places property rights on equal footing with life, liberty, and privacy, firmly establishing them as a core component of California's civil liberties framework. And the courts have interpreted this section as creating a broad, affirmative right to acquire, possess, and protect property, which must be balanced with—not subordinated to—other social interests, including housing access and tenant protections. Thus, any meaningful civil liberties analysis must include both sides of the equation: the due process rights of occupants and the constitutional property rights of lawful owners.

"For too long, California has tolerated a legal paradox: individuals who have no tenancy rights—no lease, no permission, no color of title—are permitted to remain in homes they have unlawfully occupied while property owners are forced into months-long civil proceedings. AB 897 restores constitutional balance, enabling timely removal of trespassers while preserving due process for those with legitimate claims.

"Without meaningful protections for property owners, civil liberties become selectively applied, favoring those in possession over those who hold lawful title. Just as due process shields tenants from arbitrary removal; conversely, it must not be wielded as a weapon to deprive rightful owners of their own homes. True civil liberty balances the rights of all parties, ensuring that justice does not collapse under the weight of procedural exploitation or asymmetrical enforcement. AB 897 restores that balance by reaffirming that the civil liberty of private property."

6) **Argument in Opposition**: According to *Housing California,* "AB 897 proposes to reclassify numerous informal living situations—including those often referred to as "couch surfing"—as acts of trespassing punishable by fines and potential misdemeanor charges. This approach is deeply troubling. A significant portion of Californians experiencing housing instability live in non-leaseholding arrangements with tenants or leaseholders. According to the Benioff Homelessness and Housing Initiative's landmark 2023 study, 60% of people entering homelessness from non-institutional settings were living in such informal arrangements immediately before becoming homeless.
"Rather than addressing the root causes of our state's housing crisis, AB 897 would accelerate pathways into homelessness. It threatens to saddle already-vulnerable individuals with fines and criminal charges, further entangling them in the criminal legal system. This is especially concerning given the same study found that 19% of people experiencing homelessness entered directly from institutional settings like jail or prison—a stark reminder of the close ties between criminalization and homelessness.

"Furthermore, this legislation is unnecessary. California law already provides mechanisms for addressing illegal trespass. Landlords and tenants currently have access to civil eviction processes designed to address unauthorized occupancy. By circumventing these existing channels, AB 897 strips tenants and occupants of critical time to secure alternate housing arrangements—time that is often the difference between stability and homelessness."

7) **Related Legislation**:

a) SB 448 (Umberg) would prescribes a procedure for the notice and removal of a squatter by a local law enforcement agency. The bill would authorize a property owner or their agent to serve a demand to vacate, as specified, upon a squatter. SB 448 is set to be heard in the Senate Judiciary Committee.

b) AB 1097 (Avila Farias) would additionally make it a misdemeanor to commit a trespass by entering Indian lands, as defined, where signs forbidding trespass are displayed where animals are being raised, and would clarify that it is a misdemeanor to commit a trespass by entering Indian lands for the purpose of injuring property or property rights or with the intention of interfering with a lawful business. AB 1097 is set to be heard today in the Assembly Public Safety Committee.

8) **Prior Legislation**:

a) SB 602 (Achuleta), Chapter 404, Statutes of 2023, authorizes a single request for assistance to be made and submitted electronically, in a notarized form provided by the law enforcement agency, to a peace officer. The bill would extend the maximum period of time for a request for peace officer's assistance from 30 days to 12 months for requests pertaining to fire hazard or the owner's absence.

b) SB 468 (Seyarto), of the 2023-24 Legislative Session, would have authorized a single request for assistance to be made and submitted electronically, in a notarized writing on a form provided by the law enforcement agency, to a peace officer for a period of not more than 3 years when the premises or property is closed to the public and posted as being closed and would require the notice ending assistance before the 3 years has passed to be in writing. SB 468 was held in the Senate Public Safety Committee.

c) AB 2120 (Chen), of the 2023-24 Legislative Session, would have provided that the trespass provision does not apply to a repossession agency licensed by the Department of Consumer Affairs and its employees when they are on private property searching for collateral or repossessing collateral, and, upon completing that search or repossession, leave the private property within a reasonable amount of time. AB 2120 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy

Oppose

California Homeless Union Statewide Organizing Council
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Housing California
Initiate Justice

Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
National Alliance to End Homelessness
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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

Date of Hearing: April 22, 2025
Consultant: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 946 (Bryan) – As Introduced February 20, 2025

SUMMARY: Requires, in a county with a population of at least 3,500,000 people, the chief probation officer (CPO), or a designee who is appointed by the county board of supervisors and who has jurisdiction over youth development, to perform duties and discharge obligations normally within the jurisdiction of the CPO.

EXISTING LAW:

1) States that a chief probation officer (CPO) shall be appointed and removed in every county in one of the following ways:

    a) The CPO shall be nominated by the juvenile justice commission or regional juvenile justice commission of the county and shall thereafter be appointed by the presiding judge or majority of judges. The CPO may be removed for good cause as determined by the presiding judge or majority of judges ; or,

    b) In counties with charters that provide for appointment and tenure of office for the chief probation officer, the provisions of the charter shall establishes the methods of appointment and the tenure for the chief probation officer. (Gov. Code § 27770 subd. (a)(b).)

2) States that every probation officer, assistant probation officer, and deputy probation officer shall have the powers and authority conferred by law upon peace officers listed in Section 830.5 of the Penal Code. (Wel & Inst Code § 283)

3) Provides that a probation officer or a deputy probation officer are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency.

    a) Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

        i) To conditions of parole, probation, mandatory supervision, or postrelease community supervision by any person in this state on parole, probation, mandatory supervision, or postrelease community supervision;

        ii) To the escape of any inmate or ward from a state or local institution;

iii) To the transportation of persons on parole, probation, mandatory supervision, or postrelease community supervision; and,

iv) To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of the officer's employment. (Pen Code § 830.5 subd. (a)(1-4).)

4) Requires that every person described in this chapter as a peace officer shall satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training. (Pen Code § 832 subd.(a))

5) Requires the Board of State and Community Corrections to create standards and training for Local Corrections and Probation Officers.

   a) States that for the purpose of raising the level of competence of local corrections and probation officers and other correctional personnel, the board shall adopt, and may from time to time amend, rules establishing minimum standards for the selection and training of these personnel employed by any city, county, or city and county who provide for the custody, supervision, treatment, or rehabilitation of persons accused of, or adjudged responsible for, criminal or delinquent conduct who are currently under local jurisdiction;

   b) Any city, county, or city and county may adhere to the standards for selection and training established by the board. The board may defer the promulgation of selection standards until necessary research for job relatedness is completed; and,

   c) Minimum training standards may include, but are not limited to, basic, entry, continuation, supervisory, management, and specialized assignments. (Pen Code § 832 subd.(a-c))

6) Requires the COP to perform the duties and discharge the obligations imposed on the office by law or by order of the superior court, including the following:

   a) Community supervision of offenders subject to the jurisdiction of the juvenile court as specified in the Welfare and Institutions Code;

   b) Operation of juvenile halls as specified in the Welfare and Institutions Code;

   c) Operation of juvenile camps and ranches as specified in the Welfare and Institutions Code;

   d) Community supervision of individuals subject to probation pursuant to conditions as specified in the Penal Code;

   e) Community supervision of individuals subject to mandatory supervision as specified in the Penal Code;

   f) Community supervision of individuals subject to postrelease community supervision as specified in the Penal Code;

g) Administration of community-based corrections programming, as specified in Title 8 of Part 2 of the Penal Code;

h) Serving as chair of the Community Corrections Partnership as specified in the Penal Code; and,

i) Making recommendations to the court, including, but not limited to, pre-sentence investigative reports as specified in the Penal Code. (Gov. Code § 27771 subd. (a).)

7) Provides that the CPO may perform other duties that are consistent with those enumerated in subdivision (a) and may accept appointment to the Board of State and Community Corrections and collect the per diem authorized in the Penal Code. (Gov. Code § 27771 subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In the last decades, youth in the custody of the Los Angeles County probation department have been subject to rampant sexual abuse, egregious misconduct, and staff facilitated violence.

"AB 946 will address these deficiencies by allowing the county board of supervisors to designate new authority to their youth development department that was established to bridge the gap between accountability and opportunity for the regions youth."

2) **CA Probation Departments Appointments and Training**: Existing law states that each county shall appoint a chief probation officer (CPO), depending on the county charter, either by the Board of Supervisors or by the Presiding Judge of the Superior Court. (Gov. Code § 27770 subd. (a)) The probation departments, which is led by the CPO, handles the duties and obligations, including but not limited to, adult probation, juvenile probation, and pretrial detainees, as codified in existing law. According to California State Association of Counties (CSAC) "The primary staff of the Probation Department are probation officers and institutional counselors who are sworn peace officers (Penal Code Section 830.5) with the powers of arrest, search, and seizure. Probation Officers are required to have 200 hours of comprehensive training prior to assuming their duties and 40 hours each year thereafter. This training is certified and paid for by the Standards and Training for Corrections Program of the State Board of Corrections."[1] In order to carry out these duties the Board of State and Community Corrections (BSCC) is required to establish selection criteria and minimum training standards for correctional facilities, including probation departments. BSCC established the Standards and Training for Corrections (STC) program in 1980.[2] The STC programs main purpose is to raise the level of competence of individuals in the state's local corrections and probation departments.

3) **Effects of the bill**: AB 946 will amend government code section 27771 to allow the board of supervisors, in a county with a population of at least 3,500,000 individuals, to appoint a

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[1] Probation - California State Association of Counties (Last accessed March 26th, 2025)
[2] Probation-Officer-Core-Training-Course-Manual-July-2020.pdf (Last accessed March 26th, 2025)

designee who has jurisdiction over youth development to carry out the duties and obligation which fall under the jurisdiction of the CPO. This bill gives discretion to the board of supervisors to replace the CPO with a youth development designee to carry out duties, including but not limited to juvenile probation, adult probation, and making recommendation to the courts in connection to pre-sentence investigations. As this bill is currently written it is unclear what the qualifications of this designee shall be, what training they shall receive in order to carry out the duties of the CPO, and if this designee may be sworn in as a peace officer and have the powers of arrest, search, and seizure.

AB 946 is currently only applicable to LA County, as it is the only county in California that has more than 3.5 million people, with a population of roughly 9.6 million individuals. However, if signed this bill may apply to more counties if the populations were to grow in other counties, for example as of December 2024 San Diego County had a population of roughly 3.3 million individuals and right behind that is Orange County with 3.1 individuals.[3]

4) **Argument in Support**: According to the *Pacific Juvenile Defender Center*, "Every county is currently required to nominate a chief probation officer to perform the duties and discharge the obligations imposed by the office by law. AB 946 would create an exception to counties with a population of at least 3,500,000 people and allow either the chief probation officer or a designee who is appointed by the county board of supervisors and who has jurisdiction over youth development to perform those same duties and discharge those same obligations.

"Large counties should have broad discretion to make decisions on behalf of youth and regarding youth justice. AB 946 would ensure large counties are able to designate leaders who will be tasked with carrying out the duties and obligations the law requires and that will lead directly to the success of justice-involved youth in their counties."

5) **Argument in Opposition**: According to the *Chief Probation Officers' of California*, "This bill would redirect the authority and provision of services provided by probation to a non-public safety entity. This redirection of authority would include the operation of juvenile halls and camps which provide supervision and care for youth with the most serious and violent offenses including youth and young adults realigned from the State Division of Juvenile Justice closure, supervision of individuals released from state prison onto Post Release Community Supervision, supervision of individuals on felony and mandatory supervision, and making recommendations to the court.

"Redirecting these responsibilities to another department or entity with separate and distinct missions, and without expertise, training, and linkages to the court and peace officer functions would disrupt service continuity and undermine those other entities' ability to adhere to their core functions. Perhaps more importantly, it would create serious public safety risks and negatively impact the community safety services to balance safety and treatment for youth and adults.

"As Probation Chiefs with extensive training and experience in evidence-based approaches to working with youth and young adults, we are deeply concerned not only about the potential impacts of this bill on community safety, service coordination at the county level,

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[3] California Counties by Population (2025) (Last accessed March 27th, 2025)

coordination with the courts, and the justice system's ability to function effectively, but also about similar impacts to recipient departments and the constituencies they serve.

"This proposal raises significant questions and concerns:

- Would the lack of a structured probation system lead to more youth being transferred to the adult system or more custodial options being sought due to diminished confidence in responses that offer community supervision in lieu of custody?

- Without probation's dual role in juvenile and adult criminal justice systems and as an arm of the court, how would the system ensure compliance with court orders and provide necessary updates to the Judiciary?

- What impact would occur from having non-peace officers managing juvenile detention facilities as well as supervision of adults returning from jail, prison and on felony supervision as ordered by the court? How would training be conducted and managed for an entity to oversee these duties and oversight to ensure compliance with the court and regulatory requirements?

- How would another county department—one without probation's specialized training—adapt to handling duties that fall outside its core mission?

"The first question which must be answered before all others however, is whether it is truly the desire of the Legislature to eliminate the adjudicatory and supervisory elements of the role of probation in relation to the court ordered requirements for youth and adults and transferring those duties to non-peace officers. This bill would represent a redirection of all juvenile and adult public safety and rehabilitative services provided by county probation departments."

6) **Related Legislation**: SB 357 (Menjivar) of the current Legislative Session, will allow the board of supervisors of any county to delegate to another county department all or part of the duties and authorities concerning minors who fall under the jurisdiction of the juvenile court and that are granted to the probation department or a probation officer. This bill has been referred to the Senate Public Safety Committee.

7) **Prior Legislation**: AB 103 (Committee on Budget), Chapter 17, Statues of 2017, was a public safety omnibus bill that required the presiding judge to appoint the chief probation officer upon nomination of the juvenile justice commission. This bill also deleted the creation of the office of adult probation officer.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association (CPDA)
LA Defensa
Pacific Juvenile Defender Center

Oppose

American Federation of State, County and Municipal Employees, Afl-cio
Bu 702- Seiu 721 Joint Council
Chief Probation Officers' of California (CPOC)
County of Kern
County of Monterey
Fresno County Board of Supervisors
Inyo County Board of Supervisors
Judicial Council of California
Los Angeles County Probation Managers Association Afscme Local 1967
Los Angeles County Probation Officers Union, Afscme Local 685
Marin County Probation Department
Mendocino County Board of Supervisors
Sacramento County Probation Association
San Diego County Probation Officers Association
San Joaquin County Probation Officers Association
San Mateo County Probation Detention Association
State Coalition of Probation Organizations
Ventura County Professional Peace Officers Association

1 Private Individual

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

Date of Hearing: April 22, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 981 (Gipson) – As Introduced February 20, 2025

As Proposed to be Amended in Committee

SUMMARY: Creates a five county pilot program that requires an individual convicted of specified reckless driving and speed offenses to install a functioning, certified, active intelligent speed assist (ISA) device on their vehicle, and requires the California Transportation Agency (CalSTA) to submit a report to the Legislature analyzing the effectiveness of this pilot program. Specifically, **this bill**:

1) Requires the Department of Motor Vehicles (DMV) to establish a pilot program in the Counties of Los Angeles, San Diego, Fresno, Sacramento, and Kern, to reduce the number of reckless driving, speeding, and driving under the influence (DUI) offenses in those counties, as specified.

2) Requires a court to notify a person convicted of specified driving offenses that they are required to install an ISA device on any vehicle that the person operates and that they are prohibited from operating a motor vehicle unless that vehicle is equipped with an ISA device.

3) Requires the DMV upon receipt of the court's abstract of a conviction to inform the convicted person of the requirements of this bill, including the term for which the person is required to have a device installed. The records of the DMV shall reflect the mandatory use of the device for the term required and the time when the device is required to be installed by this code.

4) Requires the DMV to advise the person that installation of an ISA device on a vehicle does not allow the person to drive without a valid driver's license.

5) Requires a person who is notified by the DMV pursuant to the above to do all of the following:

    a) Arrange for each vehicle operated by the person to be equipped with an ISA device by a certified active intelligent speed assist device provider;

    b) Provide to the DMV proof of installation by submitting a verification installation form to be developed by the DMV;and,

    c) Pay a fee, determined by the DMV, that is sufficient to cover the costs of administration of this section.

6) Provides that a person who is notified by the DMV pursuant to this bill is exempt from the requirements to install an ISA device until the time they purchase or have access to a vehicle if, within 30 days of the notification, the person certifies to the DMV all of the following:

   a) The person does not own a vehicle;

   b) The person does not have access to a vehicle at their residence;

   c) The person no longer has access to the vehicle they were driving at the time they were arrested for the underlying violation;

   d) The person acknowledges that they are only allowed to drive a vehicle that is equipped with an ISA device;

   e) The person acknowledges that they are required to have a valid driver's license before they can drive; and,

   f) The person acknowledges that they are subject to an ISA device installation requirement when they purchase or have access to a vehicle.

7) Provides that addition to any other restrictions the DMV places on the driver's license record of the convicted person when the person is issued a restricted driver's license, the DMV shall place a restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with an ISA device for the applicable term.

8) Requires a person who is notified by the department that they are required to install an ISA device shall arrange for each vehicle with an ISA device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device.

9) Requires the installer to notify the department if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ISA device.

10) Requires the DMV to monitor the installation and maintenance of the ISA device.

11) Requires a person convicted of: 1) driving a vehicle upon a highway in willful or wanton disregard for the safety of persons or property (hereafter, "reckless driving"); 2) engaging in a motor vehicle speed contest on a highway or off-street parking facility (hereafter, "speed contest"); or 3) driving a vehicle on a highway at a speed greater than 100 miles per hour (hereafter, "excessive speed"), to install an ISA device for the below terms, as follows:

   a) Upon a conviction with no priors,[1] the court may order installation of an ISA device on any vehicle that the person operates and prohibit that person from operating a motor

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[1] For purposes of this requirement, "prior" means any prior convictions for reckless driving under Vehicle Code section 23103, engaging in a speed contest, exhibition of speed, or aiding and abetting such a contest or exhibition under Vehicle Code section 23109, or specified speeding offenses under Vehicle Code section 22348.

vehicle unless that vehicle is equipped with an ISA device for a period not to exceed six months from the date of conviction, subject to the following:

i) The court shall notify the DMV of the conviction and shall specify the terms of the ISA device restriction.

ii) The DMV shall place the restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with an ISA device for the applicable term.

b) Upon a conviction with one prior the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 12 months.

c) Upon a conviction with two priors the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 24 months.

d) Upon a conviction with three or more priors the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 36 months.

12) Requires a person convicted of: 1) reckless driving that causes bodily injury to another person; 2) engaging in a speed contest that causes bodily injury to another person; or 3) is subject to a penalty enhancement for reckless driving while driving under the influence and while driving at least 20 mph over the speed limit (hereafter "DUI, speed, and recklessness enhancement"), to install an ISA device, as follows:

a) Upon a conviction with no priors[2], the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 12 months.

b) Upon a conviction with one prior, the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 24 months.

c) Upon a conviction with two priors, the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 36 months.

d) Upon a conviction with three or more priors, the person shall install an ISA device in the vehicle, as ordered by the court that is operated by that person for a mandatory term of 48 months.

13) Provides that if a person fails to comply with any of the requirements regarding ISA devices, the period in which the person was not in compliance shall not be credited toward the mandatory term for which the active intelligent speed assist device is required to be installed.

14) Requires every manufacturer and manufacturer's agent certified by the DMV to provide ISA devices to adopt the following fee schedule that provides for the payment of the costs of the

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[2] For purposes of this requirement "prior" means any prior convictions engaging in a speed contest, exhibition of speed, or aiding and abetting such a contest or exhibition under Vehicle Code section 23109 or a DUI, speed, and recklessness enhancement under Vehicle Code section 23582.

ISA device, the administration of the program, installation of the device, service, recalibration and monitoring of the device, and any other costs associated with the device by persons subject to this bill in amounts commensurate with that person's income relative to the federal poverty level, as defined:

a) A person with an income at 125 percent of the federal poverty level or below and who provides income verification is responsible for 5 percent of all of the costs associated with the ISA device.

b) A person with an income at 126 to 225 percent of the federal poverty level and who provides income verification is responsible for 20 percent of all of the costs associated with the ISA device.

c) A person with an income at 226 to 325 percent of the federal poverty level and who provides income verification is responsible for 40 percent of all of the costs associated with the ISA device.

d) A person who is receiving CalFresh benefits and who provides proof of these benefits to the manufacturer or manufacturer's agent or authorized installer is responsible for 40 percent of all of the costs associated with the ISA device.

e) A person with an income at 326 to 425 percent of the federal poverty level and who provides income verification is responsible for 80 percent of all of the costs associated with the ISA device.

f) All other offenders are responsible for 100 percent of all of the costs associated with the ISA device.

g) The manufacturer is responsible for the percentage of costs that the offender is not responsible for as specified above.

15) Requires an ISA device provider to verify the offender's income to determine the costs of the ISA device by verifying one of the following documents from the offender:

a) The previous year's federal income tax return.

b) The previous three months of weekly or monthly income statements.

c) Employment Development Department verification of unemployment benefits.

16) Provides that at any point during which a device is installed and in use, an individual shall be permitted to apply for reduced costs and shall be credited for any previously paid costs that were in excess of the fee schedule set forth above, and an individual shall also be permitted to apply for reduced costs based on a change of income.

17) Requires an ISA device provider to post conspicuously on its internet website and contracts, the information set forth in this subdivision, and prior to an individual's execution of a contract for an ISA device, the provider shall also give verbal notification of the fee schedule and how to apply for reduced costs.

18) Requires installation service and repair providers to post conspicuously in their place of business and verbally inform a person of the information set forth in this subdivision prior to installation and servicing of the device.

19) Requires a copy of the fee schedule information described above to be provided to an individual together with the court order requiring the installation of an ISA device.

20) Requires the DMV to post the fee schedule information described above on its internet website, and include the information in any mailed notice of revocation or suspension that notifies an individual of the requirement to install an ISA device.

21) Requires, on or before July 1, 2030, the DMV to report data to CalSTA regarding the implementation and efficacy of this bill, covering January 1, 2026, to January 1, 2030, subject to the following:

    a) The data described below shall, at a minimum, include all of the following:

        i) The number of individuals who were required to have an ISA device installed as a result of the program who killed or injured anyone in a crash relating to violations of reckless driving, speed contests and exhibitions of speed, excessive speed, and a DUI, speed, and recklessness enhancement.

        ii) The number of individuals who were required to have an ISA device installed as a result of the program who were convicted of reckless driving, speed contests and exhibitions of speed, excessive speed, and a DUI, speed, and recklessness enhancement, during the term in which the person was required to have ISA device installed.

        iii) The number of injuries and deaths resulting from motor vehicle crashes relating to violations of reckless driving, speed contests and exhibitions of speed, excessive speed, and a DUI, speed, and recklessness enhancement during the reporting period and during periods of similar duration prior to the implementation of the program.

        iv) The number of individuals who have been convicted more than one time for violations of reckless driving, speed contests and exhibitions of speed, excessive speed, and a DUI, speed, and recklessness enhancement during the reporting period and during periods of similar duration prior to the implementation of the program.

        v) Any other information requested by CalSTA to assess the continued effectiveness of the program in reducing recidivism for violations of reckless driving, speed contests and exhibitions of speed, excessive speed, and a DUI, speed, and recklessness enhancements.

    b) Authorizes CalSTA to contract with educational institutions to obtain and analyze the data required by this section.

c) Requires CalSTA to conduct an assessment of the program based on the data provided by the DMV and report to the Legislature, as specified, on the outcomes of the program by no later than July 1, 2031.

d) Provides that the assessment shall include recommendations on how to further reduce violations of reckless driving, speed contests or exhibitions of speed, speeding in excess of 100 mph, and reckless driving while driving under the influence, as specified.

22) Specifies that this bill shall only apply to persons convicted for violations under this bill that occurred on or after January 1, 2026.

23) Provides that the provisions of this bill shall sunset on January 1, 2033.

EXISTING LAW:

1) Provides that a person who drives a vehicle on a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving, punishable in county jail for not less than five days and no more than 90 days, or a fine not less than $145 and no more than $1,000. (Veh. Code, § 23103, subd. (a).)

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

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

4) Punishes engaging in a motor vehicle speed contest by imprisonment in county jail for at least 24 hours but no more than 90 days, or a fine of at least $355 but no more than $1,000. That person shall also be required to perform 40 hours of community service, and the court may order the privilege to operate a motor vehicle suspended for 90 days. (Veh. Code, § 23109, subd. (e).)

5) Prohibits a person from driving a vehicle upon a highway at a speed greater than 100 mph, and makes this punishable as an infraction, by a fine of up to $500. A court may also suspend a person's privilege to operate a motor vehicle for a period up to 30 days. (Veh. Code, § 22348 (b).)

6) Provides that any person who drives a vehicle 30 or more miles per hour over the maximum, or posted speed limit on a freeway, or 20 or more miles per hour over the maximum or posted speed limit on any other street or highway, and with willful or wanton disregard for the safety of persons or property, and while driving under the influence of any alcoholic beverage or any drug, shall, in addition to the punishment prescribed for that person upon conviction for driving under the influence, be punished by an additional and consecutive term of 60 days in the county jail. (Veh. Code, § 23582 (a.)

7) Establishes an ignition interlock device (IID) pilot program until January 1, 2026, as follows:

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

b) Requires a court to order the installation of an IID for repeat DUI offenders and DUIs causing bodily injury to another person, as specified (Veh. Code, §§ 23575.3, subd. (h); 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California is experiencing a public safety crisis on our roads. Thousands of people are killed each year in traffic crashes, and speeding is a major factor. While existing law allows for driver's license suspension for offenses like reckless driving or excessive speeding, this penalty is largely ineffective. Only about 25% of people comply with a suspended license, and many continue to drive illegally—putting everyone on the road at risk.

   "What's more, individuals with a history of dangerous speeding or reckless driving are significantly more likely to be involved in future crashes, including those that cause injury or death. We know who the most dangerous drivers are, and yet our current system does little to prevent repeat harm.

   "This bill offers a smarter, more targeted approach. Instead of relying solely on license suspension—which is both widely ignored and can disrupt employment or daily life for those who do comply—this legislation would require speed-limiting devices to be installed on vehicles of individuals with repeat convictions for the most dangerous driving behaviors, including reckless speeding, exhibition of speed, and enhanced DUI.

   "This proposal enhances public safety by preventing the most dangerous drivers from endangering others, while also offering a more equitable alternative to license suspension. It keeps people mobile for work and essential needs, but ensures that mobility doesn't come at the cost of others' lives."

2) **Intelligent Speed Assistance (ISA) Technology:** ISA technologies use sensors such as GPS or cameras to monitor a vehicle's speed and provide real-time feedback or intervention to ensure adherence to speed limits. According to the National Highway Traffic Safety Administration (NHTSA), "[I]ntelligent speed assistance or intelligent speed adaptation (ISA) involves in-vehicle technologies that use GPS data interacting with accurate, digitally mapped speed limit data for the entire network or vehicle-based speed limit sign recognition. ISA systems can vary from minimal systems that provide information to active speed limit

control that could be mandatory or voluntary (i.e., with on/off activation switches). Systems may:

- Provide information only (display the speed limit and changes);
- Provide visual or audible alerts when the speed limit is exceeded, but the driver can decide how to react (termed open system);
- Provide accelerator resistance to make speeding more difficult, but still possible (termed half-open). This system is like cruise control, except the speed limit (not the driver) determines when to engage speed resistance. Drivers may be able to turn off the system with a switch; and
- Automatically prevent speeding above the speed limit (mandatory speed compliance).[3]

"Compared to speed governors, which can only limit the maximum speed of vehicles, ISA has the potential to help control speed of all motor vehicle types according to the prevailing limit at a location."[4]

ISA technology is typically classified as either passive or active. "Passive ISA allows drivers to override the system and drive in excess of the local speed limit, but drivers are alerted as they exceed the local speed limit by a certain amount, for example between 0 and 10 mph above. Active ISA cannot be overridden except in limited cases, such as with the press of an override button or with kickdown of the accelerator pedal, which removes the ISA limitations for a defined period."[5]

ISA technology has been explored in various forms for over two decades, although they have been minimally used in the United States.

ISA technology may be effective at reducing speeding, and associated speeding-related fatalities and injuries.[6] In 1999, the Swedish National Road Administration conducted a three year trial of ISA technologies in urban areas.[7] Thousands of vehicles were equipped with different ISA systems, some active and some passive. Participants used these devices for over a year and researchers observed reductions in speeding violations for all participants and no change in travel times in urban areas.[8] The researchers estimated that if all drivers had ISA systems, road injuries in urban areas could be reduced by as much as 20%.[9]

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[3] National Highway Traffic Safety Administration, *Intelligent Speed Assistance* (accessed April 17, 2025), available at: https://www.nhtsa.gov/book/countermeasures-that-work/speeding-and-speed-management/countermeasures/other-strategies-1#:~:text=This%20system%20is%20like%20cruise,limit%20(mandatory%20speed%20compliance).
[4] *Ibid.*
[5] NYC Department of Citywide Administrative Services, New York City Intelligent Speed Assistance Pilot Evaluation (Oct. 2024), at p. 7, available at: https://www.nyc.gov/assets/dcas/downloads/pdf/fleet/nyc-intelligent-speed-assistance-pilot-evaluation-2024-oct.pdf
[6] *Ibid.*
[7] Swedish National Road Administration, *Intelligent Speed Adaption (ISA)* (2002), at p. iv, available at: https://www.diva-portal.org/smash/get/diva2:1363740/FULLTEXT01.pdf
[8] *Ibid.*
[9] *Ibid.*

A 2010 study by the Dutch Ministry of Infrastructure found that ISAs have "the potential to improve road safety by reducing the level of speeding, mean speed, as well as the standard deviation of speed."[10] However, the study also noted that users show little signs of learning after the systems are turned off, and serious offenders frequently used the option to override the system which may affect the efficacy of these systems.[11]

ISA technology has its limitations. For example, GPS-based ISA systems may not include local roads or detect accurate speeds. Alternatively, camera-based systems, which detect the limit by reading posted signage, have the advantage of being able to better adapt to local conditions, e.g., road work zones, but the disadvantage of being limited by visibility and presence of signage.[12]

3) **Increased Use of ISA Technology:** Use of ISA technology has expanded in recent years. Most notably, in 2019 the European Union required all new vehicles sold, beginning in 2024, to be fitted with ISA technology.[13] Specifically, the ISA required to be adopted by the European Union will function similarly to a cruise control, by preventing vehicles from travelling in excess of posted speed limit by limiting engine power, but not utilizing automatic breaking. Such systems will include off switches, and can be overridden by the driver at any time.[14]

   In 2022, New York initiated a pilot program to equip their city fleet vehicles with ISA technology.[15] Specifically they equipped approximately 500 vehicles with a device that prevents acceleration beyond a set parameter over the speed limit.[16] The findings of the pilot program were as follows:

   > In an analysis of 270 vehicles equipped with ISA, there was a 64.18% relative decrease in the time driven [greater than] 11 mph over the posted speed limit following ISA activation compared to before activation, and a similar decrease was observed in the ISA-equipped vehicles compared to non-equipped control vehicles. Speeding drive time reduction ranged from ~50% on 25 mph local roads, which have speed safety cameras set to the same enforced speed threshold, to 82% reduction on 50 mph roads. In addition, the impact of ISA on speeding behavior of habitual speeders in 130 vehicles was similar to that on the primary cohort, indicating ISA is effective at significantly reducing severe speeding across a wide range of drivers and fleet.[17]

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[10] van der Pas, et. al., *Intelligent speed assistance for serious speeders: The results of the Dutch Speedlock trial* (Nov. 2014), 72, 78-94, available at: https://www.sciencedirect.com/science/article/abs/pii/S0001457514001742?via%3Dihub
[11] *Ibid.*
[12] ACEA, *Intelligent Speed Assistance: why ISA cannot become mandatory today* (Nov. 2018), available at: https://www.acea.auto/news/intelligent-speed-assistance-why-isa-cannot-become-mandatory-today/
[13] *See* supra note 4.
[14] *Ibid.*
[15] NYC Department of Citywide Administrative Services, New York City Intelligent Speed Assistance Pilot Evaluation (Oct. 2024), available at: https://www.nyc.gov/assets/dcas/downloads/pdf/fleet/nyc-intelligent-speed-assistance-pilot-evaluation-2024-oct.pdf
[16] *Ibid.*
[17] *Ibid.*

The NHTSA is in the process of assessing the deployment of ISA technology at the federal level. "In 2022, [NHTSA] sought public comments on updating the New Car Assessment Program (NCAP), including "'exploring opportunities to encourage the development and deployment' of 'emerging vehicle technology for safe driving choices' such as ISA."[18]

4) **Effect of this Bill:** This bill creates a five-county pilot program in Los Angeles, San Diego, Fresno, Sacramento, and Kern counties, which will sunset January 1, 2033, that would require individuals convicted of certain reckless driving, speeding, and DUI offenses, to install ISA devices. This pilot program is substantially similar to the IID pilot program currently in place in California. (Veh. Code, §§ 23575.3, subd. (h); 13352; 13352.4; 13353.3; 13353.6; & 13353.75.) The primary provisions of this bill is as follows.

First, it authorizes a court to order a person, with no priors, that is convicted of reckless driving, engaging in a speed contest, or excessive speeding, to install an ISA device for up to six months. If a person has one, two, or three or more priors, that person would be required to install an ISA device for 12 months, 24 months, or 36 months, respectively. In other words, courts would only have discretion to refrain from ordering an ISA device for first-time offenders of these crimes. Further, it requires a court, for a person convicted of a first-time offense for reckless driving or engaging in a speed contest, which results in bodily injury, or a person that is subject to a DUI, speed, and recklessness enhancement, as specified, to install an ISA device for 12 months. If a person has one, two, or three or more priors, they would be required to install an ISA device for 24 months, 36 months, and 48 months, respectively.

In terms of the procedures contemplated by this bill, it requires a court to notify a person convicted of the above crimes that they must install an ISA device, and that they are prohibited from operating a vehicle without an ISA device. An individual required to install an ISA device is required to: 1) arrange for each vehicle operated by the person to be equipped with an ISA device by a certified active ISA device provider; 2) provide to the DMV proof of installation by submitting a verification installation form to be developed by the DMV; 3) pay a fee, determined by the DMV that is sufficient to cover the costs of administration of this section; and 4) arrange for each vehicle with an ISA device to be serviced by the installer at least once every 60 days.

This bill requires an individual required to install an IID to pay for the costs of the ISA device, the administration of the program, installation of the device, service, recalibration and monitoring of the device, and any other costs associated with the device by persons subject to this bill in amounts commensurate with that person's income relative to the federal poverty level, upon income verification. For example, an individual with an income at 125 percent of the federal poverty level or below is responsible for 5 percent of all ISA costs. The ISA device manufacturer is responsible for the rest of the costs.

To ensure the results of these pilot program may be used to inform future legislative efforts pertaining to ISA technology, this bill requires CalSTA to analyze the effectiveness of this pilot program, and submit a report to the Legislature containing their assessment, by July 1, 2031. The provisions of this bill will sunset on January 1, 2033.

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[18] *Ibid*; *See also* National Highway Traffic Safety Administration, *New Car Assessment Program* (Mar. 9, 2022), available at: https://www.regulations.gov/document/NHTSA-2021-0002-0001

5) **Need for Additional Clarification:** The author may wish to consider defining "functioning, certified active intelligent speed assist device." Indeed, this term is not defined in statute, and there are numerous different types of ISA technology. The author may wish to consider reviewing the definition for ISA technology utilized in SB 961 (Wiener), of the 2023-2024 Legislative Session, which sought to require future new vehicles to be equipped with a passive intelligent speed assistance system. That bill, which was ultimately vetoed by the Governor, defined "passive intelligent speed assistance system" as an "integrated vehicle system that determines the speed limit of the roadway that the vehicle is traveling on, and utilizes a brief, one-time visual and audio signal to alert the driver each time they exceed the speed limit by more than 10 miles per hour."

   As previously noted, passive ISA technology permits drivers to drive in excess of the local speed limit, but alerts individuals when they exceed that limit. Active ISA technology on the other hand actively limits a vehicle from exceeding the speed limit, but can typically be overridden where necessary.[19] Unlike the type of ISA technology contemplated in SB 961, this bill would mandate installation of active ISA. Given that ISA technology is not being widely in the United States, let alone California, and could contain glitches and unintended consequence as it is expanded in this state, it is necessary to define the type of devices that individuals would be required to install under this bill. Further, the bill refers to "certified" ISA devices and providers, and manufacturers to be "certified" by the DMV. The author may wish to clarify the requirements necessary to certify these devices, and to receive certification from the DMV, to ensure that the devices required to be installed under this bill are proven, safe, and subject to minimum standards.

6) **Governor's Veto Message of SB 961 (Wiener)**: As noted above, last year the Legislature considered expanding ISA technology in California. Specifically, the Legislature passed SB 961 (Wiener), of the 2023-2024 Legislative Session, which would have required beginning with the 2030 model year, every passenger vehicle, motor truck, and bus manufactured, sold as new, or leased as new, in the state to be equipped with a passive intelligent speed assistance system that provides a brief one-time signal to alert a drive each time they exceed the speed limit by more than ten miles per hour.

   SB 961 was vetoed by the Governor, who stated the following in his veto message:

   > Federal law, as implemented by the National Highway Traffic Safety Administration (NHSTA), already regulates vehicle safety standards, and adding California-specific requirements would create a patchwork of regulations that undermines this longstanding federal framework. NHTSA is also actively evaluating intelligent speed assistance systems, and imposing state-level mandates at this time risks disrupting these ongoing federal assessments.

   While SB 961 is distinct from this bill, given that the applicable federal agencies are still evaluating how to effectively deploy ISA technology, the author may wish to consider delaying the effective date of this bill or otherwise monitoring future federal regulatory action, to ensure this bill is consistent with pending federal regulatory guidance on ISA technology.

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[19] *Supra* note 5.

7) **Argument in Support**: According to *Streets for All*, "AB 981 will reduce traffic deaths and injuries in California by allowing for the installation of speed-limiting technology on the vehicles of drivers with repeat excessive speeding (100 mph+) or reckless driving violations, as an alternative to heavy fines and license suspension. Unlike license suspensions, which are ineffective and suffer from low compliance rates, speed-limiting technology would not deny anybody the ability to drive; it simply changes the behavior of our state's most dangerous drivers.

"Preventing traffic deaths should be a priority for California, as the state currently suffers from a traffic violence crisis. In particular, the state suffers from a speeding crisis. In 2022, the National Highway Traffic Safety Administration estimated that about 12 people were killed on California's roads every day and, according to the California Office of Traffic Safety's 2023 Traffic Safety Report, one-third of those fatalities were speeding-related. Speeding not only increases the likelihood of a crash, but also increases the likelihood of a fatal outcome.

"In 2020, the California Highway Patrol issued 3000 tickets a month to drivers for excessive speeding, or going over 100mph on our roads. Excessive speeding is the strongest predictor of someone being involved in a future lethal traffic crash. Even one excessive speed conviction almost doubles the probability of a driver being involved in a crash relative to those without a prior conviction. That means that by physically limiting the speed of drivers with excessive speeding convictions, AB 981 will prevent thousands of fatal crashes every year.

"The speed-limiting technology enabled by AB 981 has been around for decades and is already in widespread use across the European Union, and has been deployed successfully in the United States across many private vehicle fleets and is expanding into the public sector as well. In 2022, the City of New York administered a speed-limiter pilot program on its vehicle fleet, reporting that vehicles traveled within the speed limit 99% of the time and reduced hard braking by 36%. Closer to home, Ventura County has seen similar benefits.

"Streets for All believes that every road user–pedestrians, cyclists and drivers–in California should have the freedom to travel safely and comfortably. Safe streets are a core part of our vision of a sustainable future. While we also advocate for safer infrastructure, the multi-year timelines required to rebuild our communities require us to look at additional solutions to end this current crisis.

"AB 981 offers a material opportunity to achieve a lasting victory in the fight against needless road deaths."

8) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "The California Attorneys for Criminal Justice ("CACJ"), a statewide association of criminal defense attorneys in private practice or working in public defender offices, writes in opposition to AB 981, requiring a person convicted of reckless driving (Vehicle Code (VC) 23103(a), VC 23104), participating in a speed contest pursuant to VC 23109(a) & (e)(2)), speeding at over 100 mph pursuant to VC 22348(b) and VC 23582(a), excessive speed while driving under the influence of a drug or alcohol in violation of VC 23152 to install what is referred to as a "certified active intelligent speed assist device (ISA)" on any vehicle they may operate for the time period set out in the bill.

"We oppose this bill for two reasons: First, nowhere in the bill is the device in question here, identified only as a "certified intelligent speed assist device", defined. What is this device? Judges are being told they must order this device to be installed in the defendant's vehicle, and for that matter, any vehicle the defendant may operate at any time during which this order is in place (which can be up to 4 years under the language in the bill), without knowledge of what the device itself is and the defendant has no knowledge of what this device is and how it works or is supposed to work. In legal terms, this bill is legally deficient on what is known as "void for vagueness" grounds because the defendant cannot be reasonably expected to know what it is they are agreeing to as part of their sentence if they are found guilty or plead guilty to one of the offenses listed above for which this device must be installed in any vehicle they drive.

"Our second reason for opposing AB 981 is that it requires mandatory punishment except where the defendant is a so-called "first offender" for VC 23103(a), VC 23109(a), and VC 22348(b) and thus takes away the court's important and vital discretion to impose or not impose what it deems to be appropriate punishment after careful and deliberate consideration based on the particular facts of the case before the judge as well as the defendant's background and other circumstances that may be present in an individual case. What may seem appropriate in the abstract may in fact not be justice in a particular case (in the courtroom). This is why judicial discretion is so important to our goal of justice in every case.

"To our knowledge pilot programs relying on these devices have only utilized government vehicle fleets and not in the public or criminal justice sphere."

9) **Related Legislation**:

a) AB 366 (Petrie-Norris) would remove the discretion of courts to determine if a first-time DUI offender must install an ignition interlock device (IID) on every vehicle they operate, and makes permanent certain provisions of the IID pilot program currently in place. AB 366 is scheduled for hearing today in this Committee.

b) AB 71 (Lackey) would extend the sunset for the statewide ignition interlock device (IID) pilot program currently underway and requires the Department of Motor Vehicles (DMV) and California State Transportation Agency (CalSTA) to complete additional reporting to the Legislature about the pilot program. AB 71 is pending a hearing in the Assembly Appropriations Committee.

10) **Prior Legislation**:

a) SB 961 (Wiener), of the 2023-2024 Legislative Session, would have required, beginning with the 2030 model year, every passenger vehicle, motor truck, and bus manufactured, sold as new, or leased as new in the state to be equipped with a passive intelligent speed assistance system that provides a brief one-time signal to alert a drive each time they exceed the speed limit by more than ten miles per hour. SB 961 was vetoed by the Governor.

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Active San Gabriel Valley
Automobile Club of Southern California
Bike Culver City
Bike East Bay
Bike Long Beach
California Bicycle Coalition
Car-lite Long Beach
Circulate San Diego
Costa Mesa Alliance for Better Streets
East Bay for Everyone
Everybody's Long Beach
Families for Safe Streets San Diego
Glendale Yimby
Long Beach Bike Co-op
Los Angeles Walks
Move La, a Project of Community Partners
Napa County Bicycle Coalition (napa Bike)
National Transportation Safety Board
Norwalk Unides
Peopleforbikes
Remake Irvine Streets for Everyone (RISE)
San Diego County Bicycle Coalition
San Francisco Bay Area Families for Safe Streets
Spur
Streets are for Everyone (SAFE)
Streets are for Everyone (SAFE) (ORG)
Streets for All
Strong Towns Artesia
Walk San Francisco

Oppose

California Attorneys for Criminal Justice
Initiate Justice
Legal Services for Prisoner With Children

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

Amended Mock-up for 2025-2026 AB-981 (Gipson (A))

Mock-up based on Version Number 99 - Introduced 2/20/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Division 11.6 (commencing with Section 23700) is added to the Vehicle Code, to read:

DIVISION 11.6. Sentencing for Other Driving Offenses

23700. (a) Notwithstanding any other provision of law, the Department of Motor Vehicles shall establish a pilot program in the Counties of Los Angeles, San Diego, Fresno, Sacramento, Kern, to reduce the number of violations of Sections 23103, 23109, 22348, and 23582, as follows:

(b) In addition to any other requirement imposed by law, a court shall notify a person convicted of a violation listed in subdivision (h) that they are required to install a functioning, certified active intelligent speed assist device on any vehicle that the person operates and that they are prohibited from operating a motor vehicle unless that vehicle is equipped with a functioning, certified active intelligent speed assist device in accordance with this section.

(c) The Department of Motor Vehicles, upon receipt of the court's abstract of conviction for a violation listed in subdivision (h), shall inform the convicted person of the requirements of this section, including the term for which the person is required to have a device installed. The records of the department shall reflect the mandatory use of the device for the term required and the time when the device is required to be installed by this code.

(d) The department shall advise the person that installation of a functioning, certified active intelligent speed assist device on a vehicle does not allow the person to drive without a valid driver's license.

(e) (1) A person who is notified by the department pursuant to subdivision (b) shall do all of the following:

(A) Arrange for each vehicle operated by the person to be equipped with a functioning, certified active intelligent speed assist device by a certified active intelligent speed assist device provider.

(B) Provide to the department proof of installation by submitting a verification installation form to be developed by the department.

(C) Pay a fee, determined by the department, that is sufficient to cover the costs of administration of this section.

(2) A person who is notified by the department pursuant to subdivision (b) is exempt from the requirements of this subdivision until the time they purchase or have access to a vehicle if, within 30 days of the notification, the person certifies to the department all of the following:

(A) The person does not own a vehicle.

(B) The person does not have access to a vehicle at their residence.

(C) The person no longer has access to the vehicle they were driving at the time they were arrested for a violation that subsequently resulted in a conviction for a violation listed in subdivision (h).

(D) The person acknowledges that they are only allowed to drive a vehicle that is equipped with a functioning, certified active intelligent speed assist device.

(E) The person acknowledges that they are required to have a valid driver's license before they can drive.

(F) The person acknowledges that they are subject to the requirements of this section when they purchase or have access to a vehicle.

(f) In addition to any other restrictions the department places on the driver's license record of the convicted person when the person is issued a restricted driver's license, the department shall place a restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with a functioning, certified active intelligent speed assist device for the applicable term.

(g) (1) A person who is notified by the department pursuant to subdivision (b) shall arrange for each vehicle with a functioning, certified active intelligent speed assist device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device.

(2) The installer shall notify the department if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the active intelligent speed assist device.

(h) The department shall monitor the installation and maintenance of the active intelligent speed assist device installed pursuant to subdivision (d).

(i) A person is required to install a functioning, certified active intelligent speed assist device pursuant to this section for the applicable term, as follows:

(1) A person convicted of a violation of subdivision (a) of Section 23103, subdivision (a) of Section 23109, or subdivision (b) of Section 22348 shall be required to do the following, as applicable:

(A) Upon a conviction with no priors punishable under Section 23103, 23109, or 22348, the court may order installation of a functioning, certified active intelligent speed assist device on any vehicle that the person operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified active intelligent speed assist device. If the court orders the active intelligent speed assist device restriction, the term shall be determined by the court for a period not to exceed six months from the date of conviction. The court shall notify the department of the conviction and shall specify the terms of the active intelligent speed assist device restriction. The department shall place the restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with a functioning, certified active intelligent speed assist device for the applicable term.

(B) Upon a conviction with one prior punishable under Section 23103, 23109, or 22348, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 12 months.

(C) Upon a conviction with two priors punishable under Section 23103, 23109, or 22348, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 24 months.

(D) Upon a conviction with three or more priors punishable under Section 23103, 23109, or 22348, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 36 months.

(2) A person convicted of a violation of Section 23104, paragraph (2) of subdivision (e) of Section 23109, or subdivision (a) of Section 23582 shall install a functioning, certified active intelligent speed assist device, as follows:

(A) Upon a conviction with no priors punishable under Section 23109 or 23582, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 12 months.

(B) Upon a conviction with one prior punishable under Section 23109 or 23582, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 24 months.

(C) Upon a conviction with two priors punishable under Section 23109 or 23582, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 36 months.

(D) Upon a conviction with three or more priors punishable under Section 23109 or 23582, the person shall install a functioning, certified active intelligent speed assist device in the vehicle, as ordered by the court, that is operated by that person for a mandatory term of 48 months.

(j) If a person fails to comply with any of the requirements regarding active intelligent speed assist devices, the period in which the person was not in compliance shall not be credited toward the mandatory term for which the active intelligent speed assist device is required to be installed.

(k)(1) Every manufacturer and manufacturer's agent certified by the department to provide active intelligent speed assist devices shall adopt the following fee schedule that provides for the payment of the costs of the certified active intelligent speed assist device, the administration of the program, installation of the device, service, recalibration and monitoring of the device as required by subdivision (f)(1) of this Section, and any other costs associated with the device by persons subject to this division in amounts commensurate with that person's income relative to the federal poverty level, as defined in Section 127400 of the Health and Safety Code:

(A) A person with an income at 125 percent of the federal poverty level or below and who provides income verification pursuant to paragraph (2) is responsible for 5 percent of the costs of the standard active intelligent speed assist device identified in paragraph (1).

(B) A person with an income at 126 to 225 percent of the federal poverty level or below and who provides income verification pursuant to paragraph (2) is responsible for 20 percent of the costs of the standard active intelligent speed assist device identified in paragraph (1).

(C) A person with an income at 226 to 325 percent of the federal poverty level or below and who provides income verification pursuant to paragraph (2) is responsible for 40 percent of the costs of the standard active intelligent speed assist device identified in paragraph (1).

(D) A person who is receiving CalFresh benefits and who provides proof of these benefits to the manufacturer or manufacturer's agent or authorized installer is responsible for 40 percent of the costs of the standard active intelligent speed assist device identified in paragraph (1).

(E) A person with an income at 326 to 425 percent of the federal poverty level or below and who provides income verification pursuant to paragraph (2) is responsible for 80 percent of the costs of the standard active intelligent speed assist device identified in paragraph (1).

(F) All other offenders are responsible for 100 percent of the costs of the active intelligent speed assist device identified in paragraph (1).

(G) The manufacturer is responsible for the percentage of costs identified in paragraph (1) that the offender is not responsible for pursuant to subparagraphs (A) to (E), inclusive.

(2) The active intelligent speed assist device provider shall verify the offender's income to determine the costs of the active intelligent speed assist device identified in paragraph (1) by verifying one of the following documents from the offender:

(A) The previous year's federal income tax return.

(B) The previous three months of weekly or monthly income statements.

(C) Employment Development Department verification of unemployment benefits.

(3) At any point during which a device is installed and in use, an individual shall be permitted to apply for reduced costs and shall be credited for any previously paid costs that were in excess of the fee schedule set forth in paragraph (1). An individual shall also be permitted to apply for reduced costs based on a change of income.

(4) (A) The active intelligent speed assist device provider shall post conspicuously on its internet website and contracts, the information set forth in this subdivision. Prior to an individual's execution of a contract for an active intelligent speed assist device, the provider shall also give verbal notification of the fee schedule and how to apply for reduced costs.

(B) Installation service and repair providers shall post conspicuously in their place of business and verbally inform a person of the information set forth in this subdivision prior to installation and servicing of the device.

(C) A copy of this information set forth in this subdivision shall also be provided to an individual together with the court order requiring the installation of an active intelligent speed assist device.

(D) The department shall post the information set forth in this subdivision on its internet website. The department shall also include the information included in this subdivision in any mailed notice of revocation or suspension that notifies an individual of the requirement to install an active intelligent speed assist device.

(l) The requirements of this section shall apply only to a person who is convicted for a violation of Section 23103, 23104, 23109, 22348, or 23582 that occurred on or after January 1, 2026.

SEC. 2. Section 23701 is added to the Vehicle Code, to read:

23701. (a) On or before July 1, 2030, the Department of Motor Vehicles shall report data to the Transportation Agency regarding the implementation and efficacy of the act that added this section for the period covering January 1, 2026, to January 1, 2030, inclusive.

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

(1) The number of individuals who were required to have a certified active intelligent speed assist device installed as a result of the program who killed or injured anyone in a crash relating to violations of Sections 23103, 23109, 22348, and 23582.

(2) The number of individuals who were required to have certified active intelligent speed assist device installed as a result of the program who were convicted of Sections 23103, 23109, 22348, and 23582 during the term in which the person was required to have the certified active intelligent speed assist device installed.

(3) The number of injuries and deaths resulting from motor vehicle crashes relating to violations of Sections 23103, 23109, 22348, and 23582 during the reporting period and during periods of similar duration prior to the implementation of the program.

(4) The number of individuals who have been convicted more than one time for violations of Sections 23103, 23109, 22348, and 23582 during the reporting period and during periods of similar duration prior to the implementation of the program.

(5) Any other information requested by the Transportation Agency to assess the continued effectiveness of the certified active intelligent speed assist device program in reducing recidivism for violations of Sections 23103, 23109, 22348, and 23582.

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

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

(e) The assessment shall include recommendations on how to further reduce violations of Sections 23103, 23109, 22348, and 23582.

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

SEC. 3. Section 23702 is added to the Vehicle Code, to read:

23702. This division shall remain in effect only until January 1, 2033, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2033, deletes or extends that date.

SEC. 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 22, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 983 (Macedo) – As Amended April 10, 2025

SUMMARY: Authorizes vehicle impoundment for any violation of speeding in excess of 100 miles per hour, as specified.

EXISTING LAW:

1) States that any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. (Veh. Code, § 22650, subd. (b).)

2) Mandates a magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number or vehicle identification number, was an instrumentality used in the peace officer's presence in violation of provision of law related to evading and speed contest shall issue a warrant or court order authorizing any peace officer to immediately seize and impound the vehicle. The warrant or court order may be entered into a computerized database. The vehicle may be impounded for a period not to exceed 30 days. (Veh. Code, § 14602.7, subd. (a)(1).)

3) Requires the impounding agency, within two working days of impoundment, excluding weekends and holidays, to send a notice by certified mail, return receipt requested, or electronic service, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded and providing the owner with a copy of the warrant or court order. (Veh. Code, § 14602.7, subd. (a)(2).)

4) Mandates an impounding agency release a vehicle to the registered owner or their agent before the end of the impoundment period and without the permission of the magistrate authorizing the vehicle's seizure under any of the following circumstances:

   a) When the vehicle is a stolen vehicle;

   b) When the vehicle is subject to bailment and is driven by an unlicensed employee of the business establishment, including a parking service or repair garage; or

   c) When the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the driver who evaded law enforcement, as specified. (Veh. Code, § 14602.7, subd. (b)(1)(A)-(C).)

5) Prohibits peace officers from removing a vehicle from a highway to any other place, except as provided in the Vehicle Code. (Veh. Code, § 22650, subd. (a).)

6) Allows a peace officer to impound a vehicle under specified circumstances, including, among others, if an officer arrests a person driving or in control of a vehicle for an alleged offense, and the officer is, by law, required or permitted to take, and does take, the person into custody. (Veh. Code, § 22651.)

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

8) Allows a peace officer to impound a vehicle used by a person who was engaged in a speed contest if the person was arrested and taken into custody for that offense by a peace officer. (Pen. Code, § 22651.6.)

9) Provides that a person shall not aid or abet in any speed contest on a highway or in an offstreet parking facility and shall not, for the purpose of facilitating or aiding or as an incident to any speed contest, in any manner, obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction on a highway or in an offstreet parking facility. (Veh. Code, §§ 23109 subds. (b) & (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Speeding Kills. 1,509 people were killed in speeding-related traffic crashes according to the latest data. We must install safeguards to discourage reckless, dangerous speeding on our roads and highways. It will make California highways and roads safer as well as discouraging people from reckless speeding. By enforcing these stricter consequences, AB 983 will reduce dangerous driving and save lives on California highways and roadways."

2) **Vehicle Code section 22348**: This bill requires any person who is cited for speeding in excess of 100 miles per hour have their vehicle impounded for a period of 30 days. Vehicle Code section 22348 already contains fairly significant penalties – but it is only punishable as an infraction. For even a first offense, where the base fine is $500, the total fine may be anywhere between $859 and $2,137 depending on the county and result in two points on a person's driving record.

   Additionally, the court may suspend a person's license for up to 30 days. Fines increase for subsequent offenses and mandate a court suspend a person's license. Presumably, carrying insurance becomes increasingly more expensive if a person suffers a conviction for driving in excess of 100 miles per hour.

   Furthermore, Vehicle Code section 14602.7 requires a court to issue a warrant for towing and impoundment for misdemeanor evading a peace officer, reckless driving demonstrating a willful or wanton disregard for the safety of persons or property, and the most serious types of speed contest. (See Veh. Code, §§ 2800.1, 2800.2, 2800.3, 23103, and 23109, subd. (a) and (c).) Any act of speeding is dangerous depending on the circumstances – regardless of

the driver's speed, but other instances where impoundment is possible expressly involve willful disregard of law enforcement authority and safety (i.e., evading, drag racing, reckless driving). Vehicle Code sections 40000.7 and 40000.15 specify that evading a peace officer, reckless driving, and speed contest are all misdemeanors – not infractions. Vehicle Code section 22348 is an infraction only.

Allowing for impoundment for speeding over 100 miles per hour would substantially increase deprivation of personal property without due process because a person is not entitled to counsel when cited for an infraction. (Pen. Code, § 19.6; *People v. Disandro* (2010) 186 Cal.App.4th 593.) An officer may cite a person for speeding over 100 miles an hour thereby exposing a person to impoundment where a person would be left to fend for themselves if they are not able to hire counsel and where there is no meaningful opportunity to test the accuracy of the allegation.

Given the hundreds of thousands of citations for speeding, examining citations after the fact, locating the citations of speeding in excess of 100 miles per hour, preparing an affidavit for impoundment, presenting it to a judge, and taking action to impound a vehicle would likely overwhelm the courts and law enforcement. It is not as if an officer may impound the vehicle at the side of the freeway and leave the driver stranded. Any warrant requires a detailed description of the vehicle, including a license number. Unless law enforcement engages in a high speed chase, it seems unlikely they would get the license plate number as a vehicle passes a parked cruiser in excess of 100 miles per hour. It is unknown how an officer will sufficiently describe the vehicle and driver in order to issue the warrant. This bill seems to presume the officer is able to chase down the speeder and cite them, presumably getting their information. Radioing ahead likely also will not work since the driver may slow down enough to avoid a citation all together, but certainly avoid a citation for driving in excess of 100 miles per hour. Therefore, the actual solvency of this bill seems tenuous.

Finally, the absence of meaningful legal assistance means people may suffer impoundment when they are not speeding in excess of 100 miles per hour. In many instances where an officer is not able to verify exactly how fast a person was travelling, the citation may be for speeding more than 25 miles over the speed limit – not necessarily, speeding in excess of 100 miles per hour. (See Veh. Code, § 22426, subd. (b)(3).) It seems possible that people will suffer impoundment unjustly, for just speeding, if they cannot afford counsel to challenge a citation.

3) **Constitutional Issues**: While this bill amends Vehicle Code section 14602.7, which directs a court to issue a warrant for impoundment based on the officer's statements, a warrant may not be issued for an infraction. Presumably, then, this bill contemplates a warrantless impoundment. The Fourth Amendment guarantees the right against unreasonable searches and seizures, which applies to the states through the Fourteenth Amendment. (*Soldal v. Cook County, Illinois* (1992) 506 U.S. 56, 61; *Verdun v. City of San Diego* (9th Cir. 2022) 51 F.4th 1033, 1036.) It is undisputed that seizures occur when cars are impounded. (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 862.) Hence, the seizure of a vehicle, even when authorized by state law, must be reasonable under the Fourth Amendment. (*Ibid.*) A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions. (*Ibid;* see also *City of Los Angeles v. Patel* (2015) 576 U.S. 409, 419.)

Here, the pertinent exception to the warrant requirement for vehicle impoundments is the Vehicular Community Caretaker Doctrine. The United States Supreme Court in *Cady v. Dombrowski* (1973) 413 U.S. 433, 441, first articulated the vehicular community caretaking exception, which allows police to seize and remove from the streets "vehicles impeding traffic or threatening public safety and convenience." (*Ibid.*) The exception allows for the impoundment of cars **actively** posing a problem to the community's welfare due to their location. The exception does not justify impoundments that do not address a present need under the vehicular community caretaking exception. (*Miranda, supra,* 429 F.3d at p. 863.) Thus, the impoundment under the community caretaking function does not depend on whether the officer had probable cause to believe that there was a violation, but on whether the impoundment fits within the authority of police to seize and remove from the streets vehicles presently impeding traffic or threatening public safety and convenience. (*Miranda, supra,* at p. 864.)

Ultimately, the decision to impound a vehicle must be reasonable and in furtherance of public benefit and public safety. This rule has been codified in California law; Vehicle Code section 22650 provides: "A removal [...] is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism." (Veh. Code, § 22650, subd. (b); see also *S. Dakota v. Opperman* (1976) 428 U.S. 364, 369, [noting police will impound automobiles that jeopardize both the public safety and the efficient movement of vehicular traffic]; *see also People v. Williams* (2006) 145 Cal.App.4th 756, 762–763 [tow served no community caretaking function where the car was legally parked, there was no particular possibility that the vehicle would be stolen, broken into, or vandalized, and the car did not pose hazard or impediment to other traffic]; *Miranda*, *supra*, at p. 866 [an officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers].)

As explained above, the citing officer would have to prepare an affidavit for impoundment presumably after the driver was cited for speeding in excess of 100 miles per hour. If approved, the tow agency would be contacted, the car would be located, towed away, and impounded for 30 days no matter where it was – even if it was parked at someone's house. All the while, the defendant has no opportunity for the appointment of legal counsel to dispute they were driving more than 100 miles per hour. If a person was driving 99 miles per hour, they would be ineligible for impoundment. This appears to be more akin to mass impoundment with no due process – which is unconstitutional. As noted above, evading, reckless driving, and speed contest are all misdemeanors wherein an indigent defendant is entitled to counsel to test the veracity of the alleged violation.

Finally, Vehicle Code section 22651 expressly lists the circumstances wherein an officer may impound a vehicle. The bases for impoundment involve either an active obstruction where the vehicle is stopped or parked in a manner that blocks lawful traffic or where the defendant is charged with misdemeanors like driving on a suspended license, reckless driving, and evading, and even then, when the officer takes the person into custody. (See Veh. Code, § 22651, subd. (h)(1-2).) As explained above, speeding in excess of 100 miles per hour is an infraction and an officer does not have authority to arrest a person for a simple infraction. Therefore, it is possible this bill simply amounts to an unconstitutional taking of personal property.

4) **Tow and Impoundment Costs Uniquely Impact Poorest Californians**: While speeding is certainly dangerous, mandating impoundment will uniquely harm the most vulnerable Californians particularly where they cannot afford counsel to fight impoundment at a hearing. First, impoundment does not just punish the speeder, but also an entire family if that is the only car available. For instance, young people are more likely to speed, but may be driving a parent or relative's car. Even if a person is able to demonstrate pursuant to Vehicle Code section 14602.7, subdivision (b) that they were not the person driving, the cost of towing and impoundment for a short period of time will likely still have to be paid.

   A 2016 survey found that 63% of Americans don't have enough money in savings to cover a $500 emergency. For people who cannot afford to pay a citation, the consequences can be significant, including loss of driver license, job loss, wage garnishment, arrest, incarceration, and loss of vehicle to towing and impoundment.[1] California's fines and fees are actually the highest, or among the highest, in the country. Although the base fines for common infractions are often comparable to those in other states, California's court costs and penalty fees are significantly higher than average.[2] Wealthier people are just as likely to speed but are much more likely to have multiple vehicles and ability to pay costly fines, as well as rely on legal counsel to represent them at any impoundment hearing.[3]

   Additionally, a person may not be able to afford the tow and impound fees to retrieve the car – forcing the impounding agency to sell the car to recover the costs of the impoundment.[4] According to a report prepared by a wide range of civil rights organizations published in 2019:

> Cities and counties across California typically require vehicle owners to pay about $500 to retrieve a car from a tow yard. If the car was impounded because of unpaid parking tickets or expired registration, the vehicle owner must pay the tickets or registration fees before retrieving the car, which can substantially increase the total cost. All these fees and fines along with the daily storage fees from the tow company can easily balloon the cost of retrieving a car to $2,500 or more. According to a recent federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of $400 or more. An unexpected impound can be one of those unanticipated expenses. Thus, for many vehicle owners, a single impound may put their car out of reach for good: they will not be able to pay to retrieve their car from the tow lot, and the car will be sold.[5]

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[1] Lawyers Committee for Civil Rights, *"Paying More for Being Poor,"* (2017), p. 5 "
[2] *Ibid*, at pp. 6-7.
[3] 1 Board of Governors of the Fed. Reserve Sys., Report on the Economic Well-Being of U.S. Households in 2017, at 21 (2018), available at https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.
[4] ACLU of Northern California & Western Center on Law & Poverty, *"Towed into Debt: However Towing Practices in California Punish Poor People,"* 2019, p. 16.
[5] Ibid., at p. 7

Research shows that fees paid to retrieve an impounded vehicle generally fall within three categories: (1) fees associated with the tow; (2) storage fees (which increase daily); and (3) administrative fees associated with the release of the vehicle. These fees are in addition to [any outstanding traffic fines] that must be paid before retrieving the car. If a vehicle owner does not have the money to pay these ever-increasing fees within 30 days of the tow, as noted above, the car can then be sold at a lien sale, often for a fraction of its value.

ACLU of Northern California, et al., notes for the City of Los Angeles, towing fees may be assessed as follows: "A person working full time at minimum wage in California makes approximately $96 per day, before taxes. This means the average cost of one tow in California is more than a week's worth of pay for many Californians."[6]

LOS ANGELES TOWING FEES[7]

TYPE OF FEE	FEE
Towing Fee	$133
City Release Fee	$115
Storage Fee[8]	$45.65/day
Mileage Rate	$7.50/mile
MINIMUM COST AFTER THREE DAYS	**$384.95**
MINIMUM COST AFTER ONE WEEK	**$567.55**
MINIMUM COST AFTER TWO WEEKS	**$887.10**

These figures are just to cover transporting a vehicle to the impound lot. Generally, law enforcement does not tell a person to turn their cars into a lot when issued a citation for speeding over 100 miles per hour. The vehicle is usually towed either at the time of the citation or from another location. Given the devastating consequences of impoundment, at a time of considerable economic uncertainty, is this the best way to curb excessive speeding?

5) **Argument in Support**: According to *Streets for All,* "AB 983 will authorize law enforcement to impound vehicles exceeding 100 miles per hour without needing to obtain a warrant. Cars caught speeding over 100 miles per hour on a speed camera will also be impounded. Additionally, AB 983 will include provisions to protect rental car agencies and stolen vehicles.

"Excessive speeding poses a significant danger to pedestrians and other drivers. According to the World Health Organization, driving over 100 miles per hour greatly increases the likelihood of getting into an accident due to decreased field of vision and increased chances of losing control of the vehicle

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[6] *Id.*, at p. 7.

"As a street safety organization, Streets for All is profoundly aware of the danger of our roadway, with the number one cause of crashes being speed. We are also aware of a societal conversation that does not take these issues seriously. People speeding on the roadway are culturally and within media seen as cool and desirable rather than reckless and brazen. We believe that AB 983 is part of the solution to stigmatizing careless behavior that has dire impacts on our roadway and will contribute to preventing the continued erosion of well-ordered public right of way.

6) **Argument in Opposition**: According to the *ACLU California Action,* "Instead of doubling down on an already-faulty speed camera system, the Legislature should improve public safety by investing in speed-calming infrastructure.

"The behavior at issue in AB 983 is already sufficiently punished by current law. A first-time offense for speeding on a highway is an infraction punishable by a fine of $500 and a license suspension up to 30 days. Repeat offenses are punished more harshly, up to a fine of $1000 and a license suspension up to a year. Adding tow costs and the loss of a vehicle based on information gathered by a speed camera is unnecessary.

"Moreover, while the current punishments are aimed at the individual who caused the violation, AB 983's vehicle impoundment would punish the owner of the vehicle even if they were not the driver at the time of the violation. For example, AB 983 would allow a mother's car to be impounded because her child caused a violation while driving the car. We should not punish families in this way, especially when vehicles are often key to a family's ability to get to work, go grocery shopping, pick children up from school, or get to the hospital in an emergency.

"For low income and working households, the towing of a vehicle is often catastrophic. Retrieving a car after it has been towed is time-consuming and costly, and for many people a tow means total loss of their car. The tow and storage fees are often more than people can afford, and when an individual cannot pay the fees associated with the tow, the vehicle is sold at auction, resulting in the person permanently losing their car. According to a 2018 federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of $400 or more. But a report from the following year found that the average towing and storage fees in California for a vehicle that is held for just 3 days is nearly $500. When people lose their cars, they often lose their biggest personal asset and their ability to meet their basic needs.

"The Legislature should not continue to rely on problematic speed camera systems. A coalition of civil rights and racial justice groups opposed AB 645 (Friedman, 2023), the law that set up speed camera pilot programs, based on racial and economic justice, due process, and privacy concerns. As noted then, surveillance systems like these speed camera systems often disproportionately impact marginalized communities. Those concerns are only exacerbated here as AB 983 ratchets up the punishment for violations from fines, which already disrupt a person's financial stability, to vehicle impoundment, which stops an individual and their family from meeting basic needs.

"While the Legislature's desire to address speeding is understandable, the proper approach is effective speed-calming infrastructure, such as roundabouts, speed bumps, and traffic circles. For example, roundabouts have been found to lead to 90% fewer accident-related fatalities

and 75% fewer accident-related injuries, reduced traffic delays by up to 50%, decreased pollution, and taxpayer savings due to roundabouts needing less maintenance than traffic lights or surveillance systems.

7) **Prior Legislation**:

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Automobile Club of Southern California
California Police Chiefs Association
California State Sheriffs' Association
Streets for All

Oppose

ACLU California Action
California Attorneys for Criminal Justice
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender
Silicon Valley De-bug
Streets are for Everyone
Universidad Popular
Western Center on Law & Poverty, INC.

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

Date of Hearing: April 22, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 992 (Irwin) – As Introduced February 20, 2025

As Proposed to be Amended in Committee

SUMMARY: Requires a peace officer to obtain either an associate's degree, bachelor's degree, modern policing degree, professional policing certificate, or otherwise have specified military or out-of-state law enforcement experience, within 36 months of receiving their basic certificate from the Commission on Peace Officer Standards and Training (POST). Specifically, **this bill**:

1) Requires, commencing January 1, 2031, each state officer and employee designated as a peace officer, as specified, or any other peace officer employed by an agency that participates in the POST program to attain one or more of the following degrees, experiences, or certificates, within 36 months of receiving their basic certificate by POST:

    a) An associate's degree from a community college, accredited by an agency recognized by the United States Department of Education.

    b) A bachelor's degree or other advanced degree from a college or university accredited by an agency recognized by the United States Department of Education

    c) A modern policing degree, which shall meet all of the following criteria:

        i) Require at least 60 semester units or 90 quarter units of degree-applicable credit coursework, from a college or university accredited by an agency recognized by the United States Department of Education.

        ii) Award credits for required commission-certified academy course instruction.

        iii) Offer courses that include, but are not limited to, the following list of subjects: Communications, Psychology, Writing, Ethics, and Criminal Justice.

    d) A professional policing certificate, which may be offered by any accredited college or university, and shall meet all of the following criteria:

        i) Require at least 16 or more semester units or 24 or more quarter units of degree-applicable credit coursework, from a college or university accredited by an agency recognized by the United States Department of Education.

        ii) Offer courses that include, but are not limited to, the following list of subjects: Communications, Psychology, Writing, Ethics, and Criminal Justice.

e) At least two years of military experience in good standing, with an honorable discharge if military service has concluded.

f) At least two years of law enforcement experience from another state, with separation in good standing.

2) Authorizes coursework completed as part of the commission-certified academy to count towards the modern policing degree and professional policing certificate and may count toward any associate degree or bachelor's degree. Coursework completed as part of the commission-certified academy cannot count towards the entirety of the units required for a professional policing certificate.

3) Exempts from the above requirements any person who, as of December 31, 2030, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California.

4) Removes the requirement that POST approve and adopt education criteria for peace officers, based on, and within two years of, the office of the Chancellor of the Community Colleges (OCCC) submitting a report to the Legislature outlining a plan to implement a modern policing degree program.

5) Establishes the Statewide Law Enforcement Recruitment Task Force, with the goal of identifying and recruiting candidates for law enforcement agencies, which shall be comprised of management and rank and file representatives from county sheriff departments, municipal police agencies, the Department of the California Highway Patrol (CHP), and other law enforcement organizations.

EXISTING LAW:

1) Establishes POST to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites. (Pen. Code, §§ 830-832.10; 13500 et seq.)

2) Establishes the powers of POST, including among others, to develop and implement programs to increase the effectiveness of law enforcement, to secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, §§ 830-832.10; 13500 et seq.)

3) Requires every peace officer in the state to satisfactorily complete an introductory training course prescribed by POST. (Pen. Code, § 832, subd. (a).)

4) Provides that each class of public officers or employees declared by law to be peace officers shall meet specified minimum standards, including that they be a high school graduate, pass the General Education Development Test or other high school equivalency test, or have attained a two-year, four-year, or advanced degree from an accredited college or university, as specified. (Gov. Code, § 1031.)

5) Specifies that the above paragraph shall not be construed to preclude the adoption of additional or higher standards. (Gov. Code, § 1031, subd. (g).)

6) Requires any person designated as a peace officer, notwithstanding designated exceptions, or any peace officer employed by an agency that participates in a POST program to be at least 21 years of age at the time of appointment. (Gov. Code, § 1031.4, subd. (a).)

7) Provides that any person, who as of December 31, 2021, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California is not subject to the age requirement of 21 years of age. (Gov. Code, § 1031.4, subd. (b).)

8) Requires representatives from POST, stakeholders from law enforcement, the California State University, and community organizations to serve as advisors to the OCCC to develop a modern policing degree program. (Pen. Code, § 13511.1, subd (a).)

9) Requires the OCCC to report recommendations to the Legislature outlining a plan to implement the modern policing degree program on, or by, June 1, 2023. (Pen. Code, § 13511.1, subd (a).)

10) Requires the recommendations in the OCCC report to meet the following:

    a) Focus on courses pertinent on law enforcement including, but not limited to, psychology, communications, history, ethnic studies, law, and those determined to develop necessary critical thinking skills and emotional intelligence.

    b) Allowances for prior law enforcement experience, appropriate work experience, postsecondary education experience, or military experience to satisfy a portion of the employment eligibility requirements.

    c) Include both the modern policing degree program and bachelor's degree program in the discipline of their choosing as minimum education requirements for employment as a peace officer.

    d) Include recommendations to adopt financial assistance for students of historically underserved and disadvantaged communities with barriers to higher education access to fulfill the minimum requirements to be adopted for employment as a peace officer. (Pen. Code, § 13511.1, subd (a)(1)-(4).)

11) Requires POST to approve and adopt the education criteria for peace officers, based on the recommendations in OCCC report, within two years from the submission of the report to the Legislature and in consultation with specified stakeholders. (Pen. Code, § 13511.1, subd (c).)

12) 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.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, ""Public safety is core to Californians' quality of life, so ensuring we have peace officers who have completed thorough preparation is of critical importance. The Legislature must act on our prior direction to the law enforcement and higher education community by putting into statute several pathways for peace officers to demonstrate their preparation, so that we all can realize the benefits of a modern police force throughout California."

2) **Law Enforcement Hiring and Staffing:** In the past several years, law enforcement agencies have struggled to recruit and retain sworn personnel. A survey conducted by the Police Executive Research Forum in June 2021 found that the departments surveyed were, on average, filling only 93% of the authorized number of positions available.[1] California has not been immune from officer recruitment and retention challenges. Between September 2021 and February 2022, San Diego lost over 100 officers, and in 2022 the city expected retirements and departures to outpace new hires.[2] Similarly, as of August 2021, the Los Angeles Police Department had 296 empty officer positions and almost 500 fewer officers on duty than it did the previous year; and as of November 2021, San Francisco was short 533 officers relative to full staffing levels.[3] According to a study conducted by the Public Policy Institute of California, between 2020 and 2022, the state lost 3,563 sworn and 1,240 civilian staff, and staffing levels are down by 3.2% compared to 2020.[4] In 2021, the number of officers per 100,000 residents was the lowest since 1995.[5] Staffing levels increased in 2023, but still remain lower than in 2020.[6]

   To address the staffing shortfall, law enforcement agencies have pursued a variety of potential solutions, such as increasing pay and benefits, scaling back job requirements, and hiring more non-sworn support staff. Some states, including California, have sought to address the problem and expand the applicant pool by removing or modifying officer citizenship requirements or raising the maximum age for eligibility.[7]

3) **Academic Requirements for Law Enforcement**: Law enforcement education requirements vary by jurisdiction and depending on the type and level of peace officer position. In California, prospective officers are required to have no more than a high school diploma or GED and complete a certain number of training hours through POST. (Gov. Code, § 1031; Pen. Code, § 832, subd. (a).) California law enforcement officers are already more likely to have some college education or an associate degree compared to full-time workers in other

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[1] Police Executive Research Forum, *Survey on Police Workforce Trends* (June 11, 2021), available at: https://www.policeforum.org/workforcesurveyjune2021

[2] The San Diego Tribune, *San Diego facing new police officer vacancy crisis blamed partly on vaccine mandate* (Feb. 3, 2022), available at: https://www.sandiegouniontribune.com/news/politics/story/2022-02-03/san-diego-facing-new-police-officer-vacancy-crisis-blamed-partly-on-vaccine-mandate

[3] Los Angeles Daily News, *LAPD is short about 300 officers but the chief hopes to fill the gap* (Aug. 20, 2021), available at: https://www.dailynews.com/2021/08/20/lapd-is-short-about-300-officers-but-the-chief-plans-to-fill-the-gap/; Sierra, *SFPD could be short 533 officers amid staffing strains from the vaccine mandate*, ABC 7 News, (Nov. 1, 2021), available at: https://abc7news.com/san-francisco-vaccine-mandate-sfpd-sf-city-workers-on-leave/11188916/

[4] Lofstrom et. al., *Law Enforcement Staffing in California*, Public Policy Institute of California (Feb. 2025), available at: https://www.ppic.org/publication/law-enforcement-staffing-in-california/

[5] Public Policy Institute of California, *California's Notable Decliens in Law Enforcement Staffing* (Feb. 14, 2023), available at: https://www.ppic.org/blog/californias-notable-declines-in-law-enforcement-staffing/

[6] Lofstrom et. al., *Law Enforcement Staffing in California*, Public Policy Institute of California (Feb. 2025), available at: https://www.ppic.org/publication/law-enforcement-staffing-in-california/

[7] See SB 960 (Skinner, Ch. 825, Stats. of 2022), and AB 1435 (Lackey, 2023), vetoed by the Governor.

occupations, and California has more college-educated officers than all but three states.[8] Increased focus on incidents of excessive force by peace officers have led to growing efforts to establish higher baseline educational requirements for officers. Research suggests that attaining college education significantly reduces the likelihood of force occurring, that officers with a college degree may be less likely to discharge their firearms, and that better educated officers may use force less often.[9]

In 2021, multiple bills were introduced which would have increased educational requirements for prospective California peace officers. Ultimately, AB 89 (Jones-Sawyer), Chapter 405, Statutes of 2021, was enacted, which required prospective peace officers to be at least 21 years of age, and to require the OCCC to develop a modern policing degree program with POST and other stakeholders. (Pen. Code, § 13511.1, subd (a).) AB 89 also required that stakeholder group to submit a report to the Legislature outlining a plan to implement that program by June 1, 2023. (*Ibid.*) That bill further specified that the OCCC's recommendations must include both the modern policing degree program and bachelor's degree in the discipline of the work group's choosing as minimum education requirements for employment as a peace officer. (*Ibid.*) Finally, AB 89 required POST to approve and adopt the education criteria for peace officers, based on the recommendations in the report, within two years from the submission of the report to the Legislature. (Pen. Code, § 13511.1, subd (c).)

In early 2023, AB 458 (Jones-Sawyer), Chapter 440, Statutes of 2023, as originally introduced, would have codified that expected recommendation and required prospective officers, by January 1, 2028, to obtain either a modern policing degree or bachelor's degree prior to receiving their basic certificate from POST, unless the officer was already employed by a public agency or enrolled in a basic academy. AB 458 was later amended into a bill unrelated to peace officer education requirements.

In November 2023, the OCCC task force released its final report and recommendations.[10] As part of this broader recommendation, the OCCC task force proposed a modern policing degree as either an Associate of Arts or Associate of Sciences in Policing to be completed prior to obtaining a POST basic certificate or within 24 months of initial appointment as a peace officer.[11] Notably, the OCCC task force recommended the inclusion of "both the modern policing degree program and bachelor's degree in the discipline of their choosing as

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[8] Public Policy Institute of California, *New Law Raises Standards for Police Officers* (Jan. 26, 2022), available at: https://www.ppic.org/blog/new-law-raises-standards-for-police-officers/#:~:text=Last%20fall%2C%20Governor%20Newsom%20signed,enforcement%20from%2018%20to%2021; Cal Matters, *Mandate higher education for California police officers* (March 26, 2021), available at: https://calmatters.org/justice/2021/03/mandate-higher-education-for-california-police-officers/

[9] Rydberg and Terril, *The Effect of Higher Education on Police Behavior*, Police Quarterly (13 (1), 92-120, at pp. 92, 99, available at: https://www.researchgate.net/publication/247748841_The_Effect_of_Higher_Education_on_Police_Behavior; Mcelvain and Kposowa, *Police Officer Characteristic and the Likelihood of Using Deadly Force*, Criminal Justice Behavior 25(4): 505-521, at p. 505, available at: https://www.researchgate.net/publication/247745141_Police_Officer_Characteristics_and_the_Likelihood_of_Using_Deadly_Force

[10] California Community Colleges Chancellor's Office, *California Assembly Bill 89 Modern Policing Degree Task Force Report and Recommendations* (Nov. 6, 2023), available at: https://www.cccco.edu/-/media/CCCCO-Website/docs/report/2023-AB-89-Task-Force-Report-to-Legislature---FINAL.pdf?la=en&hash=734BC84521A88B49A0ADAD91AE1E289D031937C9&hash=734BC84521A88B49A0ADAD91AE1E289D031937C9

[11] *Id.* at p. 8.

minimum education requirements for employments as a peace officer."[12] Further, the report recommended that "the California Community Colleges should develop the Modern Policing Degree with transferability into a baccalaureate degree in mind," and should "develop a baccalaureate degree in Policing."[13] Given the other recommendations regarding minimum educational standards, the OCCC task force likely did not intend to require prospective officers to obtain *both* an associate's degree *and* a bachelor's degree.

In response to the OCCC report, SB 1122 (Seyarto) of the 2023-2024 Legislative Session, sought to clarify that any requirement for the completion of a bachelor's degree or associate's degree adopted pursuant to the recommendations of the OCC may be satisfied after the completion of the POST program, and that an individual may complete a bachelor's or associate's degree within 36 months of their employment as a peace officer. This bill was passed by both houses of the Legislature but was recalled from Engrossing and Enrolling due to a fatal typographical error. AB 852 (Jones-Sawyer) of the 2023-2024 Legislative Session, similarly would have required a peace to attain a modern policing degree, or a bachelor's or other advanced degree from an accredited college or university, within 36 months of commencing their employment as a peace officer. AB 852 similarly was passed by both houses of the Legislature but was never sent to the Governor.

4) **Effect of this Bill:** This is the latest legislative effort to establish and clarify minimum educational standards for peace officers. This bill outlines six potential ways for prospective California peace officer to comply with the minimum education standards required to be outlined by the OCCC and ultimately adopted by POST, as required by AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021. This bill would require, beginning January 1, 2031, each state and local peace officer to obtain at least one of the following degrees, certificates, or experiences: 1) an associate's degree from a community college; 2) a bachelor's degree or other advanced degree from an accredited college or university; 3) a modern policing degree, as specified; 4) a "professional policing certificate," as specified; or 5) have at least two years of military or out of state law enforcement experience, subject to an honorable discharge (if military service is concluded) or separation in good standing, respectively. Any coursework completed as part of the commission-certified academy may count towards the modern policing degree, professional policing certificate, or any associate degree or bachelor's degree.

   For the purposes of this bill, a modern policing degree must require at least 60 semester units or 90 quarter units of degree-applicable credit coursework, award credits for required commission-certified academy course instruction, and offer courses that may include communications, psychology, writing, ethics, and criminal justice, among others.

   A professional policing certificate on the other hand, must require at least 16 or more semester units or 24 or more quarter units of degree-applicable credit coursework and offer courses that may include communications, psychology, writing, ethics, and criminal justice, among others.

   This outlines numerous ways to comply with the minimum education requirements contemplated by AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021 – a broader approach

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[12] *Ibid.*
[13] *Id.* at p. 9.

than those taken in prior legislative efforts to codify such minimum education standards. In 2023, AB 458 (Jones-Sawyer), Chapter 440, Statutes of 2023, as originally introduced, would have required prospective peace officers to obtain either a modern policing degree or bachelor's degree. SB 1122, of the 2023-2024 Legislative Session, sought to clarify that a prospective officer could comply with future educational standards by completing a bachelor's degree or an associate's degree.

This broader approach is partially consistent with the original goals of AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021, as well as the recommendations in the OCCC report submitted to the Legislature in 2023. That said, it establishes avenues to adhere to minimum education requirements that were not previously contemplated by AB 89 or the OCCC report.

AB 89 and the OCCC report both specified that prior law enforcement experience may contribute towards a prospective officer meeting the minimum peace officer education requirements. AB 89 required the OCCC recommendations to include "allowances for prior law enforcement experience, and appropriate work experience, postsecondary education experience, or military experience to satisfy a portion of the employment eligibility requirements." (Pen. Code, § 13511.1, subd. (a)(2).) The OCCC report similarly recommends that colleges should work to "develop credit for prior learning experiences" such as military service, police academy experience, and other relevant career experiences.[14]

This bill goes slightly beyond this recommendation. Instead of permitting prior out-of-state law enforcement experience, or military experience, to satisfy "a portion"[15] of, or provide "credit" towards, peace officer minimum education requirements, this bill authorizes such prior experiences to serve as a complete substitute for an associate degree, bachelor's degree or modern policing degree. To better align this bill with the original intent of AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021, and the OCCC report's recommendations, the author may wish to narrow the impact of such prior law enforcement or military experiences to providing credit towards satisfying officer minimum education requirements, rather than exempting such persons from those education requirements entirely.

Additionally, AB 89 proposes to allow prospective peace officers to satisfy peace officer minimum education requirements by obtaining a "professional policing certificate" that must offer 16 or more semester units or 24 or more quarter units of degree-applicable credit coursework. Neither AB 89 nor the OCCC report submitted to the Legislature contemplated or recommended the creation of such a certificate. Rather AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021, required the OCCC to submit a report to the Legislature outlining a plan to implement a modern policing degree program. Accordingly, the bulk of the OCCC recommendations focus on outlining the requirements and substance for that program.[16] POST is required to "approve and adopt the education criteria for peace officers, based on the recommendations in [the OCCC report]." (Pen. Code, § 13511.1, subd (c).) Given that the OCCC report does not recommend creating such a "professional policing certificate" and this

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[14] California Community Colleges Chancellor's Office, *California Assembly Bill 89 Modern Policing Degree Task Force Report and Recommendations* (Nov. 6, 2023), at pp. 15-16. available at: https://www.cccco.edu/-/media/CCCCO-Website/docs/report/2023-AB-89-Task-Force-Report-to-Legislature---

[15] (Pen. Code, § 13511.1, subd. (a)(2).)

[16] California Community Colleges Chancellor's Office, *California Assembly Bill 89 Modern Policing Degree Task Force Report and Recommendations* (Nov. 6, 2023), at pp. 8-15. available at: https://www.cccco.edu/-/media/CCCCO-Website/docs/report/2023-AB-89-Task-Force-Report-to-Legislature---

certificate could be awarded with only 16 semester units, including academy coursework, the creation of this certificate is arguably inconsistent with the OCCC report and risks undercutting or entirely supplanting the modern policing degree program required to be established by AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021.The author may wish to remove the certificate requirement entirely, or otherwise increase the amount of units required of such a certificate, to avoid creating a far easier means of compliance that discourages prospective officers from completing the modern policing degree program.

This concern is particularly apt given that the bill also authorizes academy coursework to count towards the completion of such a 16 minimum unit certificate, which makes it possible for academy coursework to automatically satisfy the "certificate" option. This is arguably a major loophole in this bill. Committee amendments attempt to address this issue by specifying that coursework completed as part of the commission-certified academy cannot count towards the entirety of the units required for a professional policing certificate. The author additionally may wish to provide further guidelines and limitations on the extent to which academy coursework can count towards the minimum 16 semester unit requirement of the policing certificate, to avoid undercutting the modern policing degree program.

AB 992 also removes the requirement that POST approve and adopt education criteria for peace officers, based on, and within two years of, the submission of the OCCC report to the Legislature. The OCCC report was released in November of 2023, which would require POST to adopt minimum education standards for peace officers by the end of this year. SB 385 (Seyarto and Wahab), of the 2024-2025 Legislative Session, mirrors this provision, and additionally includes an urgency provision to ensure this statutory deadline is removed before this bill enters into effect. This bill would enter into effect by January 1, 2031, which gives community colleges and universities some time to develop the programs and certificates created by this bill. However, this would not only remove POST's upcoming deadline to adopt education criteria, but also POST's responsibility to develop such criteria more generally. This shifts the responsibility for developing peace officer minimum standards from POST to the Legislature, which is distinct from the process initially proposed by AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021.

Finally, AB 992 establishes the Statewide Law Enforcement Recruitment Task Force, with the goal of identifying and recruiting candidates for law enforcement agencies, which shall be comprised of management and rank and file representatives from county sheriff departments, municipal police agencies, CHP, and other law enforcement organizations. The author may to expand upon, and further clarify, the structure, jurisdiction, and responsibilities of this proposed entity.

5) **Argument in Support**: According to the *Peace Officers' Research Association of California*, "AB 992 builds upon the work of a legislatively directed working group that, in 2023, provided recommendations for creating a modern policing degree. Rather than relying on a single path, this bill expands the approach by offering multiple higher education options that reflect the diverse experiences and strengths of future law enforcement professionals. These include associate's degrees, professional certificates, prior military service, and other relevant credentials.

"AB 992 refines the previous framework by allowing greater flexibility in how education requirements can be met, rather than requiring a specific degree program to be approved by

the Commission on Peace Officer Standards and Training (POST). This change creates a more realistic and adaptable structure for officer education and recruitment.

"The bill also establishes a statewide task force to support recruitment efforts and encourage broader access to law enforcement careers across California's communities. PORAC believes AB 992 is a thoughtful and balanced approach that supports the continued advancement of our profession, while keeping pathways to service open and attainable for individuals from all backgrounds. Providing officers with strong educational foundations—without imposing unnecessary barriers—will help strengthen both public safety and community trust."

6) **Related Legislation**: SB 385 (Seyarto and Wahab) would eliminate the requirement that POST adopt education criteria for police officers, based on the report that the Chancellor of the California Community Colleges submitted to the Legislature, within two years of the submission of the report, and makes this effective as an urgency statute. SB 385 is pending in Senate Appropriations Committee.

7) **Prior Legislation**:

   a) SB 1122 (Seyarto), of the 2023-2024 Legislative Session, would have clarified that a bachelor's or associate's degree required for employment as a peace officer may be obtained after the completion of the POST program and within 36 months of employment as a peace officer. SB 1122 recalled from Engrossing and Enrolling.

   b) AB 852 (Jones-Sawyer), of the 2023-2024 Legislative Session, would have required a peace officer who is hired on or after January 1, 2029 to attain a modern policing degree, or a bachelor's or other advanced degree from an accredited college or university, within 36 months of commencing their employment as a peace officer. AB 852 passed the Assembly and Senate but was never sent to the Governor.

   c) AB 458 (Jones-Sawyer), Chapter 440, Statutes of 2023, requires an officer to attain either of the following degrees prior to receiving a basic certificate beginning on January 1, 2028: a modern policing degree from a California Community College; or, a bachelor's degree or other advanced degree from an accredited college or university. AB 458 was gutted and amended in the Senate.

   d) AB 655 (Kalra), Chapter 854, Statutes of 2022, required background checks to determine whether a person seeking to be employed as a peace officer exhibits unlawful bias by engaging in a hate group.

   e) AB 2229 (L. Rivas), Chapter 959, Statutes of 2022, reenacts the requirement that peace officers be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of their powers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

   f) SB 960 (Skinner), Chapter 825, Statutes of 2022, removed provisions of existing law requiring peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship.

   g) AB 89 (Jones-Sawyer), Chapter 405, Statutes of 2021, requires all peace officers employed by agencies that participate in the POST program, who are not employed in or

enrolled in academy for that position as of 2024, to be at least age 21 and meet specified education requirements.

h) AB 846 (Burke), Chapter 322, Statutes of 2020, provided that evaluations of peace officers shall include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Civil Liberties Advocacy
California Coalition of School Safety Professionals
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles County Sheriff's Department
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None Submitted.

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

Amended Mock-up for 2025-2026 AB-992 (Irwin (A))

Mock-up based on Version Number 99 - Introduced 2/20/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 1031.5 is added to the Government Code, to read:

1031.5. (a) In addition to the standards in Section 1031, commencing January 1, 2031, each state officer and employee designated as peace officers as described in Section 830.1, with the exception of those described in subdivision (c) of that section, 830.2, with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33 of the Penal Code, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program shall attain one or more of the following degrees, experiences, or certificates within 36 months of receiving their basic certificate by the commission:

(1) An associate's degree from a community college, accredited by an agency recognized by the United States Department of Education.

(2) A bachelor's degree or other advanced degree from a college or university accredited by an agency recognized by the United States Department of Education.

(3) At least two years of military experience in good standing, with an honorable discharge if military service has concluded.

(4) At least two years of law enforcement experience from another state, with separation in good standing.

(5) A modern policing degree, as described in subdivision (b).

(6) A professional policing certificate, as described in subdivision (c).

(b) A modern policing degree shall meet all of the following criteria:

(1) Require at least 60 semester units or 90 quarter units of degree-applicable credit coursework, from a college or university accredited by an agency recognized by the United States Department of Education.

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(2) Award credits for required commission-certified academy course instruction.

(3) Offer courses that include, but are not limited to, the following list of subjects:

(A) Communications.

(B) Psychology.

(C) Writing.

(D) Ethics.

(E) Criminal Justice.

(c) A professional policing certificate may be offered by any accredited college or university, and shall meet all of the following criteria:

(1) Require at least 16 or more semester units or 24 or more quarter units of degree-applicable credit coursework, from a college or university accredited by an agency recognized by the United States Department of Education.
(2) Offer courses that include, but are not limited to, the following list of subjects:

(A) Communications.

(B) Psychology.

(C) Writing.

(D) Ethics.

(E) Criminal Justice.

(d) Coursework completed as part of the commission-certified academy shall count towards the modern policing degree and professional policing certificate and may count toward any associate degree or bachelor's degree described in paragraphs (1) and (2) of subdivision (a). Coursework completed as part of the commission-certified academy cannot count towards the entirety of the units required for a professional policing certificate.

(e) This section does not apply to any person who, as of December 31, 2030, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California.

SEC. 2. Section 13511.1 of the Penal Code is amended to read:

13511.1. (a) The commission, stakeholders from law enforcement, including representatives of law enforcement administration and law enforcement employees, the California State University, including administration and faculty members, and community organizations shall serve as advisors to the office of the Chancellor of the California Community Colleges to develop a modern policing degree program. By June 1, 2023, the office of the Chancellor of the California Community Colleges, in consultation with the stakeholders, shall submit a report on recommendations to the Legislature outlining a plan to implement this program. The recommendations in the report shall:

(1) Focus on courses pertinent to law enforcement, which shall include, but not be limited to, psychology, communications, history, ethnic studies, law, and those determined to develop necessary critical thinking skills and emotional intelligence.

(2) Include allowances for prior law enforcement experience, and appropriate work experience, postsecondary education experience, or military experience to satisfy a portion of the employment eligibility requirements.

(A) It is the intent of the Legislature that allowances for prior experience in this paragraph for those with military experience may be provided to those with military specializations pertinent to law enforcement, including those specializations in community relations, deescalation, foreign language translators, and those determined to require necessary critical thinking skills and emotional intelligence.

(B) It is the intent of the Legislature that allowances for prior experience specified in this paragraph shall be granted to those of good moral character, and shall not be granted to those with prior sustained disciplinary actions taken against them, except that the Commission on Peace Officer Standards and Training may, after considering the severity of the sustained misconduct or violation, grant a partial allowance.

(3) Include both the modern policing degree program and bachelor's degree in the discipline of their choosing as minimum education requirements for employment as a peace officer.

(4) Include recommendations to adopt financial assistance for students of historically underserved and disadvantaged communities with barriers to higher education access that fulfill the minimum education requirements to be adopted, pursuant to this section, for employment as a peace officer.

(b) The report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 3. Section 13519.16 is added to the Penal Code, to read:

13519.16. (a) The Statewide Law Enforcement Recruitment Task Force is hereby established, with the goal of identifying and recruiting candidates for law enforcement agencies.

(b) The task force shall be comprised of management and rank and file representatives from county sheriff departments, municipal police agencies, the Department of the California Highway Patrol, and other law enforcement organizations.

Date of Hearing: April 22, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 994 (Hadwick) – As Amended March 24, 2025

As Proposed to be Amended in Committee

SUMMARY: Provides that a person currently committed to state prison who is alleged to have committed a new offense may request after consultation with counsel that any pretrial confinement pending disposition of charges for the new offense that would otherwise be served in the county jail be served at the state prison at which the prisoner is currently confined, unless the person is otherwise eligible for and obtains pretrial release. Provides that this request shall be made in the court with jurisdiction and may be made through the person's counsel.

EXISTING LAW:

1) Provides that, in all criminal prosecutions, the accused shall enjoy the right…to have the assistance of counsel for his defense. (U.S. Const., 6th Amend.; Cal. Const, art. I, § 15.)

2) Authorizes the court, when there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, by a written order filed with the clerk of the court, to designate the jail of a contiguous county for the confinement of any prisoner of his or her county, and authorizes the court to, at any time, modify or vacate the order. (Pen. Code, § 4007.)

3) Authorizes the county sheriff, when there are reasonable grounds to believe that a prisoner may be forcibly removed from a county jail, to remove the prisoner to any California state prison for safekeeping. (Pen. Code, § 4007.)

4) Provides that, when a prisoner is removed from county jail to state prison, it is the duty of the warden of the prison to accept and detain the prisoner in their custody until the incarcerated person's removal is ordered by the superior court of the county from which they were delivered. (Pen. Code, § 4007.)

5) Authorizes the court, when a county prisoner requires medical treatment necessitating hospitalization which cannot be provided at the county jail or county hospital because of lack of adequate detention facilities, and when the prisoner also presents a serious custodial problem because of his or her past or present behavior, on the request of the county sheriff and with the consent of the Secretary of the California Department of Corrections (CDCR), to designate by written order, subject to specified procedures, the nearest state prison or correctional facility which would be able to provide the necessary medical treatment and secure confinement of the prisoner. (Pen. Code, § 4007.)

6) Authorizes the court, when there are reasonable grounds to believe that there is a prisoner in a county jail who is likely to be a threat to other persons in the facility or who is likely to cause substantial damage to the facility, on the request of the county sheriff and with the consent of the Secretary of CDCR, designate by written order, subject specified procedures, the nearest state prison or correctional facility which would be able to secure confinement of the prisoner, subject to space available. (Pen. Code, § 4007.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "State prison inmates who commit new crimes while in prison tend to serve their pre-trial confinement for the new charges in county jail if their original prison release date falls after the new crime but before the completion of court proceedings on the new charges. The timing of the process when a defendant faces new charges as described results in risk to the security and safety of county jails that could be avoided by having the California Department of Corrections and Rehabilitation maintain custody of these defendants. AB 994 allows an inmate near the end of their prison sentence who has committed a new crime to stay in prison for pre-trial confinement instead of a county jail. This addresses safety issues stemming from housing former state prison inmates with county jail inmates and promotes efficiency within our state and local correctional systems."

2) **Effect of the Bill:** Existing law authorizes a court, when there are reasonable grounds to believe that there is a prisoner in a county jail who is likely to be a threat to other persons in the facility or who is likely to cause substantial damage to the facility, on the request of the county sheriff and with the consent of the Secretary of CDCR, to designate by written order the nearest state prison or correctional facility which would be able to secure confinement of the prisoner, subject to space available. (Pen. Code, § 4007.) Existing law also provides, among other things, that a hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later; that the prisoner shall be entitled to be present at the hearing and to be represented by counsel; and that the rate of compensation for the prisoner's confinement within a California state prison or correctional facility shall be established by CDCR and shall be charged against the county making the request. (Pen. Code, § 4007.)

   This bill would provide that a person currently committed to state prison who is alleged to have committed a new offense may request after consultation with counsel that any pretrial confinement pending disposition of charges for the new offense that would otherwise be served in the county jail be served at the state prison at which the prisoner is currently confined, unless the person is otherwise eligible for and obtains pretrial release. It also would provide that this request shall be made in the court with jurisdiction and may be made through the person's counsel.

3) **Criminal Justice Realignment:** In November 2006, plaintiffs in two class action lawsuits—*Plata v. Brown* (involving CDCR medical care) and *Coleman v. Brown* (involving CDCR mental health care)— filed motions for the courts to convene a three-judge panel pursuant to the federal Prison Litigation Reform Act. The plaintiffs argued that persistent overcrowding in the state's prison system was preventing CDCR from delivering constitutionally adequate

health care to incarcerated persons. The three-judge panel declared that overcrowding in the state's prison system was the primary reason that CDCR was unable to provide incarcerated persons with constitutionally adequate health care. In January 2010, the three-judge panel issued its final ruling ordering the State of California to reduce its prison population by approximately 50,000 individuals in the next two years. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.)

The United States Supreme Court upheld the decision of the three-judge panel, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" persons in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939.) Without changes to how the prison population was managed, the court decisions could have led to arbitrary release of tens of thousands of people in prison.

AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment that, among other things, limited which felons could be sent to state prison and required more persons convicted of felonies to serve their sentences in county jails. Realignment also affected parole supervision after release from custody, providing that most persons could no longer be returned to state prison for violating a term of supervision; they would serve their revocation terms in county jail.

This bill would remove from county jail a few individuals typically housed there while awaiting trial, instead serving their pretrial confinement period in state prison.

4) **Argument in Support**: According to the *California State Sheriffs' Association*, the bill's sponsor: "If an inmate commits a crime while incarcerated in the state prison, they are typically housed at the local county jail in the jurisdiction where the crime occurred upon their prison release date. If not subject to pre-trial release, the inmate is housed in the county jail until their case reaches a disposition. The prison system does not allow for inmates to remain in its custody as it is not currently authorized to house offenders that are not formally sentenced to state prison.

"County jails were not typically designed to house multiple high-level offenders and often experience classification problems when it comes to housing. Many of the offenders are in custody for multiple violent offenses or have a history of violent offenses. This includes assault on peace officers or homicide. This has caused high-level offenders to be housed in jails built for mainly minimum to medium custody inmates. As time has passed, this has caused an increase in violent incidents in local facilities. Many local facilities have open housing with few restricted housing cells.

"The crimes in question occur while inmates are in the custody of the state prison system. In counties where the courtroom is located at the state prison, an additional burden falls to local jails by having to transport defendants back and forth to court. This adds officer safety and operational security concerns. AB 994 increases public safety as well as the security of jail facilities by allowing inmates being released from state prison with pending criminal charges to remain in state prison custody instead of county jail if they are to be confined pre-trial."

5) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "This bill would have a profound adverse impact on a criminal defendant's right to counsel and

access to justice. Specifically, the bill provides that a state prison inmate with pending charges will be housed in the state prison nearest the county in which the case is pending. There are many county seats and court houses located literally hours away by car from the nearest state prison. Yet, it is a necessity that a defense attorney, whether private counsel or a public defender, meet with their client, potentially numerous times, to render to them effective assistance of counsel consistent with the defendants' Sixth Amendment rights. The distance and travel time will axiomatically limit an attorney's ability to conveniently meet with their client to the detriment of the state prison inmate and the attorney's other clients due to the burden on the attorney's schedule.

"In addition to the foregoing grave impact to a defendant's access to justice, this bill will result in significant increased costs to the state and counties. An inmate is constitutionally entitled to be present, in person, at their court hearings. The Penal Code requires it in felony matters. Thus, the Department of Corrections and Rehabilitation or the county in which the case is pending will be obligated to transport the defendant to court, in some cases over great distances. Finally, if the defendant is represented by a public defender, the budget and attorney resources of that office will be burdened when one of their deputies travels potentially hours to meet with their appointed clients.

"In contrast to what is proposed by this bill, current practice requires a prison inmate to be housed at the county jail wherein the charges are pending. This just makes sense and it is the most pragmatic and efficient approach. County jails are, in some cases, attached to the county court and if not, they are typically situated very near the courthouse. Meeting with in-custody clients in the county jail occurs as part the standard daily routine for criminal defense attorneys in all counties throughout the state. CACJ recommends the bill be amended to vest the accused with the option to choose between either a state prison or a local county jail stay pending new changes."

6) **Prior Legislation**: AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state prison, required that more felons serve their sentences in county jails.

REGISTERED SUPPORT / OPPOSITION:

Support

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Opposition

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

Amended Mock-up for 2025-2026 AB-994 (Hadwick (A))

Mock-up based on Version Number 98 - Amended Assembly 3/24/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 4007 of the Penal Code is amended to read:

4007. (a) When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed with the clerk of the court, designate the jail of a contiguous county for the confinement of any prisoner of their county, and may at any time modify or vacate the order.

(b) When there are reasonable grounds to believe that a prisoner may be forcibly removed from a county jail, the sheriff may remove the prisoner to any California state prison for safekeeping and it is the duty of the warden of the prison to accept and detain the prisoner in their custody until their removal is ordered by the superior court of the county from which the prisoner was delivered. Immediately upon receiving the prisoner the warden shall advise the Secretary of the Department of Corrections and Rehabilitation of that fact in writing.

(c) When a county prisoner requires medical treatment necessitating hospitalization which cannot be provided at the county jail or county hospital because of lack of adequate detention facilities, and when the prisoner also presents a serious custodial problem because of their past or present behavior, the judge of the superior court may, on the request of the county sheriff and with the consent of the Secretary of the Department of Corrections and Rehabilitation, designate by written order the nearest state prison or correctional facility which would be able to provide the necessary medical treatment and secure confinement of the prisoner. The written order of the judge shall be filed with the clerk of the court. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall not be transferred to the state prison or correctional facility prior to the hearing, except upon a determination by the physician responsible for the prisoner's health care that a medical emergency exists which requires the transfer of the prisoner to the state prison or correctional facility prior to the hearing. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The prisoner may waive their right to this hearing in writing at any time. If the prisoner waives their right to the hearing, the county sheriff shall notify the prisoner's attorney of the transfer within 48 hours, or the next business day, whichever is later. The court may modify or vacate the order at any time.

(d) The rate of compensation for the prisoner's medical treatment and confinement within a California state prison or correctional facility shall be established by the Department of Corrections and Rehabilitation, and shall be charged against the county making the request.

(e) When there are reasonable grounds to believe that there is a prisoner in a county jail who is likely to be a threat to other persons in the facility or who is likely to cause substantial damage to the facility, the judge of the superior court may, on the request of the county sheriff and with the consent of the Secretary of the Department of Corrections and Rehabilitation, designate by written order the nearest state prison or correctional facility which would be able to secure confinement of the prisoner, subject to space available. The written order of the judge must be filed with the clerk of the court. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The court may modify or vacate that order at any time. The rate of compensation for the prisoner's confinement within a California state prison or correctional facility shall be established by the Department of Corrections and Rehabilitation and shall be charged against the county making the request.

~~(f) Notwithstanding Section 4000 or 4001, when a person currently committed to a state prison is alleged to have committed a new offense, any pretrial confinement pending disposition of charges for the new offense that would otherwise be served in the county jail shall occur at the nearest state prison that would be able to secure confinement of the prisoner, subject to space available, or the state prison at which the prisoner is currently confined, upon the request of the county sheriff unless the person is otherwise eligible for and obtains pretrial release.~~

(f)(1) Notwithstanding Section 4000 or 4001, a person currently committed to a state prison who is alleged to have committed a new offense may request, after consultation with counsel, that any pretrial confinement pending disposition of charges for the new offense that would otherwise be served in the county jail be served at the state prison at which the prisoner is currently confined, unless the person is otherwise eligible for and obtains pretrial release.

(2) A request made pursuant to paragraph (1) shall be made in court by the person requesting to serve any pretrial confinement in state prison or through their counsel.

Date of Hearing: April 22, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1071 (Kalra) – As Amended March 28, 2025

SUMMARY: Amends the Racial Justice Act of 2020 (RJA) to clarify when and how a defendant may file for relief depending on the procedural posture of the defendant's case, conviction, or sentence. Specifically, **this bill**:

RJA - Motions:

1) Authorizes, where a defendant's sentence ***has not been imposed*** or who is before the trial court for any remand or resentencing proceeding, they may file a motion alleging a violation of the RJA before the trial court.

2) Provides that where a defendant's sentence has been imposed but is not yet final, they may file a motion alleging a violation of the RJA at any time before the sentence becomes final and before any court of competent jurisdiction.

3) Authorizes, where the defendant's sentence ***has been imposed***, but is not final, and for any claims based on the trial record:

   a) A defendant may raise an RJA claim on direct appeal from the conviction or sentence.

   b) An appellate court shall address any claims based on the trial record unless a defendant requests a stay and remand to the superior court to file a motion alleging a violation of the RJA. An appellate court shall grant a stay and remand upon a defendant's request and attestation that the RJA claim needs further development through no fault of the defendant.

4) States for an ***incarcerated defendant whose sentence is final***, the defendant may file an RJA motion or a habeas petition, as specified, based on a violation of the RJA in a court of competent jurisdiction.

5) Authorizes any defendant ***who is not incarcerated, but whose conviction is final*** to file a motion to alleging a violation of the RJA in any court of competent jurisdiction.

RJA – Remedies:

Remedy for violations before judgement is entered -

6) Allows a court, in determining a remedy for a RJA violation filed before judgement was entered, to order any lawful remedy available pursuant to the United States Constitution or state constitution, or any other law.

Remedy after judgement is entered -

7) *Direct Impact Violation*: Requires a court, in determining a remedy for a RJA violation filed and ruled on ***after*** judgement is entered, to vacate the conviction and sentence, find that it is legally invalid, and order new proceedings unless the defense and prosecution stipulate to an alternative remedy, on any RJA motion wherein a defendant shows the judge, attorney, law enforcement officer, or expert witness demonstrates bias or animus against the race, ethnicity, or national origin of a defendant or is discriminatory against the defendant (hereinafter "direct impact violation").

8) States an "alternative remedy" as described above, for purposes of imposing a remedy for a direct impact violation of the RJA after judgement is entered as:

   a) Dismissal of the enhancement.

   b) Reduction of one or more charges to lesser included or lesser related offenses.

   c) Imposition of a lower sentence than previously imposed.

   d) Any other lawful remedy available under the U.S. Constitution, California Constitution, or any other law.

9) States any "alternative remedy" may be one or a combination of options described above that would result in a substantive reduction in sentence.

10) *Disparate Impact Violation*: Requires a court, in determining a remedy for a RJA violation filed after judgement is entered, to impose either of the following, on any RJA motion wherein a defendant shows they were charged or sentenced in a manner more serious than defendants of other races, ethnicities, or national origin who are similarly situated to defendant (hereinafter "disparate impact violation"):

   a) Modify the judgment to a lesser included or related offense, dismiss enhancements, special circumstances, or special allegations, and resentence.

   b) Order any other remedy available under the U.S. Constitution, California Constitution, or any other law.

Petitions for Habeas Corpus:

11) Requires that for any habeas petition based on a violation of the RJA, the petition shall state whether the petitioner requests appointment of counsel; if the petitioner cannot afford counsel; and either the petition alleges a violation of the RJA or the State Public Defender requests that counsel be appointed.

12) Mandates the lack of a request for appointment by the State Public Defender shall not be construed as a reflection of the merits of the petition or the petitioner's entitlement to

counsel.

13) Specifies that all definitions and legal thresholds stated in the RJA are controlling for purposes of a habeas petition or claim based on a violation of the RJA, as specified.

14) Authorizes a person who is planning to file a habeas petition or has filed a petition for violation of the RJA, to request disclosure of any relevant evidence in support of an RJA claim.

15) States that when counsel is appointed and before the court takes further action on the habeas petition based on a RJA claim, a petitioner may file a motion requesting disclosure of any relevant evidence in support of their claim and amend their petition.

16) Mandates if a petitioner, when acting as their own attorney, files a habeas petition based on a RJA claim and it is denied, the denial shall be without prejudice.

17) Prohibits a petition from being found to be successive, untimely, or abusive if the petition is based on a first claim of a RJA violation or the RJA claim is filed based on evidence that has not previously been presented and heard in relations to a particular habeas claim.

18) States if a RJA petition was previously deemed forfeited or waived by the trial court or on direct appeal, the petitioner need not allege nor establish ineffective assistance of counsel to prove a violation or to be entitled to relief.

19) States the court's determination of whether the petitioner has made a prima facie showing of an RJA violation for purposes of setting a hearing shall be based solely on the petitioner's showing.

20) States if a court makes a finding that the petitioner has not made a prima facie showing and fails to state its legal and factual reasoning on the record or issue a written order, it shall constitute grounds for reversal of the court's denial.

21) Provides that the prosecution may stipulate to the facts forming the basis of a RJA claim eliminating any need for an evidentiary hearing.

22) States when holding an evidentiary hearing on an RJA claim evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses.

23) Allows the court to appoint an independent expert at any evidentiary hearing on a RJA claim.

24) Provides that for purposes of an RJA petition and evidentiary hearing, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a RJA violation occurred.

25) Requires the petitioner to have the burden of proving a violation of a RJA petition by a preponderance of evidence, but does not need to show intentional discrimination.

26) Specifies that if a habeas petitioner establishes a violation of the RJA, the court may impose any remedy specified in the RJA.

27) Clarifies if the prosecutor declines to show cause why a hearing should not be held or at any point concedes or stipulates to a RJA violation, the presumption in favor granting relief applies.

28) Requires that if the court holds an evidentiary hearing and petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing so long as there is a signed or oral waiver on the record.

New Petition for Relief based on a RJA violation after judgment when petitioner is out of custody

29) States that any person who is convicted of a crime who conviction is sought or obtained or whose sentence is imposed in violation of the RJA may file a petition with the court in which they were convicted.

30) Requires an RJA petition to be served on the district attorney, or on the agency that prosecuted petitioner, and the attorney that represented the petitioner in the trial court, or on the public defender of the county where petitioner was convicted.

31) Requires the petition to include all the following:

    a) The superior court case number and year of the petitioner's conviction.

    b) Stated in plain language, specifically how the RJA was violated.

    c) Whether the petitioner requests the appointment of counsel.

    d) The petitioner's declaration that the contents of the petition are true and correct.

32) Allows the petitioner to attach copies of any supporting documentation in their possession. However, the failure to attach documentation does not render the petition defective.

33) States if any of the required information is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

34) Provides that if the petition contains all required information, or any missing information can readily be ascertained by the court, and the petitioner has requested counsel, the court shall appoint counsel.

35) States any and all definitions and legal thresholds specified in the RJA are controlling for purposes of filing a petition when the petitioner is out of custody after imposition of judgement.

36) Authorizes a petitioner or their counsel, to file a motion for discovery of evidence relevant to the petitioner's RJA claim.

37) Mandates if a petitioner originally filed pro per, the court must permit newly appointed counsel to request additional disclosure of evidence, as specified in the RJA, and to amend the petition prior to the court taking further action.

38) Provides that a petition raising a violation of the RJA for the first time, or on the basis of evidence that has not previously been presented and heard in relation to the particular alleged violation of the RJA, shall not be deemed a successive, untimely, or abusive petition.

39) Mandates the court, in reviewing a petition arising out of an RJA claim to determine whether the petitioner makes a prima facie showing, as specified in the RJA and that determination must be based solely on the petitioner's showing.

40) States if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion. Failure to provide that statement shall be grounds for reversal.

41) Prohibits a RJA petition from being deemed successive, untimely, or abusive, if petitioner is raising a RJA claim for the first time, or on the basis of evidence that has not previously been presented and heard in relation to the particular alleged violation of the RJA.

42) States if the petitioner makes a prima facie showing, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing within 60 days of the issuance of the order, unless the state declines to show cause or stipulates to facts establishing a violation of the RJA.

43) States evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses.

44) Authorizes a court to appoint an independent expert. For the purpose of a motion and hearing under this subdivision, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a RJA violation has occurred. Expert testimony is not required to prove a violation of the RJA.

45) States the petitioner shall have the burden of proving a RJA violation by a preponderance of the evidence and the petitioner does not need to prove intentional discrimination.

46) Provides that a petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless petitioner's counsel indicates that the petitioner's presence in court is needed or the petitioner requests to be physically present.

47) Requires a court to impose any of the remedies specified in the RJA if the court determines that the petitioner has established a violation of the RJA.

48) States if the court determines the petitioner has not established a violation by a preponderance of the evidence, a violation of the RJA, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion. Failure to provide such a statement shall be grounds for reversal.

49) Mandates a presumption in favor of granting relief, if the prosecutor declines to show cause or at any point concedes or stipulates to a violation of the RJA.

50) States this presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

51) Requires that the denial of counsel, granting or denial of disclosures to prepare a petition, and the granting or denial of a petition filed pursuant to this new petition process shall be appealable the same as any order made after judgment affecting the substantial rights of the party, as specified.

52) States in cases in which the petitioner is not represented by counsel and the petition is denied, the court shall promptly notify the petitioner of their right to appeal, the time limits and procedures for doing so, and the right to counsel on appeal.

EXISTING LAW:

1) Establishes the RJA which prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining or imposing a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

    a) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;

    b) During the trial, in a court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful, except as specified;

    c) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;

    d) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the

defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,

e) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed. (Pen. Code, § 745, subd. (a).)

2) States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the RJA. (Pen. Code, § 745, subd. (b).)

3) States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of the RJA, the court shall hold a hearing. (Pen. Code, § 745, subd. (c).)

4) Provides that at the hearing, either party may present evidence, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent investigator. (Pen. Code, § 745, subd. (c)(1).)

5) States the defendant must prove the violation by a preponderance of the evidence. (Pen. Code, § 745, subd. (c)(2).)

6) Requires the court to make findings on the record at the conclusion of the hearing. (Pen. Code, § 745, subd. (c)(3).)

7) Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the RJA that is in the possession or control of the state. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure. (Pen. Code, § 745, subd. (d).)

8) States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the RJA, the court shall impose a remedy specific to the violation found from a specified list of remedies. (Pen. Code, § 745, subd. (e).)

9) Provides that before a judgment has been entered, the court may declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges. (Pen. Code, § 745, subd. (e)(1).)

10) Provides that when judgement has been entered, the following remedies apply:

a) If the court finds that the conviction was sought or obtained in violation of the RJA, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with the RJA;

b) If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,

c) If the court finds that only the sentence was sought or obtained in violation of the RJA, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed. (Pen. Code, § 745, subd. (e)(2).)

11) Prohibits imposition of the death penalty where the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).)

12) Provides that a court is not foreclosed from imposing any other remedies available under the United States Constitution, the California Constitution, or any other law. (Pen. Code, § 745, subd. (e)(4).)

13) Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system. (Pen. Code, § 745, subd. (f).)

14) Specifies that these provisions do not prevent the prosecution of hate crimes. (Pen. Code, § 745, subd. (g).)

15) Defines "more frequently sought or obtained" or "more frequently imposed" as statistical evidence or aggregate data that demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity. (Pen. Code, § 745, subd. (h)(1).)

16) Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the RJA occurred, as specified. (Pen. Code, § 745, subd. (h)(2).)

17) Defines "racially discriminatory language" as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory. (Pen. Code, § 745, subd. (h)(3).)

18) Defines "state" as including the Attorney General, a district attorney, or a city prosecutor. (Pen. Code, § 745, subd. (h)(4).)

19) States that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition. (Pen. Code, § 745, subd. (i).)

20) Applies the RJA prospectively to cases in which a judgment has not been entered prior to January 1, 2021. (Pen. Code, § 745, subd. (j).)

21) States that a writ of habeas corpus may be prosecuted following a judgment entered on or after January 1, 2021, based on evidence of a violation of the RJA. (Pen. Code, § 1473, subd. (f).)

22) Provides that a petition raising such a claim, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed successive. (Pen. Code, § 1473, subd. (f).)

23) States that if the petitioner already has a habeas corpus petition on file in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained or imposed in violation of the RJA. (Pen. Code, § 1473, subd. (f).)

24) Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the RJA or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. (Pen. Code, § 1473, subd. (f).)

25) Requires the court to review the petition and if the court determines that the petitioner makes a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant shall appear at the hearing by video unless counsel indicates that their presence in court is needed. (Pen. Code, § 1473, subd. (f).)

26) Provides that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion. (Pen. Code, § 1473, subd. (f).)

27) Allows a person who is no longer in custody to vacate a conviction or sentence based on a violation of the RJA, as specified. (Pen. Code, § 1473.7, subd. (a)(3).)

28) Allows a person who is unlawfully imprisoned or restrained of his or her liberty, under any pretense, to prosecute a writ of habeas corpus to inquire into the cause of their imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)

29) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to the person's incarceration;

b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; or,

c) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. Defines "new evidence" as evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching. (Pen. Code, § 1473, subd. (b).)

30) Provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus based on false evidence. (Pen. Code, § 1473 subd. (c).)

31)

32) States that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Pen. Code, § 1473 subd. (d).)

33) Specifies that "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances. (Pen. Code, § 1473, subd. (e)(1).)

34) Provides that a writ of habeas corpus may also be prosecuted on the basis that evidence relating to intimate partner battering and its effects, as defined, was not introduced at the trial relating to the prisoner's incarceration for a conviction of a violent felony, as defined, and was of such substance that had the substantial and competent expert evidence been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. (Pen. Code, § 1473.5, subds. (a) & (b).)

35) Specifies that habeas corpus is the exclusive procedure for collateral attack on a judgment of death. (Pen. Code, § 1509, subd. (a).)

36) Creates an explicit right for a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence based on a prejudicial error damaging to the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or based on newly discovered evidence of actual innocence, as specified. (Pen. Code, § 1473.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In 2020, the Legislature passed AB 2542 (Kalra), the California Racial Justice Act (RJA), to address racial discrimination and bias in criminal proceedings across the state. However, despite clean-up legislation, there continue to be procedural barriers that impede incarcerated individuals' attempts to raise legitimate RJA claims.

   AB 1071 builds upon the RJA to make certain that RJA claims are processed consistently and according to the intent of the law. Specifically, this bill affirms the Legislature's intent to create a low threshold for the appointment of counsel, ensures access to discovery for petitioners to prove their claims, directly incorporates Penal Code section 745's standards and procedures to habeas petitions alleging a violation of the RJA, and clarifies the range of appropriate remedies available.

   By making these technical, clarifying changes, AB 1071 responds to feedback from the courts and practitioners to better ensure cases can be heard based on merit rather than stalled by procedure.

2) **RJA**: This bill attempts to clarify how an RJA claim should be addressed by the courts depending on the posture of the defendant and the defendant's case: (a) where the defendant is still before the trial court, either before imposition of sentence or when the trial court may still recall and resentence the defendant[1]; (b) when the defendant is on direct appeal before final judgment; (c) where the defendant's judgment is final; and (d) when the defendant's judgment is final and the defendant is no longer in custody. This bill also attempts to clarify the appointment of counsel and the remedies that may either be agreed to by counsel, or imposed by the court for a RJA violation.

   The RJA was initially enacted in 2020 and amended again in 2021. It generally authorizes a criminal defendant to file a motion in court alleging they suffered racial bias in the charging, or sentencing of a defendant. Specifically, the RJA allows racial bias to be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities, or national origin in the county where the convictions were sought or obtained; or longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. The defendant must demonstrate a prima facie case that defendants similarly situated of other races are less likely be charged or sentenced in a specific manner.[2]

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[1] See Pen. Code, § 1172.1, subd. (a)(1) "When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law…recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence."

[2] See *Mosby v. Superior Court (People)* (2024) 99 Cal.App.5th 106 [holding a petition for relief under the RJA made a prima facie showing of a violation, thus requiring an evidentiary hearing, because statistical evidence

Racial bias may also be shown by evidence that a judge or attorney, among other listed persons associated with the defendant's case, exhibited bias towards the defendant, or, in court and during the trial proceedings, used racially discriminatory language or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The RJA does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case.

This bill also clarifies the possible remedies that may be available for violation of a RJA claim depending on whether the violation is the result of discrimination or bias by the judge, a law enforcement officer, defense counsel, the prosecutor, an expert, or juror or where the violation is based on bias in the charging and/or sentencing of the defendant and similarly situated defendants of other races, national origins, or ethnicities are treated differently.

Since the enactment of the RJA, the courts have confronted a variety of situations that demonstrate the need for clarity. First, a few appellate courts have continued to deem petitions forfeited if the trial record does not demonstrate the issue was preserved, or the motion is procedurally deficient. (See *People v. Lashon* (2023) 95 Cal.App.5th 136 (RJA motion deemed forfeited on direct appeal because it was not raised in the trial court before judgment was entered [remanded by the Cal. Sup. Ct., 315 Cal.Rptr.3d 16]; *People v. Singh* (2024) 103 Cal.App.5th 76, 114 ["The Legislature could have, but did not, expressly declare that a defendant in such instances could raise such a claim on appeal for the first time."]; *People v. Corbi* (2024) 106 Cal.App.5th 25, 43 [holding defendant forfeited RJA claim by not objecting at trial]; *People v. Hodge* (2024) 107 Cal.App.5th 985 [holding that since the defendant was in custody, he must raise an RJA claim in a habeas petition].)

On the issue of forfeiture, this bill makes clear a defendant may raise a RJA claim for the first time on direct appeal and provides greater clarity about a defendant's right to file an RJA claim on either direct appeal or habeas. It also prohibits a court from requiring a defendant demonstrate ineffective assistance of counsel, and allows a defendant to file successive petitions based on separate and new alleged violations of the RJA. This bill also creates a separate standalone motion for defendants who had judgment entered against them and are out of custody given that, as of January 1, 2026, a petition for relief may be filed on any conviction occurring at any time.

On the issue of discovery, this bill authorizes any newly appointed counsel to file a request for discovery on a RJA claim even where the defendant or another attorney sought discovery. This bill also makes it clear that a defendant is entitled to counsel on a RJA claim.

3) **Habeas Petitions:** Habeas corpus, also known as "the Great Writ," is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from unlawful restraint. The functions of the writ is set forth in Penal Code section 1473, subdivision (a):

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showing a history of racial disparity in charges sought by the district attorney's office, in addition to evidence of similar conduct by similarly situated defendants of other races who were charged with lesser crimes, showed more than a mere possibility that a violation of [the RJA], had occurred; and statistical analysis of racial disparities alone did not suffice to establish a prima facie case because the plain statutory language required a petitioner to provide evidence of similar conduct and similarly situated defendants, after which the district attorney could present race-neutral reasons for the disparities by showing the factors relevant to the charging decisions.].)

"Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Penal Code section 1473, subdivision (d) specifies that "nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted."

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: false evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration; or false physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person. (Pen. Code, § 1473, subd. (b)(1) & (2).) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus based on false evidence. (Pen. Code, § 1473, subd. (c).)

A habeas corpus claim of false testimony requires proof that false evidence was introduced against petitioner at his or her trial and that such evidence was material or probative on the issue of his or her guilt. (*In re Bell* (2007) 42 Cal.4th 630, 637.) False evidence introduced at trial against a defendant is substantially material or probative if there is a reasonable probability that, had the false evidence not been introduced, the result would have been different. (*In re Roberts* (2003) 29 Cal.4th 726, 741-742.) A reasonable probability that the result would have been different if false evidence had not been introduced against defendant is a chance great enough, under the totality of circumstances, to undermine the court's confidence in the outcome. (*Id.* at p. 742.)

A writ of habeas corpus may also be prosecuted based on newly discovered evidence. The new evidence must be "credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial." (Pen. Code, §1473, subd. (b)(3).)

The Legislature has also codified the right to prosecute a petition for writ of habeas corpus when evidence of intimate partner battering was not presented at trial. (Pen. Code, § 1473.5.) Again, the evidence must be of such substance that had it been presented there is a "reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different." (Pen. Code, § 1473.5, subd. (a).)

The RJA provides that for judgments of conviction occurring on or after January 1, 2021, a writ of habeas corpus may be prosecuted where the state violates the RJA by seeking or obtaining a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Unlike habeas provisions generally, the RJA's habeas provision does not require a showing that the bias was prejudicial to the criminal proceedings. If the petitioner is successful in their habeas claim, the court must vacate the conviction and sentence, find that it is legally invalid, and order new proceedings that are consistent with the RJA prohibitions against racial bias.

4) **Outstanding Issues:** The opposition highlights what it believes are remaining issues with the RJA that should be addressed in a "clean-up" bill. Specifically, the lack of notice to the person or office accused of racial bias, a meaningful opportunity to be heard and the right to

counsel, allowing unchallenged hearsay, and use of RJA findings of racial bias as a basis for decertification. The San Francisco Police Officers Association states in part:

> The Racial Justice Act (RJA), as currently applied, violates fundamental due process rights for those accused of bias, including peace officers, judges, attorneys, and jurors. Significant violations include:
>
> **Failure to Provide Notice:** Accused individuals are denied the right to be informed of evidentiary hearings regarding alleged bias.
>
> **Denial of Legal Representation:** The statute denies accused individuals of the right to legal representation and participation in hearings affecting their character and career.
>
> **Admission of Unchallenged Hearsay:** The use of hearsay evidence is permitted, preventing accused individuals from challenging accusations.
>
> **Irreversible Career Damage:** For peace officers, a finding of racial bias can result in irreversible career damage through decertification under SB 2.
>
> **Legal Precedent for Due Process Protections** Established case law strongly supports the right of individuals to receive notice and an opportunity to respond to allegations made against them. In Joint *Anti-Fascist Refugee Committee v. McGrath* (1951) 341 U.S. 123, the Supreme Court recognized that individuals who suffer reputational harm from governmental actions must be afforded procedural fairness:
>
> The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society."1 (*Id.*, at p. 646-647, Frankfurter concurring.)
>
> "No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." (Id., at p. 171-172.) ....

RJA motions rely on the district attorney or deputy attorney general to advocate for the People, assuming it chooses to oppose a RJA motion. Not all motions involve the actions of law enforcement, but may be based on statistical analysis or the actions of other court officers, including expert witnesses and defense counsel. Similarly, the defendant's trial counsel is also not provided counsel or an opportunity to be heard. When a person's liberty is at stake, the integrity of the conviction and sentence should be paramount. (*United States v. Hasting* (1983) 461 U.S. 499, 527, fn. 6.)

As to implications of reputational harm and possible decertification, there may be a need to clarify that a finding of officer bias in an RJA claim is not a per se violation of Government

Code section 1029, subd. (a)(11) – although presumably, the Commission on Peace Officer Standards and Training (POST) is able to make such a determination if a decertification petition is before them on a racial bias claim based on a RJA petition. A peace officer may face decertification for a finding of "serious misconduct." (Pen. Code, 1029, subd. (a)(11). "Serious misconduct" includes evidence of racial bias. (Pen. Code, § 13510.8, subd. (b)(5) ["Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner."]; Cal. Code Regs., tit. 11 § 1205, subd. (a)(5).) If a court grants a RJA claim based on an officer's racial bias, it is arguable that the employing agency may be required to report it to POST.

As to reputational harm, to the extent that an allegation of racial bias results in an adverse employment action, the officer would be entitled to the rights and remedies in the Public Safety Officers Procedural Bill of Rights (POBOR) and entitled to due process. (See Gov. Code, § 3300, et seq., *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340, involved a probationer's discharge for misconduct which "'stigmatized'" his reputation, or "'seriously impaired'" his opportunity to earn a living.].)

5) **Argument in Support**: According to *California Innocence Coalition*: "The California Innocence Coalition consists of four Innocence Network member organizations in California, the Northern California Innocence Project, The Innocence Center, the Los Angeles Innocence Project, and the Loyola Project for the Innocent. The missions of our organizations are to protect the rights of the innocent by litigating their cases to bring them home and to promote a fair and effective criminal legal system by advocating for change in California laws and policy. Collectively, the California Innocence Coalition has won the freedom of over 70 wrongly imprisoned individuals who collectively lost over 800 years in prison for crimes they did not commit.

"The Racial Justice Act prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. While the intent of the Racial Justice Act (RJA) is clear, courts have struggled with how to properly resolve violations of the Racial Justice Act. This bill provides clarity and a more efficient process for determining if a violation has occurred.

"This bill also helps guarantee that those who may have suffered a violation are afforded an attorney and an opportunity to obtain the information necessary to file an RJA challenge. AB 1071 reaffirms the importance of courts imposing remedies that serve to eliminate bias and redress past harms. As stated in the intent section of the original RJA, "We cannot simply accept the stark reality that race pervades our system of justice. Rather, we must acknowledge and seek to remedy that reality and create a fair system of justice that upholds our democratic ideals."

'At the same time, AB 1071 provides judges more discretion and flexibility in selecting a remedy, to ensure that the remedies are commensurate with the violation. The Racial Justice Act is one of the most important and consequential laws enacted in this state. AB 1071 (Kalra) is essential to aid courts in effectuating the intent of the legislation to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any

stage of a criminal trial, is intolerable and undermines a fair criminal justice system.

6) **Argument in Opposition**: According to the *Riverside County District Attorney's Office*: "This bill disrupts the finality of judgments, upends habeas corpus procedures, raises serious constitutional concerns, and will result in significant disruption to the California criminal justice system. Moreover, this bill creates an enormous unfunded mandate whose cost will have to be absorbed by already-strained state and local budgets.

AB 1071 would create a massive unfunded mandate

"AB 1071 would create unnecessary new avenues for relief under the Racial Justice Act (RJA), lessen the burden for defendants to obtain RJA discovery, and virtually eliminate any prerequisites for a previously convicted defendant to obtain appointed counsel. These changes to the RJA would result in an explosion of new litigation from already convicted defendants, whether they have any basis to seek relief or not. Current law gives the courts the ability to ensure that only cases where the defendant makes a preliminary showing that they might be entitled to relief go forward. AB 1071 removes those guardrails, which means that the courts will have no ability to screen RJA cases at early stages. As you must already know, RJA litigation is not a simple matter; each of these new petitions will need to be fully and zealously litigated by both sides, and ultimately the Courts of Appeal will need to examine cases for error.

"The California court system is already overwhelmed, and AB 1071 will require judges to hear thousands of new cases, even if it is clear defendants are not entitled to relief. Likewise, the Attorney General, State Public Defender, the Habeas Corpus Resource Center, local Public Defenders, and local prosecutors will also be forced to absorb these thousands of cases into their already overworked offices. Without Legislative approval of ***significant*** increased funds for the courts and attorneys who will be handling these cases, the California criminal justice system will grind to a halt. This problem is particularly acute in post-conviction matters. AB 1071 would require courts to hold evidentiary hearings in virtually all cases; the bill would even hamstring the Courts of Appeal by requiring remand-on-demand by convicted defendants without giving the People an opportunity to respond. This would be an extraordinary financial and logistical burden on the courts and litigants.

AB 1071 would mean that no criminal case is ever final

"As recognized by our Supreme Court, both individual litigants and society as a whole have a legitimate interest in the finality of criminal prosecutions. "No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation." (*In re Reno* (2012) 55 Cal.4th 428, 451.)

"If passed, AB 1071 would mean that no criminal case is ever truly final. The newly created petition outlined in proposed Penal Code section 1473.2 (1473.2) would allow any person convicted of a crime *ever* – no matter if they are still incarcerated, no matter if their conviction was dismissed after successfully completing probation – to petition for RJA relief. Likewise, habeas corpus petitions filed by pro per defendants can never be truly denied because such denials would automatically be without prejudice. Victims of decades-

old crimes who believe their cases were done will be subjected to new trauma; old wounds will open, and they will have to revisit some of the worst moments of their lives without any judicial backstop.

AB 1071 upends traditional rules of habeas corpus and gives the courts little guidance

"The writ of habeas corpus is a foundational tool of Western law. It predates the Magna Carta and is specifically enshrined in the United States and California Constitutions. Over hundreds of years lawyers and judges have developed a complex set of rules and procedures governing the Great Writ. AB 1071 upends these long-established rules and would leave the criminal justice system with more questions than answers.

"It is not clear that 1473.2 is a new cause of action within the habeas corpus universe, or an altogether new type of petition. Generally, with limited exceptions, a person seeking relief under habeas corpus must be incarcerated. Current Penal Code section 745, subdivision (j)(3), limits petitions to defendants who are currently incarcerated. Proposed Penal Code section 745, subdivision (b)(3), states that an incarcerated defendant whose sentence is final may file a petition under 1473.2. But 1473.2 would not contain the limitation that it applies only to incarcerated defendants; it applies to any "person convicted of a criminal offense." Which section controls?

"Moreover, 1473.2 contains its own rules and procedures; some of those conform to existing rules of habeas corpus, others do not. For example, under proposed section 1473.2, subdivision (g), certain petitions may not be deemed successive, untimely, or abusive, three well-established concepts in the law of habeas corpus. But subdivision (b)(3) states that petitioners may, rather than shall, attach copies of supporting documentation to their petition. This controverts a longstanding habeas corpus procedural bar. Likewise, subdivision (h)(1) states, "A prima facie determination shall be based solely on the petitioner's showing." AB 1071 would also amend section 1473 to include the same provision. But current law allows courts to request and considered an informal response prior to issuing an order to show cause (OSC). (Cal. Rules of Court, 8.385 subd. (b)(1; see *In re Jenkins* (2023) 14 Cal.5th 493, 519.)

"Even worse, under current law, the issuance of an OSC "creates a 'cause' giving the People a right to reply to a petition by a return and to otherwise participate in the court's decision making process." (*People v. Patterson* (2017) 2 Cal.5th 885, 900; *In re Serrano* (1995) 10 Cal.4th 447, 455.) The return frames the issues for the court and defines the scope of the evidentiary hearing. But AB 1071 could be read to eliminate the People's ability to file a return at all. Do traditional rules of habeas corpus apply to petitions under the RJA? Do those rules apply to petitions filed under proposed section 1473.2? The bill is unclear and resolving that lack of clarity will take years of litigation at all levels of the California court system.

AB 1071 is unconstitutional

"California voters have repeatedly and consistently supported the continued existence of capital punishment. Most recently, the voters passed Proposition 66, which among other things created Penal Code section 1509. That section states that habeas corpus is only way for a condemned prisoner to collaterally attack a death sentence. By creating proposed

section 1473.2, AB 1071 would create a new mechanism to collaterally attack death sentences via the RJA. But this new mechanism violates the California Constitution. Under Article II, section 10(c), an initiative may only be amended by the Legislature if the initiative specifically allows for such an amendment. In the case of Proposition 66, ""The statutory provisions of this act shall not be amended by the Legislature, except by a statute passed in each house by rollcall vote entered in the journal, three- fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." (Death Penalty Reform And Savings Act, 2016 Cal. Legis. Serv. Prop. 66 (Proposition 66) (West).)

"The RJA was not passed by a three-fourths vote in either chamber, and therefore cannot be used as a basis to collaterally attack a death penalty sentence outside of habeas corpus. Because AB 1071 would create a new, non-habeas corpus mechanism to collaterally attack death sentences via the RJA, the bill is facially unconstitutional.

AB 1071 is confusing, unclear, and internally inconsistent

"Finally, in addition to the serious problems we lay out above, AB 1071 contains numerous provisions that cannot be harmonized with other statutes, are internally inconsistent, or otherwise confusing or unclear. For example:

"Section 1473.2, subdivision (c), states that a court shall appoint counsel if a petition is missing critical information but that information could be "readily" ascertained by the court. How should the court make that ascertainment? What does "readily" mean? May a court order a third party such as a defense attorney or prosecutor to provide the information, and if so, how would that order be harmonized with the good cause requirement found in section 745 subdivision (d)?

"Section 1473.2, subdivision (h)(3)(A), states that expert testimony is not required to prove a violation of subdivision (a). We assume that this refers to subdivision (a) of the RJA – a different section – but proposed section 1473.2 is not clear. Moreover, Evidence Code section 720 defines an expert as a person who has "special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." Such a person may give an opinion related to "a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code § 801, subd. (a).) Statistical analysis is by any measure beyond common experience. Does proposed section 1473.2 override the Evidence Code? Can a judge consider unexplained statistics; if so, at what stage and to what degree?

"A proposed amendment to section 745, subdivision (e), would require a "substantive" reduction in sentence. So far as we are aware, a "substantive" reduction in sentence is not defined by this bill or by any provision of the Penal Code. Does this mean a certain number of years, a certain percentage of the sentence, or something else?

"The RJA is slowly but surely winding its way through the courts. AB 1071 will undo years of litigation by both defense attorneys and prosecutors, inject new uncertainty into existing RJA jurisprudence, and massively increase the caseloads of the courts, defense attorneys, and prosecutors."

7) **Prior Legislation**:

a) AB 2542 (Kalra), Chapter 317, Statutes of 2020 prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin by establishing the Racial Justice Act of 2020.

b) AB 256 (Kalra), Chapter 739, Statutes of 2022, makes the California Racial Justice Act of 2020 (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, apply retroactively and makes other changes.

c) SB 133 (Committee on Budget), Chapter 34, Statutes of 2023 require Judicial Council to promulgate standards for appointment of private counsel in superior court for claims where an individual has not been sentenced to death and require those standards to include a minimum requirement of 10 hours of training in the California Racial Justice Act of 2020 approved for Minimum Continuing Legal Education credit by the State Bar of California.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Path
A New Way of Life Re-entry Project
ACLU California Action
Alameda County Public Defender's Office
All of US or None (HQ)
Alliance of Californians for Community Empowerment (acce Action)
Amnesty International USA
Asian American Criminal Trial Lawyers Association
Asian Americans Advancing Justice Southern California
Back to the Start
Bend the Arc: Jewish Action California
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Innocence Coalition
California Native Vote Project
California Pan - Ethnic Health Network
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Californians United for a Responsible Budget
Center for Policing Equity
Coalition for Humane Immigrant Rights (CHIRLA)
Communities United for Restorative Youth Justice (CURYJ)
County of San Bernardino Public Defender Second Chance Unit
Courage California
Court Appointment Programs, Lawyer Referral & Information Service, Bar Association of San

Francisco
Death Penalty Focus
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
Equal Rights Advocates
Felony Murder Elimination Project
Friends Committee on Legislation of California
Full Picture Justice
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of California
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Los Angeles County Public Defender's Office
Nextgen California
Pacific Juvenile Defender Center
Peace and Justice Law Center
Rubicon Programs
Sacramento County Public Defender
San Francisco Public Defender
Santa Clara County Public Defender's Office
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Starting Over INC.
Starting Over Strong
The W. Haywood Burns Institute
Uncommon Law
Universidad Popular
University of San Francisco School of Law | Racial Justice Clinic
Vera Institute of Justice

Oppose

California District Attorneys Association
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)
Riverside County District Attorney

Oppose Unless Amended

San Francisco Police Officers Association

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