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 III
AB 1087 (Patterson) – AB 1489 (Bryan)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1087 (Patterson) – As Introduced February 20, 2025

As Proposed to be Amended in Committee

SUMMARY: Provides for a period of probation of between three and five years for vehicular manslaughter while intoxicated and gross vehicular manslaughter while intoxicated.

EXISTING LAW:

1) Provides that gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was under the influence of alcohol or drugs, as specified, with gross negligence. (Pen. Code, § 191.5, subd. (a).)

2) Provides that gross vehicular manslaughter while intoxicated as a felony, punishable by imprisonment in the state prison for 4, 6, or 10 years. (Pen. Code, § 191.5, subd. (c)(1).)

3) Provides that a person convicted of gross vehicular manslaughter while intoxicated, who has one or more prior specified convictions, shall be punished with a felony by imprisonment in the state prison for a term of 15 years to life. (Pen. Code, § 191.5, subd. (d).)

4) Provides that vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was under the influence of alcohol or drugs, as specified, but without gross negligence. (Pen. Code, § 191.5, subd. (b).)

5) Provides that vehicular manslaughter while intoxicated is punishable as a misdemeanor by imprisonment in a county jail for not more than one year or as a felony by imprisonment in the county jail for 16 months or two or four years. (Pen. Code, § 191.5, subd. (c)(2).)

6) Requires, if any person is convicted of driving under the influence, as specified, and is granted probation, the period of probation to be for a term as follows:

   a) For a period of between three and five years; or,

   b) If the maximum sentence for the offense exceeds five years, for a period of probation for a longer period than three years but not exceeding the maximum time for which sentence imprisonment may be pronounced. (Veh. Code, § 23600, subd. (b)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California law has a major disparity in how the criminal justice system grants probation to those who drive under the influence that results in an injury or death of another person. If you take the life of someone while driving under the influence, you shouldn't be on probation for less time than a person who didn't. By aligning the terms of probation, we can ensure the person who took a life can receive much needed services from our probation officers while being responsibly monitored to ensure they don't recidivate."

2) **Effect of this Bill**: Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. As a general proposition, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

   Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court evaluates the safety of the public, the nature of the offense, the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.) The court also has broad discretion to impose conditions that foster the defendant's rehabilitation and protect public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring misconduct in the future. (*Id.* at 1121.)

   Prior to 2021, when a defendant was convicted of a felony, the court could impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years. (Pen. Code, § 1203.1.) In misdemeanor cases, the court could impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.) AB 1950 (Kamlager), Chapter 328, Statutes of 2020, limited probation to two years for a felony and one year for a misdemeanor, except where "an offense that includes specific probation lengths within its provisions." (Pen. Code, § 1203.1, subd. (l)(1).)

   Existing law provides for a period of between three and five years of probation for any person convicted of driving under the influence. (Veh. Code, § 23600, subd. (b)(1).) However, if the maximum sentence for the offense exceeds five years, for a period of probation may be for a longer period than three years but may not exceed the maximum time for which sentence imprisonment may be pronounced. (*Ibid.*) DUI is a lesser included offense of both vehicular manslaughter and gross vehicular manslaughter. However, there is no specified probation term for the latter crimes. As such, despite being more serious crimes than DUI, the maximum term of probation for both vehicular manslaughter and gross vehicular manslaughter is two years. (See *Bowden v. Superior Court* (2022) 82 Cal.App.5th 735, 745.)

   This bill would increase the period of probation for vehicular manslaughter while intoxicated and gross vehicular manslaughter while intoxicated from a term of two years to three to five

years.

3) **Vehicular Manslaughter While Intoxicated And Gross Vehicular Manslaughter While Intoxicated**: The difference between vehicular manslaughter while intoxicated and gross vehicular manslaughter while intoxicated is the degree of negligence required. Vehicular manslaughter while intoxicated is a lesser crime than gross vehicular manslaughter while intoxicated. Vehicular manslaughter while intoxicated only requires ordinary negligence, which is the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else. A person is negligent if they do something that a reasonably careful person would not do in the same situation. On the other hand, gross vehicular manslaughter while intoxicated requires a person to act in a reckless way that creates a high risk of death or great bodily injury. In other words, a person acts with gross negligence when they disregard human life. (Compare CALCRIM NO. 590 [Gross Vehicular Manslaughter While Intoxicated] with CALCRIM No. 591 [Vehicular Manslaughter While Intoxicated].)

   To prove that the defendant is guilty of vehicular manslaughter while intoxicated, the prosecution must show:

   1. The defendant drove under the influence of drugs and/or alcohol;
   2. While driving under the influence the defendant also committed an act that might cause death;
   3. The defendant committed the act that might cause death with ordinary negligence; and,
   4. The defendant's negligent conduct caused the death of another person. (CALCRIM No. 591.)

   To prove that the defendant is guilty of gross vehicular manslaughter while intoxicated, the prosecution must show:

   1. The defendant drove under the influence of drugs and/or alcohol;
   2. While driving under the influence the defendant also committed an act that might cause death;
   3. The defendant committed the act that might cause death with gross negligence; and,
   4. The defendant's grossly negligent conduct caused the death of another person. (CALCRIM No. 590.)

4) **Argument in Support**: According to *Streets for All*, "This bill proposes a simple but important change to existing law by increasing the probation period for individuals convicted of unlawfully killing a person while driving under the influence. Currently, someone convicted of this offense can receive a probation term shorter than that of someone convicted of a standard DUI. The bill would close that gap by aligning the probation period for DUI-related vehicular killings with the standard DUI probation length of three to five years. This ensures greater consistency in how DUI offenses are treated, particularly when they result in the most tragic outcome: the loss of life.

   "Streets For All strongly supports this bill because street safety is core to our mission. Driving under the influence poses a deadly threat to people walking, biking, and using public space—and accountability matters. When a person loses their life due to an impaired driver, it is not acceptable that the probation period for the offender could be shorter than for a non-lethal DUI. Aligning probation lengths reinforces the seriousness of these crimes and

provides more time for supervision, intervention, and potential rehabilitation, which ultimately enhances public safety for everyone using our streets.

"The 'with' or 'without malice' distinction in the case of DUI law moreover, is arbitrary. 'With malice' or 'implied malice' means the person knew that driving under the influence was dangerous and could kill someone, but did it anyway — showing a conscious disregard for human life. Streets For All is of the believe that every driver who has a drivers license issued to them should have this understanding already and therefore citations "without malice" should largely be nonexistent.

"This bill sends a clear message: killing someone while driving under the influence carries serious, lasting consequences. Streets For All urges lawmakers to support this common-sense measure."

5) **Related Legislation**:

a) AB 1193 (Gipson), Chapter 750, Statutes of 2024, would eliminate the statute of limitations for hit and run, as defined, resulting in death or injury. AB 1193 is pending a hearing in this committee.

b) AB 1281 (DeMaio), would increase the punishment for hit-and-run involving death or serious bodily injury from a wobbler to a 15-year state prison term. The hearing on AB 1281 was cancelled at the request of the author.

6) **Prior Legislation**:

a) AB 2823 (Joe Patterson), of the 2023-2024 Legislative Session, was identical to this bill. AB 2823 did not receive a hearing in this committee.

b) AB 2943 (Zbur), Chapter 168, Statutes of 2024, among other things, increased the maximum term of probation for shoplifting from up to one year to a period not exceed two years. AB 2943 is pending in Assembly Appropriations Committee.

c) AB 1067 (Jim Patterson), of the 2023-2024 Legislative Session, would have increased the penalties for fleeing the scene of an accident resulting in the death of another person from an alternate felony-misdemeanor with a maximum punishment of four years in state prison, to an alternate felony-misdemeanor having a maximum punishment of six years in the state prison. AB 1607 failed passage in Assembly Appropriations Committee.

d) AB 1551 (Gipson), of the 2023-2024 Legislative Session, would have required the California Victim Compensation Board to pay child victims loss of support until they are 18 years old for gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, or a hit and run while intoxicated, if the offense caused the death of the child's parent or guardian AB 1551 failed passage in Assembly Appropriations Committee.

e) AB 582 (Jim Patterson), of the 2021-2022 Legislative Session, was identical to AB 1067. AB 582 was held in the Assembly Appropriations Committee.

f) AB 1950 (Kamlager), Chapter 328, Statutes of 2020, specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction

g) AB 195 (Jim Patterson), of the 2019-2020 Legislative Session, as amended in the Senate, was identical to AB 1067. AB 195 failed passage in the Senate Public Safety Committee.

h) AB 2014 (E. Garcia), of the 2017-2018 Legislative Session, would have increased the penalty for fleeing the scene of an accident resulting in death or serious bodily injury from two, three, or four years in state prison to two, four, or six years in state prison. The hearing on AB 2014 was canceled in this committee at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
Placer County District Attorney's Office
Streets for All

Opposition

None

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

Amended Mock-up for 2025-2026 AB-1087 (Patterson (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 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(b) Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

(c) (1) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated in violation of subdivision (a) is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(2) Vehicular manslaughter while intoxicated in violation of subdivision (b) is punishable by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or four years.

(d) A person convicted of violating subdivision (a) who has one or more prior convictions of this section or of paragraph (1) of subdivision (c) of Section 192, subdivision (a) or (b) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.

(e) Notwithstanding Section 1203.1 or 1203a, if a person is convicted of a violation of this section and is granted probation, the period of probation shall be not less than three nor more than five years~~., provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which the sentence of imprisonment may be pronounced.~~

(f) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in People v. Watson, 30 Cal.3d 290.

(g) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(h) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

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: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1097 (Ávila Farías) – As Amended March 17, 2025

SUMMARY: Makes it a misdemeanor for a person to enter upon private property within 48 hours of the owner requesting that person to leave the premises or having received an order of exclusion from a tribal government. Specifically, **this bill**:

1) Makes it a misdemeanor, punishable by a county jail term of up to six months, a fine of up to $1,000 or both, to enter private property or Indian lands, including contiguous land, real property, private businesses, or structures belonging to the same owner, whether or nor not generally open to the public, within 48 hours of having been requested by the owner, operator, or agent of the premises to leave the premises or after receiving an order of exclusion from a tribal government.

2) States that a federally recognized Indian tribe may enter into an agreement with a law enforcement agency for services to enforce an order of exclusion issued pursuant to the above.

3) Expands the misdemeanor trespass crime of entering upon private property, whether or not generally open to the public, after having being informed by a peace officer at the request of the owner or the owners agent, that the peace officer is acting at the request of the owner, that the property is not open to the particular person, or failing to leave the property after being asked to leave the property, as specified, as follows:

   a) Clarifies this applies to entering upon Indian Lands.

   b) Specifies that this trespass crime applies to private businesses.

   c) Specifies that in the case of Indian lands or private property on Indian lands, that the person who may inform an individual that the property is not open to that particular person, may be a peace officer or a tribal police officer.

   d) Specifies that in the case of Indian lands, the peace officer or tribal officer may inform the individual that they are acting at the request of the tribe.

4) Defines the below terms as follows:

   a) "Federally recognized Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

b) "Indian lands" means all land within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, all dependent Indian communities within the borders of the U.S. whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

c) "Order of exclusion" means a written order issued by a tribal government of a federally recognized Indian tribe prohibiting a person from entering the tribe's Indian lands.

d) "Tribal government" means a council, or its designated agency under tribal law that is primarily responsible for carrying out the federally recognized Indian tribe's inherent sovereign power of self-governance and for controlling internal relations and territorial management.

5) Clarifies that the trespass crime of entering upon lands or buildings owed by another person without the license of the owner or legal occupant, where there are signs forbidding trespass displayed, and if are cattle, goats, pigs, sheep, fowl, or other animal being raised, bred, fed, or held on those lands for the purpose of food for human consumption, also applies to entering Indian lands, as defined.

6) Clarifies that the trespass crime of 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, also applies to entering Indian lands, as defined.

EXISTING FEDERAL LAW:

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

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

3) Authorizes tribal courts to exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for specified crimes, including, assault of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and a violation of a protective order. A tribe may not exercise this special jurisdiction if neither the defendant nor the victim is Indian. (25 U.S.C § 1304.)

EXISTING STATE LAW:

1) Provides that to improve the implementation of concurrent criminal jurisdiction on California Indian lands, the DOJ shall provide technical assistance to local law enforcement agencies that have Indian lands within or abutting their jurisdictions, and to tribal governments with

Indian lands, including those with and without tribal law enforcement agencies, as specified. (Pen. Code, § 11070, subd. (a).)

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

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

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

5) Generally punishes trespass as a misdemeanor, punishable by a county jail term of up to six months, a fine of up to $1,000 or both. (Pen. Code, §§ 19, 602.)

6) Makes it a misdemeanor to willfully commit trespass by 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: 1) having been informed by a peace officer at the request of the owner, their agent, or person in lawful possession, and upon being informed by the peace officer that the officer is acting at the request of the owner, their agent, or person in lawful possession, that the property is not open to the particular person; or 2) refusing or failing to leave the property upon being asked to leave the property, subject to the following:

   a) This crime applies only to a person who has been convicted of a crime committed upon the particular private property.

   b) A single notification or request to the person described above shall be valid and enforceable unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

   c) Where the person has been convicted of a violent felony, that notification or request applies without time limitation, if the person has been convicted of any other felony, this applies for no more than five years from the date of conviction, where the person has been convicted of a misdemeanor, this applies for no more than two years from the date of conviction, and where the person was convicted for an infraction, as specified, this applies for no more than one year from the date of conviction. (Pen. Code, §602, subd. (t).)

   d) Establishes numerous other trespass crimes, as specified. (Pen. Code, §602, subds. (a)-(y).

7) Provides 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 four hundred dollars ($400), or by both that imprisonment and fine, although this shall not apply to the following persons:

a) Any person engaged in lawful labor union activities that are permitted to be carried out on the property by state or federal law.

b) Any person on the premises who is engaging in activities protected by the California Constitution or the United States Constitution. (Pen. Code, § 602.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Unfortunately, the seclusion tribes have learned to live with and the peace that they fought so long to obtain, has become threatened by trespassers. Additionally, this geographical seclusion has made it difficult to sustain an adequate number of law enforcement personnel to protect the lands. Trespassing on Indian lands places a significant safety risk on tribal families.

   While California has existing law within California Penal Code Section 602 to protect against trespassing, this section of law does not explicitly include Indian lands as those protected under this statute. AB 1079 clarifies that federally recognized Indian Tribal lands are considered areas where trespassing would constitute a misdemeanor."

2) **Effect of this Bill:** California's primary trespass statute – Penal Code section 602 – has nearly an entire alphabet of subdivisions. (Pen. Code, 602.) Most of the subdivisions in Section 602 define separate crimes, typically each with slightly different elements than the other subdivisions. (*Ibid.*) Trespass is generally a misdemeanor, though California law does include a felony for aggravated trespass. (Pen. Code, § 602 subds. (k) & (l). For misdemeanor trespass, the penalty is up to six months of jail time or up to a $1,000 fine, or both. (Pen. Code, §§ 19, 602.)

   Most relevant here is subdivision (t) which makes it a misdemeanor to willfully enter private property, including contiguous land, real property, or structures thereon, regardless of whether the land is generally open to the public after: 1) being informed by a peace officer at the request of the owner that the officer is acting at the request of the owner and that the property is not open to the particular person; or 2) refusing or failing to leave the property upon being asked to leave the property by the officer. (Pen. Code, §602, subd. (t)(1).).

   This only applies to a person who has been convicted of a crime committed upon the particular private property. (Pen. Code, §602, subd. (t)(2).). Further, the notification by a peace officer, on behalf of an owner, that the property is not open to a particular person or a request for that person to leave the property, is valid and enforceable until rescinded by the owner, their agent, or the person in lawful possession of the property. (Pen. Code, §603, subd. (t)(3).) The amount of time that the notification or request remains in effect depends on

the severity of the underlying crime. Where the person was convicted of a violent felony, that notification or request applies without time limitation, while if the person was convicted of any other felony, this applies for no more than five years from the date of conviction. (Pen. Code, §602, subd. (t)(4).). Additionally, if the person was convicted of a misdemeanor, this applies for no more than two years from the date of conviction. (*Ibid.*) If the person was convicted for an infraction, as specified, this applies for no more than one year from the date of conviction. (*Ibid.*)

AB 1097 would make several changes to California trespass law. First, it would create a new trespass misdemeanor, punishable by a county jail term of up to six months, a fine of up to $1,000 or both. (Pen. Code, §§ 19.) Specifically, it would make it a misdemeanor to enter private property or Indian lands, including contiguous land, real property, private businesses, or structures belonging to the same owner, whether or nor not generally open to the public, within 48 hours of having been requested by the owner, operator, or agent of the premises to leave the premises or after receiving an order of exclusion from a tribal government. Second, it would authorize a federally recognized Indian tribe to enter into an agreement with a law enforcement agency for services to enforce an order of exclusion issued pursuant to the above crime.

Third, it proposes to broaden the misdemeanor trespass crime of entering upon private property, whether or not generally open to the public, after having being informed by a peace officer at the request of the owner or the owners agent, that the peace officer is acting at the request of the owner, that the property is not open to the particular person, or failing to leave the property after being asked to leave the property, as specified, as follows:

a) Clarifies this applies to entering upon Indian Lands.

b) Specifies that this trespass crime applies to private businesses.

c) Specifies that in the case of Indian lands or private property on Indian lands, that the person who may inform an individual that the property is not open to that particular person, may be a peace officer or a tribal police officer.

d) Specifies that in the case of Indian lands, the peace officer or tribal officer may inform the individual that they are acting at the request of the tribe.

3) **California Criminal Trespass Laws Apply on Tribal Land**: Under Public Law 280 (1953), California has jurisdiction over offenses committed by or against Indians in Indian Country to the same extent that the State has jurisdiction over offenses committed elsewhere in the State. (18 U.S.C. § 1162.) California's criminal laws have the same force and effect within Indian country as they have elsewhere within the State. (*Ibid.*) In other words, the criminal laws of California, including criminal trespass laws, extend to Indian lands within the state.

Accordingly prosecutors and law enforcement may enforce criminal trespasses on Indian lands to the same extent they can enforce criminal trespass on property not located on Indian land. Given that Public Law 280 created concurrent jurisdiction over criminal offenses committed by or against Indians within Indian Country, tribal police may also enforce certain crimes on Indian land. Specifically, if the offender is non-Indian, and the victim is non-

Indian or Indian or it is a victimless crime the state generally has exclusive jurisdiction. (*Draper v. United States* (1896) 164 U.S. 240). Alternatively, if the offender is Indian, and the victim is Indian or non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.) Lastly, if the offender is Indian, and it is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (*Ibid.*) Given that trespass is generally a victimless crime, tribal police already have the authority to enforce trespass violations where the offender is Indian, irrespective of involvement of state or local law enforcement.

Additionally, Indian governments seeking to prohibit persons from entering tribal land while under an order of exclusion may already do so. In *Duro v. Reina*, the Supreme Court addressed the authority of tribal law enforcement to detain non-Indians: [T]ribes also possess their traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands []… Tribal law enforcement authorities have the power to restrain those who disturb public order on the reservation, and [] if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise [] their power to detain the offender and transport him to the proper authorities. (*Duro v. Reina* (1990) 495 U.S. 676, 696.)

In sum, local, state and tribal law enforcement have the authority to enforce criminal trespass violations on Indian Lands, making the need to create a new trespass crime, and mechanism to enforce that crime, unclear.

4) **Authorizing State and Local Law Enforcement to Enforce Tribal Orders:** State and local law enforcement officers have authority to enforce public offenses. (Pen. Code, § 836, subd. (a).) A crime or public offense "is an act committed or omitted in violation of *a law* forbidding or commanding it" and include felonies, misdemeanors, and infractions (Pen. Code, § 15) (emphasis added) Accordingly, a peace officer may arrest a person pursuant to a warrant, or without a warrant if: 1) officer has probable cause to believe a person committed a public offense in the officer's presence; 2) a person arrested has committed a felony, although not in the officer's presence; or 3) the officer has probable cause to believe that the person to be arrested has committed a felony. (*Ibid.*)

Violating a tribe's order of exclusion, in and of itself, is not a public offense. As such, law enforcement officers may not have the authority to enforce the orders. This issue was specifically addressed in a 1997 Attorney General Opinion that answered the question of what action a county sheriff could take to enforce an order of exclusion issued by a tribal council of an Indian tribe. (80 Ops. Cal. Atty. Gen. 46 (1997).) Preliminarily, the Attorney General reiterated that California's criminal statutes, including trespass statutes, apply to Indian reservations within the state. (*Id.* at p. 5). The opinion further stated that "[t]ribal code provisions and orders, on the other hand, do not constitute the criminal laws of the state and have no force and effect elsewhere within California…[and] *are not enforceable by a county sheriff either within or without the reservation."* (*Ibid.*) (emphasis added) Accordingly, the Attorney General held that because the tribal order of exclusion did not meet all the elements of the criminal trespass statute at issue, "a violation of the exclusion order in question would not *per se* satisfy the descriptive elements of a criminal trespass…; thus, a sheriff would not be authorized to enforce the issuance of such an order." (*Id.* at p. 4).

This bill would make it a misdemeanor to enter upon specified tribal land within 48 hours after receiving an order of exclusion from a tribal government, and would authorize a tribe to enter into an agreement with a law enforcement agency to enforce such an order of exclusion. This would give California state and local law enforcement officials the authority to enter sovereign Indian land, to arrest a person and to prosecute that person in a California superior court for misdemeanor trespass—simply because the person violated a tribal order that has does not have any force of law in the State of California. This is contrary to prior Attorney General guidance and inconsistent with the longstanding criminal enforcement authority established in California law. If enacted, this statute may be vulnerable to a legal challenge.

5) **Argument in Support**: According to *California Civil Liberties Advocacy*, "AB 1097 is a long-overdue clarification of state law under the framework of Public Law 280, which delegates certain criminal jurisdiction to the state in Indian country. While existing California law penalizes various forms of trespass on private property, it has lacked clarity regarding Indian lands, leaving enforcement inconsistent and leaving tribal governments without practical recourse in cases of repeat trespassers—even after criminal activity has occurred. This bill closes that gap.

"Affirming Tribal Sovereignty

"Most importantly, AB 1097 properly recognizes the inherent sovereign authority of federally recognized tribes to regulate access to their lands, issue exclusion orders, and partner with local law enforcement agencies on a voluntary basis to enforce those orders. This is not only a matter of criminal law but also a fundamental affirmation of tribal self-determination and territorial integrity. In a time when Indigenous communities still face challenges to their jurisdiction and dignity, AB 1097 represents a thoughtful step toward parity and respect.

"Protecting Due Process and Civil Liberties

"Importantly, AB 1097 builds upon existing due process protections by extending California's current limitations on trespass enforcement to Indian lands. Under existing law, enhanced trespass penalties apply only to individuals who have committed a prior criminal offense on the same property, with enforceability limited by time—ranging from one year for infractions to five years for felonies, and unlimited for violent felonies. This bill preserves those safeguards while clarifying that they now apply equally to Indian lands and tribal exclusion orders. By explicitly defining terms such as "Indian lands," "order of exclusion," and "tribal government," AB 1097 helps ensure enforcement is targeted, consistent, and respectful of individual rights as well as tribal sovereignty.

"Advancing Civil Liberties Through Sovereignty

"As a civil liberties organization, CCLA believes property rights, the right to self-governance, and the right to safety on one's own land are foundational liberties. These rights are no less applicable to sovereign tribal nations. AB 1097 ensures that tribal lands are treated with the same dignity and respect as any other private or governmental property under California law."

6) **Argument in Opposition**: According to *UNITE HERE International Union*, "While we remain steadfast in support of tribal sovereignty, we remain just as steadfast in our resolve to protect the access rights granted to union organizers and employees under the Tribal Labor Relations ordinance (TLRO). To that end, we were able to support previous iterations of this bill, including SB 1160 (Hueso) in 2018, which included protections ensuring that labor organizers and employees exercising their rights to organize a union are not improperly removed from tribal lands via orders of exclusion. To that end, we request Assembly Member Avila Farias to take the same language, which is in sum and substance virtually identical to the language in SB 1160:

"*If the order of exclusion pertains to a labor organization or its representatives or eligible employees engaged in otherwise lawful labor activity, the tribe shall first obtain a decision from the Tribal Labor Panel established by the tribal labor relations ordinance stating that the order of exclusion does not conflict with the tribal labor relations ordinance adopted by the tribe or with a labor contract that is applicable to the gaming facility, provided that the affected labor organization, its representatives and eligible employees shall be given notice and an opportunity to be heard by the Tribal Labor Panel before such decision is issued.*

"This language was previously negotiated by UNITE HERE and tribal stakeholders in 2018. We urge Assembly Member Avila Farias to amend her bill with the same language, which balances tribal sovereignty against the need to preserver organizing rights."

7) **Related Legislation**: AB 31 (Ramos), would establish a pilot program, under the direction of the DOJ and the Commission on Peace Officer Standards and Training that would grant tribal law enforcement officers, of specified tribes, state peace officer authority on Indian land and elsewhere in the state under specified circumstances. AB 31 is pending in the Assembly Appropriations suspense file.

8) **Prior Legislation**:

   a) AB 2120 (Chen), of the 2023-2024 Legislative Session, would have allowed a licensed repossession agency and its employees to enter upon real property, not open to the public and without the consent of the owner, when they are searching for collateral or repossessing collateral, and upon completing the search or repossession, leave the private property within a reasonable amount of time. AB 2120 was vetoed by the Governor.

   b) SB 468 (Seyarto), of the 2023-2024 Legislative Session, would have authorized, for the purposes of requesting assistance enforcing trespass violations, a request for peace officer assistance to continue after a change in ownership or transfer of lawful possession if the transferee notifies the relevant law enforcement or the city of the change. SB 468 was never heard in Senate Public Safety.

   c) SB 602 (Archuleta), Chapter 404, Statutes of 2023, extends the operative timeframe for trespass letters of authorization from 30 days to 12 months, as specified.

   d) AB 515 (Chen), of the 2021-2022 Legislative Session, was substantially similar to AB 2120 (Chen), of the 2023-2024 Legislative Session. AB 515 was vetoed by the Governor.

e) AB 660 (Rubio), Chapter 381, Statutes of 2017, expands the crime of trespass on the property of a public agency.

a) SB 1160 (Hueso), of the 2017-2018 Legislative Session, would have made entering a gaming facility on a federally recognized Indian tribe after receiving an order of exclusion from the tribal government, a misdemeanor offense. SB 1160 was never heard in Assembly Public Safety.

b) AB 1686 (Medina), Chapter 453, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present.

c) SB 1295 (Block), Chapter 373, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present, and provides that a request for assistance shall expire upon transfer of ownership of the property or upon change of the person in lawful possession.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy

Oppose Unless Amended

Unite Here International Union, Afl-cio

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1178 (Pacheco) – As Introduced February 21, 2025

As Proposed to be Amended in Committee

SUMMARY: Requires a court to consider whether a particular peace officer is currently operating undercover and their duties demand anonymity when determining if an agency that employs peace officers or custodial officers shall redact a disclosable personnel record under the California Public Records Act (CPRA) on the basis that there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

EXISTING LAW:

1) Declares that people have the right of access to information concerning government business, and balances such right with the right to privacy as well as any disclosure statutes governing the official performance of peace officers. (Cal. Const., art. I, § 3, subds. (a)(1) & (3).)

2) Establishes the CPRA and requires government agencies to disclose government records to the general public upon request, unless such records are exempted from disclosure, as specified. (Gov. Code, § 7920.000 et seq.)

3) Requires any agency in the state that employs peace officers to make a record of any misconduct investigation involving a peace officer and to place that record in the officer's general personnel file or a separate file designated by the agency. (Pen. Code, § 832.12, subd. (a).)

4) Generally provides that the personnel records of peace officers and custodial officers are confidential and cannot be disclosed, except as specified. (Pen. Code, § 832.7, subd. (a).)

5) Defines a "personnel record" as any file for an employee that is maintained by their employer and relates, among other things, to personal data, medical history, complaints, or investigations of complaints, pertaining to the manner in which they performed their duties, and any other information the disclosure of which would constitute an unwarranted invasion of personal privacy. (Pen. Code, § 832.8, subd. (a).)

6) States that officer records related to the following circumstances are not confidential and must be made available for public inspection pursuant to the CPRA:

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

      i) Any incident involving the discharge of a firearm at a person by an officer;

ii) Any incident involving the use of force by an officer that results in great bodily injury or death;

iii) A sustained finding involving a complaint alleging excessive or unreasonable force; or,

iv) A sustained finding that an officer failed to intervene when another officer clearly used excessive or unreasonable force.

b) A sustained finding that an officer sexually assaulted a member of the public, as defined;

c) A sustained finding involving dishonesty by an officer that directly relates to the reporting, investigation, or prosecution of a crime;

d) A sustained finding that an officer engaged in prejudicial or discriminatory conduct, as defined;

e) A sustained finding that an officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, § 832.7, subd. (b)(1)(A)-(E).)

7) Provides that records that shall be released pursuant to the above include all investigative reports, photographs, videos, autopsy reports, all material compiled for a district attorney to review when determining whether to file charges, documents setting forth findings, and disciplinary records, among other things. (Pen. Code, § 832.7, subd. (b)(3).)

8) Requires records subject to release to include records related to unlawful use of force in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident. (Pen. Code, § 832.7, subd. (b)(3).)

9) Provides that an agency shall redact a peace officer, or custodial officer record that is subject to release as described above, only for any of the following purposes:

a) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers;

b) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses;

c) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers; or,

d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person. (Pen. Code, § 832.7, subd. (b)(6).)

10) Generally authorizes an agency to redact a record subject to release, as described above, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. (Pen. Code, § 832.7, subd. (b)(7).)

11) Outlines the process and timeline for which an agency can withhold disclosable records when circumstances, such as ongoing investigations, exist. (Pen. Code, § 832.7, subd. (b)(8).)

12) Generally provides that under the CPRA, an agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000.)

13) Authorizes a video or audio recording that relates to a critical incident, as specified, to be withheld as follows:

    a) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide the specific basis for withholding the recording and may use redaction technology to obscure those portions of the recording that protect that interest.

    b) Except where disclosure would interfere with an active investigation, if the agency demonstrates that the reasonable expectation of privacy of a subject cannot adequately be protected through redaction and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public. (Gov. Code, § 7923.625, subd. (b) (1) & (2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Transparency is essential for public trust. At the same time, we also need to protect the safety of officers doing dangerous work. Undercover officers have been identified in public records releases due to plain reading of the language put into CA Penal Code, which requires "specific threats" against the officer to justify a redaction from a record request. The argument that the officer is "undercover" has not been sufficient to satisfy the redaction, not only compromising the hard work of those undercover officers but also putting them in serious danger if their identity is blown.

   "AB 1178 fixes an unintended consequence that puts undercover officers in specialized dangerous assignments at risk. All records related to sustained misconduct will still be fully disclosed – this just allows for redaction of identifying information in those limited cases."

2) **Confidentiality of Peace Officer Records:** The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government

activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Under the California Constitution, statutes, court rules, or other authorities are to be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (Cal. Const. Art. I § 3.) Thus, under the CPRA, generally all public records are open to public inspection unless a statutory exception exists. The public agency "has the burden of proof when asserting an exemption under the CPRA or when claiming certain documents should be redacted." (*Regents of University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 398, fn 10.) If a record is not expressly exempted, an agency may nonetheless refuse to disclose records if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 7922.000.)

In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely: 1) records of complaints to, or investigations conducted by, any state or local police agency; 2) personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law. (Gov. Code, §§ 7923.600, 7927.700, 7927.705.)

In 1974, the California Supreme Court decided *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (hereafter *Pitchess*), which allowed a criminal defendant to access certain kinds of information in citizen complaints against law enforcement officers contained in the officers' personnel records. The California Legislature codified the privileges and discovery procedures related to *Pitchess* motions in 1978 by enacting Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045. The statutory scheme carefully balances two directly conflicting interests: peace officers' claims to confidentiality and defendants' equally compelling interest to all information pertinent to their defense. (*Alt v. Superior Court* (1999) 74 Cal.App.4th 950.)

The Legislature has recently passed several amendments to Penal Code section 832.7 that expand and strengthen the public's access to peace officer personnel records, and particularly those records pertaining to misconduct.

In 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public's ability to access previously confidential peace officer personnel records. SB 1421 removed *Pitchess* protection from records pertaining to officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty. SB 1421 also permitted the redaction of specified personal identifying information and identity of officers, specified that records of unfounded complaints are not required to be disclosed, and clarified that the Legislature did not intend to change or overrule the California Supreme Court's holding in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.[1]

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[1] In *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, the California Supreme Court held that the names of police officers involved in shootings generally must be disclosed under the CPRA. The California Supreme Court reasoned that such evidence is too vague and generalized to overcome the strong public interest in disclosure. "In a case such as this one, which concerns officer-involved shootings, the public's interest in the conduct of its peace officers is particularly great

Then in 2021, the Legislature passed SB 16 (Skinner, Ch. 402, Stats. of 2021), building upon the transparency provisions enacted by SB 1421 by exempting other incidents such as excessive use of force complaints and unlawful arrests. (See Pen. Code, § 832.7.) In 2021, the Legislature also passed SB 2 (Bradford), Chapter 409, Statues of 2021, which among a number another of other reforms, amended Penal Code section 832.7 by making it inapplicable to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training.

3) **Effect of this Bill**: Under existing law, the personnel records of law enforcement officers are confidential and cannot be disclosed. (Pen. Code, § 832.7, subd. (a).) A "personnel record" means the file maintained by the officer's employer that contains, among other things, complaints or investigation of complaints pertaining to the officer's duties. (Pen. Code, § 832.8, subd. (a).) Following the passage of SB 1421 (Skinner) in 2018, and SB 16 (Skinner) in 2021 certain officer records are now subject to disclosure under the CPRA. These include records relating to *incidents* involving an officer's discharge of a firearm at a person or an officer's use of force that results in great bodily injury or death. They additionally include records of *sustained findings* that an officer used excessive or unreasonable force, failed to intervene when another officer clearly used excessive or unreasonable force, sexually assaulted a member of the public, engaged in specified dishonest, prejudicial or discriminatory conduct, or made an unlawful arrest or search. (Pen. Code, § 832.7, subd. (b)(1)(A)-(E).)

   When personnel records described above are subject to disclosure, a law enforcement agency is required to redact those records in the following circumstances:

   a) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers;

   b) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses;

   c) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers; and,

   d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person. (Pen. Code, § 832.7, subd. (b)(6).)

   This bill seeks to protect undercover officers who are working in dangerous conditions by clarifying that information identifying specific undercover officers may be subject to

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because such shootings often lead to severe injury or death. Here, therefore, in weighing the competing interests, the balance tips strongly in favor of identity disclosure and against the personal privacy interests of the officers involved."

redaction upon a showing that the disclosure of a particular officer's identity would threaten their safety. Specifically, this bill requires a court to consider whether a particular peace officer is currently operating undercover and their duties demand anonymity, when determining if a record should be redacted on the basis that there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

Notably, AB 1178 maintains judicial discretion over when an undercover officer's identity demands redaction. This is important since not all undercover officers' work in conditions where disclosure of their identity would threaten their physical safety. While some officers may spend years infiltrating dangerous criminal organizations and disclosure of their identity may threaten retaliation, another may simply contribute to occasional sting operations at restaurants as part of efforts to crack down on underage drinking.

4) **Law Enforcement Agencies May Already Withhold or Redact Records Identifying Undercover Officers:** In addition to the authority to redact records described above, several other statutes authorize, and even require, law enforcement agencies to withhold or redact records pertaining to undercover officers.

First, law enforcement agencies may withhold records identifying undercover officers under the catchall balancing test of the CPRA, if they can prove "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 7922.000.)

The California Supreme Court has stated that this balancing test may be utilized to protect the identities of undercover officer whose duties are such that they demand anonymity to protect their safety and effectiveness. In *Commission on Peace Officer Standards & Training v. Superior Court* the California Supreme Court stated the following:

> We readily acknowledge that throughout the state there are some officers working in agencies who, because of their particular responsibilities, require anonymity in order to perform their duties effectively or to protect their own safety… If the duties of a particular officer, such as one who is operating undercover, demand anonymity, the need to protect the officer's safety and effectiveness certainly would justify the Commission in withholding information identifying him or her under [the CPRA], which permits records to be withheld if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (*Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal.4th 278, 301 (2007))

This permits agencies to withhold identifying information such as officer names, which are otherwise subject to disclosure. (See *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 337 ("[i]f an officer's anonymity is essential to his or her safety, the need to protect the officer would outweigh the public interest in disclosure and would justify withholding the officer's name") *Long Beach Police Officers Ass'n. v. City of Long Beach, supra,* 59 Cal. 4th at p. 74 ("Of course, if it is essential to protect an officer's anonymity for safety reasons or for reasons

peculiar to the officer's duties—as, for example, in the case of an undercover officer—then the public interest in disclosure of the officer's name may need to give way.")

This is not a blanket exemption for every officer who has ever worked undercover. Rather, the agency must prove "on the facts of the particular case" that the interests in non-disclosure outweigh the interests in disclosure. (Gov. Code, § 7922.000). As such, the Supreme Court has rejected general claims that an undercover officer's record should be withheld, without any facts demonstrating why disclosure would threaten their safety or effectiveness. (*Long Beach Police Officers Ass'n. v. City of Long Beach*, *supra*, 59 Cal. 4th at p. 74; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 301.) Determining that an undercover officer's identity needs to be protected under the catchall balancing test must be based on a "particularized showing." *Long Beach Police Officers Ass'n. v. City of Long Beach*, *supra*.

Second, Penal Code section 832.7 contains a provision substantially similar to the CPRA's catchall balancing test that is specific to redacting peace officer identifying information. Specifically, it authorizes an agency to redact a disclosable peace officer record "including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information." (Pen. Code, § 832.7, subd. (b)(7).) For example, if a sustained finding established that an officer sexually assaulted a member of the public, making their personnel record subject to public disclosure, an agency could nonetheless redact that officer's name or other identifying information, upon a showing that public interest in preserving that officer's anonymity and safety outweighed the public interest in identifying that officer.

Additionally, an agency may redact audio and video recordings pertaining to an officer's use of force or discharge of a firearm at a person for privacy reasons. Specifically, if an audio or video recording relates to a "critical incident" an agency may redact the recording, including by blurring or distorting images or audio, to obscure portions of the recording if the agency demonstrates that the public interest in withholding the recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording. (Gov. Code, § 7923.625, subd. (b)(1).) A "critical incident" is considered a video or audio recording that depicts an incident involving the discharge of a firearm at a person by an officer, or an incident in which the use of force by an officer against a person resulted in death or in great bodily injury. (Gov. Code, § 7923.625, subd. (e).) Any redactions must not interfere with a viewer's ability to accurately comprehend the events captured in the recording. (*Ibid.*) The agency must provide a written response to the individual requesting the recording, stating the specific basis for the expectation of privacy and the public interest served by withholding the recording. (*Ibid.*)

In sum, law enforcement agencies have numerous tools at their disposal to redact or otherwise refuse to disclose records that would reveal the identity of an undercover officer.

5) **Argument in Support**: According to the *Peace Officers Research Association of California*, "AB 1178 was narrowly tailored to have a negligible impact on public access to records of sustained serious misconduct as established by SB 1421 and SB 16 and codified in Penal Code Section 832.7. The Bill merely protects the confidentiality of witness officers while

engaged in undercover assignments, attached to task forces, or facing verified death threats, who have not engaged in misconduct themselves. The public will continue to receive full investigative reports, audio, and video evidence related to sustained serious misconduct cases. This bill simply ensures that the identities of vulnerable officers are not inadvertently disclosed.

"Specifically, AB 1178 amends Penal Code Section 832.7 to require a law enforcement agency to redact records to remove the rank, name, photo, or likeness of specified individuals including, among others: (1) all duly sworn officers working an undercover assignment or who worked an undercover assignment in the past 24 months; (2) all sworn personnel attached to a federal or state task force; and (3) members of a law enforcement agency who received verified death threats to themselves or their families within the last ten years because of their law enforcement employment. These targeted redactions protect a small fraction of officers, while leaving the substance of misconduct records unredacted.

"Revealing the identity of an undercover officer simply because they were present during another officer's misconduct, could place their life at risk. Such exposure could unravel months or years of covert work, jeopardize critical investigations, and place them and their families at immediate danger from those under investigation. Yet redacting their identifying information does not obscure the misconduct itself or hinder accountability for the officer responsible, ensuring transparency remains robust.

"California peace officers undertake extraordinary risks, particularly in undercover assignments, to protect our communities. AB 1178 balances this sacrifice with the public's right to information by protecting a limited number of officers from dire unintended consequences, without compromising the ability to comprehend the serious misconduct investigation. In line with PORACs mission to advocate for the safety and welfare of law enforcement professionals, we urge your support for this important legislation."

6) **Argument in Opposition**: According to *Smart Justice California*, "Current law, under SB 1421, states that documents regarding serious misconduct by officers are public records. The misconduct recorded in these documents is egregious, and oftentimes illegal. For example, SB 1421 states that records relating to excessive use of force, sexual assault of a member of the public, and falsifying evidence must be made available for public inspection. AB 1178's redaction provisions would severely limit the public's ability to hold police accountable for these illegal acts.

"AB 1178's broad redaction clauses are unnecessary and disregard the officer privacy provisions the Legislature carefully crafted in enacting SB 1421. Current law provides for the redaction of information that would entail a significant intrusion on officers' privacy with no public benefit — officers' home addresses or the names of family members, and "confidential medical, financial or other information" that would constitute an "unwarranted invasion of personal privacy." Moreover, SB 1421 contains a flexible provision focused on officer safety, allowing for redaction of any document "[w]here there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person." The current law's privacy mandates already fully meet the needs that AB 1178 is motivated by."

7) **Related Legislation**:

a) AB 847 (Sharp-Collins) would grant access to confidential peace officer personnel records maintained by their employing agencies, as specified, to civilian law enforcement oversight boards or commissions. AB 847 is pending a hearing in this committee.

b) AB 1388 (Bryan) would prohibit an agency employing a peace officer from entering into an agreement with a peace officer that requires the agency to destroy, remove, or conceal a record of a misconduct investigation, or the agency to halt or make particular findings in a misconduct investigation. AB 1388 is pending a hearing in this committee.

8) **Prior Legislation**:

a) SB 400 (Wahab), Chapter 3, Statutes of 2024, clarifies that law enforcement agencies that formerly employed a peace officer are not prohibited from disclosing the termination for cause of that officer, as specified.

b) AB 2557 (Bonta), of the 2021-2022 Legislative Session, would have abrogates the California Supreme Court holding in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, and makes records and information maintained for the purpose of civilian oversight of peace officers subject to disclosure pursuant to the CPRA. AB 2557 was held in Assembly Judiciary Committee.

c) SB 16 (Skinner), Chapter 402, Statutes of 2021, authorized further disclosures of certain officer records related to incidents such as excessive use of force complaints and unlawful arrest.

d) AB 17 (Cooper), of the 2021-2022 Legislative Session, would have, among other things, removed sustained findings that an officer used unreasonable or excessive force, or failed to intervene against another office using excessive or unreasonable force, from the list of records that may be disclosed under the CPRA. AB 17 was never heard in this committee.

e) AB 60 (Salas), of the 2021-2022 Legislative Session, was substantially similar to AB 17 (Cooper). AB 60 was never heard in this committee.

f) SB 2 (Bradford), Chapter 409, Statutes of 2021, grants new powers to POST to investigate and determine peace officer fitness and to decertify officers who engage in "serious misconduct" and makes changes to the Bane Civil Rights Act to limit immunity as specified.

g) SB 731 (Bradford), of the 2019-2020 Legislative Session, would have made all records related to the revocation of a police officer's certification a public record and required that investigation records be retained for 30 years, among other things. SB 731 was not brought up for a vote in the full Assembly.

h) SB 1421 (Skinner), Chapter 988, Statutes of 2018, authorized disclosure of certain officer records related to specified incidents such as officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or

dishonesty.

i) SB 1436 (Carpenter) Chapter 630, Statutes of 1978, in part, strengthened officer personnel record confidentiality, and created a statutory process through which such records could be examined.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriff's
California Association of Highway Patrolmen
California District Attorneys Association
California Fraternal Order of Police
California Narcotic Officers' Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Crime Victims United of California
Long Beach Police Officers Association
Los Angeles County Sheriff's Department
Peace Officers Research Association of California (PORAC)
Public Risk Innovation, Solutions, and Management (PRISM)
Sacramento County Deputy Sheriffs Association
Sheriff's Employee Benefits Association (SEBA)

Oppose

ACLU California Action
All of US or None (HQ)
American Community Media
California Attorneys for Criminal Justice
California Broadcasters Association
California News Publishers Association
Californians for Safety and Justice (CSJ)
Care First California
Communities United for Restorative Youth Justice (CURYJ)
First Amendment Coalition
Freedom of the Press Foundation
Human Rights Data Analysis Group
Industrial Workers of the World Freelance Journalists Union
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
League of Women Voters of California
Legal Services for Prisoners With Children

Media Alliance
National Press Photographers Association
Oakland Privacy
Orange County Press Club
Radio Television Digital News Association
Smart Justice California, a Project of Tides Advocacy
Society of Professional Journalists, Northern California Chapter
Universidad Popular

1 Private Individual

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

Amended Mock-up for 2025-2026 AB-1178 (Pacheco (A))

Mock-up based on Version Number 99 - Introduced 2/21/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

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

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

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records

relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) (1) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(2) In determining whether to redact a record pursuant to paragraph (1), a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the

public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in

accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident,

including those described in subparagraphs (A) to (E), inclusive, of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall not include any information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 832.7 of the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to actively protect law enforcement officers that willingly risk their lives in dangerous and uncertain assignments and who face life-threatening situations as they provide the necessary umbrella of protection to the residents of the State of California by their service, it is necessary to limit access to these records.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1229 (Schultz) – As Introduced February 21, 2025

SUMMARY: Transfers administration of the Adult Reentry Grant Program (ARG) to the Department of Housing and Community Development (HCD), in addition to requiring HCD to modify the grant program to provide 5-year renewable grants to up to 6 regional administrators responsible for funding permanent affordable housing and services for people who were formerly incarcerated in state prison and are experiencing homelessness or are at risk of homelessness. Specifically, **this bill**:

1) Requires that, on or before December 1, 2026, HCD shall do all of the following:

   a) Modify the ARG program to provide grants to up to six regional administrators responsible for funding permanent affordable housing and services for people who were formerly incarcerated in state prison and are experiencing homelessness or are at risk of homelessness.

   b) Issue proposed guidelines establishing the grant program, or a draft notice of funding availability for stakeholder feedback, to select regional administrators for five-year renewable grants. Guidelines or the notice of funding availability shall require regional administrator applicants to demonstrate all of the following:

      i) At least three years of experience administering a rental subsidy program, master leasing to sublet to tenants with a history of homelessness, or subcontracting to administer rental subsidies in permanent housing that follows evidence-based practices. The experience shall include recruiting landlords or partnerships with affordable housing property managers to accept subsidies, and administration and oversight of vouchers or other forms of rental subsidies.

      ii) Experience administering requests for proposals or a similar competitive process for selecting subrecipients meeting the criteria of the program.

      iii) A relationship with a public housing authority to connect people to federal vouchers as they turn over.

      iv) Experience working with a homeless continuum of care and, if the regional administrator is different from the continuum of care in the region, a coordinated entry system administrator.

      v) A relationship with at least one managed care plan or at least two community supports providers, or a direct contract with a managed care plan as a provider.

vi) A viable plan to administer or contract with subrecipients to administer rental subsidies for permanent housing to connect participants to permanent housing as quickly as possible.

vii) A viable plan to connect participants, as needed and eligible, to community supports, Justice-Involved Reentry Initiative in-reach services, and behavioral health treatment and services for so long as medically necessary.

viii) A viable plan to meet reporting requirements.

c) Establish criteria to score applicants applying for grant funds competitively. Scoring criteria shall include, but not be limited to, the following:

i) Need in the region, which includes consideration of the number of individuals experiencing homelessness among people on parole, to the extent data are available.

ii) The viability of plans and extent of experience.

iii) The extent of coordination and collaboration between the applicant, the continuum of care covering the geographic area, and homeless service providers with a history of serving people reentering communities from incarceration, using the Housing First model.

iv) The applicant's proposed use of funds, the extent to which the proposed use will lead to overall reductions in homelessness and recidivism based on evidence, and the extent of the applicant's commitment and past fidelity to Housing First.

v) The applicant's documented partnerships with affordable and supportive housing providers in the jurisdiction.

vi) The applicant's demonstrated commitment to address the needs of people experiencing homelessness and recent incarceration through existing programs or programs planned to be implemented within 12 months.

vii) For county applicants overseeing housing authorities, the extent to which an applicant demonstrates housing authorities have eliminated or plan to eliminate restrictions on people with arrests or criminal convictions to access publicly funded housing subsidies, notwithstanding restrictions mandated by the United States Department of Housing and Urban Development or federal law.

d) Work collaboratively with the State Department of Health Care Services and the Department of Corrections and Rehabilitation (CDCR) to establish a process for referrals of people eligible to participate in the program through the Justice-Involved Reentry Initiative, parole or probation agents, or other avenues of referrals.

2) States that the Board of State and Community Corrections (BSCC) shall continue to oversee and administer existing grants that have not yet expired, using resources allocated to the board, including funds allocated by Budget Act of 2025.

3) Provides that a person is eligible for participation in this program if both of the following are applicable:

   a) The individual voluntarily chooses to participate.

   b) Either of the following applies:

      i) The individual has been assigned a date of release from prison within 30 to 180 days and is likely to become homeless upon release.

      ii) The person is currently experiencing homelessness as a person on parole or postrelease community supervision and has experienced prison incarceration within the last five years.

4) States that a participant may remain eligible and continue to receive housing and services funded under the program after discharge from parole or postrelease community supervision if the participant continues to need assistance from the program.

5) Provides that program funds shall be used for the following eligible activities:

   a) Up to 3 percent of program funds may be used for the department's administration of the program.

   b) At least 70 percent of the funds shall be used for one or more of the following, so long as the housing funded under the program complies with the Housing First model:

      i) Rental subsidies in an amount the applicant identifies, but no more than the maximum amount of rent a public housing authority may pay for the community in which the applicant is providing rental assistance.

      ii) Operating subsidies in new and existing affordable or supportive housing units, in an amount the applicant identifies, but no more than the maximum amount of fair market rent a housing authority may pay, for the community in which the project is located.

      iii) Incentives to landlords to accept rental subsidies and house-eligible participants, including, but not limited to, security deposits and holding fees.

      iv) Reasonable administrative fees of regional administrators and subrecipients.

   c) At least 10% of the funds shall be used for voluntary multidisciplinary services, to include the following:

      i) Services assisting participants in transitioning from prison to the community, including linkage to Justice Involved Reentry Program in-reach providers, assisting with locating permanent housing with property managers and landlords willing to accept rental or operating subsidies for program participants, linkage to community supports providers and other existing programs funding services upon discharge, if the services allow the participant to successfully reenter their community, offer participants access to permanent affordable housing, and promote housing stability.

ii) Direct provision of housing transition navigation services, housing deposits, and housing tenancy and sustaining services for participant's ineligible for or not yet determined to be eligible for existing programs.

iii) Services coordinating with and connecting participants to the coordinated entry system functioning in the geography to which the participant is returning, coordinating with and linking people to the Medi-Cal Enhanced Care Management benefit and health care providers that participants need to stabilize in housing, and assisting participants in obtaining any available local, state, or federal rental subsidies available.

iv) Evidence-based supported employment services, including individual placement and support services that allow participants who are able and want to work to find and maintain stable employment. Supported employment services shall include all of the following:

(1) Assistance with completing employment applications.

(2) Identifying potential workplace accommodations that may be required.

(3) Assistance with addressing workplace situations and conflicts.

(4) Assistance with transportation needs.

(5) Coordinating vocational training.

(6) Assistance with developing skills to maintain stable employment.

(7) Care coordination and advocacy with health care professionals to support care planning and referrals to other needed services.

v) Services assisting people learn financial literacy and management, as well as managing and building savings, including a process to assist participants in saving a consistent portion of their income from employment.

d) As needed, up to 10 percent of funds for operating support for interim interventions while participants wait for referral to permanent housing, so long as the interim setting complies with the requirements of Low-Barrier Navigation Centers, as defined.

6) States that service providers shall offer voluntary services, in conjunction with housing, to obtain and maintain health and housing stability while participants are on parole and after discharge from parole, so long as the participant needs the services.

7) Requires all services be offered to participants in their home or be made as easily accessible to participants in the community as possible. Services shall promote housing and health stability, including, but not limited to, assertive community treatment, intensive case management, or other evidence-based models of service provision, as well as engagement to encourage participation in services and Medi-Cal-funded mental health treatment, substance use disorder treatment, and other health treatment, as medically necessary.

8) States that the regional administrator or subrecipient provider, upon the service provider's receipt of referral and, in collaboration with the parole agent or postrelease community supervision probation officer, if assigned to supervision, shall, when possible, do all of the following:

   a) Seek all prerelease assessments and discharge plans.

   b) Draft a plan for the participant's transition into permanent housing in collaboration with the participant.

   c) Engage the participant to actively participate in services upon release on a voluntary basis.

   d) Assist the participant in obtaining identification and other documentation the participant may need to access housing and services.

   e) Assist the participant in applying for any benefits for which the participant is eligible.

9) States that the regional administrator and all subrecipients shall work to promote housing stability, using the core components of Housing First and the Housing First model.

10) Provides that a regional administrator awarded a contract shall provide or subcontract with community-based organizations (CBOs) to provide reentry services, housing, community supports, and supported employment that participants need and want by doing the following:

   a) Coordinating with managed care plans and partnering with managed care contracted providers to offer participants in-reach services through the Justice-Involved Reentry Initiative, community supports to which the participants are entitled, and the Medi-Cal Enhanced Care Management benefit.

   b) Partnering with county behavioral health and health agencies to offer participants services and treatment participants need and want.

   c) Partnering with county workforce investment boards.

   d) Partnering with the region's homeless continuums of care and coordinated entry systems to coordinate referrals to housing for participants or potentially eligible participants.

   e) Partnering with affordable and supportive housing developers to offer ongoing operating subsidies in available housing units for participants.

   f) Coordinating with public housing authorities to connect participants to any federal housing subsidies available.

   g) Providing administrative assistance to subcontracted CBOs in complying with the reporting and other administrative requirements of the department.

   h) Working to reduce racial and ethnic disparities in eligible participants receiving housing and services.

i) Developing career pathways for participants, removing structural barriers to employment and promoting equitable access to leadership positions.

11) Requires any subcontracted providers to demonstrate requisite experience.

12) States that in subcontracting with CBOs, HCD and regional administrators shall work to reduce barriers to subcontracting and simplify the contracting process, and to reduce barriers and delays in participants receiving services and housing.

13) Provides that in selecting subcontracted entities, regional administrators shall select providers that have or will have, by the time of contract start date, the following:

a) Removed barriers to hiring people with lived experience of incarceration.

b) Employed people with lived experience of incarceration and former homelessness.

c) If the subcontracted entity is a CBOs, at least one individual with lived experience of incarceration and homelessness on the board of directors.

14) Provides that regional administrators or their subcontracted CBOs shall identify and locate housing opportunities for participants prior to release from prison or as quickly upon release from prison as possible, or as quickly as possible when participants are identified during parole or postrelease community supervision.

15) Establishes that housing identified shall satisfy all of the following:

a) Tenants have rights and responsibilities of tenancy and are required to sign a lease with a landlord or property manager that complies with the core components of Housing First.

b) The housing is located in an apartment building, townhouse, or single-family home, including rent-subsidized apartments leased in the open market or set aside within privately owned buildings, or affordable or supportive housing receiving a publicly funded subsidy.

c) The housing is not subject to community care licensing requirements and is exempt from licensing.

d) Upon referral to housing, participants are allowed to choose whether to share a single housing unit with nonrelatives or to live alone.

16) States that shared housing shall meet the following requirements:

a) Participants shall be allowed to choose shared housing over living alone and to choose the people with whom they share housing.

b) Participants shall have their own private bedroom with a lockable door.

c) Every participant shall have their lease.

d) Housing units shall include bathrooms no more than four participants must share.

e) Housing units shall include kitchens on the same floor as the participant, unless living in a single family home.

f) The regional administrator or subcontractor shall ensure participants sharing housing receive services to assist in overcoming conflicts.

17) States that HCD shall distribute funds by executing contracts with awarded regional administrators that shall be for a term of five years, subject to automatic renewal, provided the regional administrator complies with defined requirements. Awards shall be offered to grantees prior to provision of rental assistance and services.

18) Requires a regional administrator submit to the department an annual report on a form issued by the department, pertaining to the recipient's program, provider selection process, contract expenditures, and progress toward meeting state goals. Regional administrators shall report the following data, which shall be disaggregated by race, gender, and gender identity:

a) The number of participants served.

b) The types of services provided to program participants.

c) The number of participants currently living in permanent housing, either in housing receiving or not receiving a program subsidy.

d) The average length of participation in the program.

e) Fidelity to Housing First among all providers.

f) Other outcomes for participants, including the number of participants who ceased to participate in the program and reasons why, the number who returned to state prison or were incarcerated in county jails, the number of arrests among participants, the number of days in jail and prison among participants, and health outcomes or change in health status, to the extent data are available.

g) Through participant surveys, satisfaction with the program or changes to participants' rating of their health, income, employment, and housing status.

19) States that within one year of program implementation, HCD shall design an evaluation and hire an independent evaluator to assess outcomes from the program, which shall include, but not be limited to, all of the following, disaggregated by race, gender, and gender identity:

a) The total number of participants served and the type of interventions provided.

b) The housing status of participants at 12, 24, and 36 months after entering the program, to the extent this data are available, including the number of participants who remained in permanent housing.

c) Recidivism among participants, including the number of arrests, days incarcerated, and incarceration in jail or prison.

d) Other outcomes evaluators are able to access through available data.

20) States that as part of the annual report, a regional administrator shall report to HCD on the expenditures and activities of any subrecipients for each year of the term of the contract with the department until all funds awarded to a subrecipient have been expended.

21) Provides that HCD may monitor the expenditures and activities of the recipient, as HCD deems necessary, to ensure compliance with program requirements.

22) States that HCD may, as it deems appropriate or necessary, request the repayment of funds from a regional administrator or pursue any other remedies available to it by law for failure to comply with program requirements.

23) Establishes that, on or before July 1, 2030, HCD shall submit the evaluation prepared to the chairs of the Joint Legislative Budget Committee, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate and Assembly Committees on Public Safety, the Senate Committee on Housing, and the Assembly Committee on Housing and Community Development.

24) States that HCD shall establish a process for engaging an individual scheduled for discharge, within at least 210 days of the scheduled release date, for the purpose of assessing the individual's risk of homelessness upon discharge. The process shall include the following questions:

a) Do you have a plan for where you will live when you get out?

b) If you have a plan, where do you plan to sleep after returning to your community?

c) Where were you living when you were arrested, prior to your conviction?

d) Have you ever slept in a place not meant to be a place to live long-term, such as a shelter, transitional housing, a bus or train station, on the streets, or a motel or hotel?

25) Provides that HCD shall not use any of the answers provided to lengthen an individual's term or to otherwise punish or discipline the individual.

26) Defines "Adult Reentry Grant Program" as the program created by funding allocated to the Board of State and Community Corrections (BSCC) and all subsequent allocations of funding thereafter to this program, including ongoing appropriations.

27) States "chronic homelessness" means people being discharged from an institution who were chronically homeless before entering an institution, regardless of the length of institutional stay, and chronic homelessness additionally means:

a) A "homeless individual with a disability," as defined, who:

i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

ii) Has been homeless and living continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living, as defined. Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

b) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all defined criteria, before entering that facility; or

c) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all defined criteria, including a family whose composition has fluctuated while the head of household has been homeless.

28) Provides that "community supports" means substitute services or settings to those required under the California Medicaid State Plan that Contractor may select and offer to their Members when the substitute service or setting is and are medically appropriate and more cost-effective that the service or setting listed in the California Medicaid State Plan Community supports especially relevant to this program include the following:

a) Housing transition navigation services for services helping an individual access permanent housing.

b) Housing deposits.

c) Housing tenancy and sustaining services after a participant moves into permanent housing.

29) Establishes that community supports also includes any other community supports a participant is eligible to receive in the county in which the participant is reentering or living.

30) States that "continuum of care" means the group organized to carry out responsibilities and that is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

31) Provides that "county" includes a city and county or a city that is working with one or more counties to apply for grant funds.

32) Establishes that "fair market rent" means the rent, including the cost of utilities, other than the telephone, as established by the United States Department of Housing and Urban Development, for units of varying sizes, as determined by the number of bedrooms, that is paid in the market area to rent privately owned, existing, decent, safe, and sanitary rental housing of a modest nature with suitable amenities.

33) Defines "homelessness" to mean a person who is being released from prison who was homeless before their incarceration and who does not have an identified residence upon release, regardless of their length of stay in prison, and homelessness is defined as:

a) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

b) An individual or family who will imminently lose their primary nighttime residence, provided that:

i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

ii) No subsequent residence has been identified; and

iii) The individual or family lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks needed to obtain other permanent housing;

c) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

i) Are defined as homeless under other specified federal law;

ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding applying for homeless assistance; and

iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

d) Any individual or family who:

i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

ii) Has no other residence; and

iii) Lacks the resources or support networks, *e.g.,* family, friends, faith-based or other social networks, to obtain other permanent housing.

34) Defines "Housing First" to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible.

a) "Housing First" includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient in accessing permanent housing and in securing longer term rental assistance, income assistance, or employment.

i) For time-limited, supportive services programs serving homeless youth, programs should use a positive youth development model and be culturally competent to serve unaccompanied youth under 25 years of age. In the event of an eviction, programs shall make every effort, which shall be documented, to link tenants to other stable, safe, decent housing options.

35) States that "interim interventions" means housing that does not qualify as permanent housing as defined, including, but not limited to, transitional housing, emergency shelters, motel vouchers, tiny homes, or navigation centers, as defined under other federal, state, or local programs, offering services or partnerships with homeless services to connect individuals and families to housing transition navigation services and permanent housing.

36) Provides that "Justice-Involved Reentry Initiative" means the partnership between the Department of Health Care Services (DHCS) with state agencies, counties, providers, and CBOs to establish a coordinated community reentry process that will assist people leaving incarceration in connecting to the physical and behavioral health services they need prior to release and reentering their communities.

37) Defines "likely to become homeless upon release" to mean the individual has a history of experiencing homelessness and the individual satisfies either of the following:

a) The individual has not identified a fixed, regular, and adequate residence to occupy upon release.

b) The individual's only identified nighttime residence for release includes a supervised publicly or privately operated shelter designed to provide temporary living accommodations, or a public or private place not designed for, or not ordinarily used as, a regular sleeping accommodation for human beings.

38) Provides that "permanent housing" means a structure or set of structures with subsidized or unsubsidized rental housing units subject to applicable landlord-tenant law, without a limit on the length of stay and without a requirement to participate in supportive services as a condition of access to, or continued occupancy of, the housing. Permanent housing includes supportive housing.

39) Establishes that "permanent supportive housing" and "supportive housing" mean permanent housing without a limit on the length of stay that is linked to onsite and offsite housing tenancy sustaining services that are easily accessible to tenants and assist participants in retaining the housing, improving the participant's health status, and maximizing the participant's ability to live and, when possible, work in the community. Permanent supportive housing includes associated facilities if used to provide services to tenants.

40) Defines "provider" to mean a CBO that qualifies as an exempt organization, as defined, and that contracts with a participating regional administrator, for the purpose of providing services to participants experiencing or at risk of homelessness, with demonstrated fidelity to the Housing First model.

41) Provides that "regional administrator" means an entity coordinating existing funding sources, including funding under the program, the Justice-Involved Reentry Initiative, community supports, and Medi-Cal Enhanced Care Management, to offer housing subsidies and services following evidence-based models to eligible participants. A regional administrator may be a county agency, community-based organization that is a nonprofit, a homeless continuum of care, a flexible housing subsidy pool administrator, or other entity the department identifies.

42) States that "rental subsidies" means a subsidy provided to a permanent housing provider, including a developer that has received government subsidies to build affordable or supportive housing or private market landlord, to assist a tenant to pay the difference between 30 percent of the tenant's income and fair market rent or reasonable market rent as determined by the grant recipient and approved by the department.

43) Defines "subrecipient" to mean a community-based organization that is a private nonprofit provider or public housing authority that the regional administrator determines is qualified to undertake the eligible activities for which the recipient seeks funds under the program, and that enters into a contract with the recipient to undertake those eligible activities in accordance with the requirements of the program.

44) States that "voluntary services" means services offered in conjunction with housing that are not contingent on participation in services, from which tenants are not evicted based on failure to participate in services, where the service provider engages the tenant to encourage

the tenant to voluntarily participate in services using evidence-based engagement models, and services are flexible and tenant centered.

45) Makes legislative findings and declarations.

EXISTING LAW:

1) Establishes that HCD shall be administered by an executive officer known as the Director of Housing and Community Development. The director shall be appointed by the Governor, subject to confirmation by the Senate, and shall hold office at the pleasure of the Governor. (Health & Saf. Code, § 50401.)

2) States that agencies and departments administering state programs created on or after July 1, 2017, shall collaborate with the California Interagency Council on Homelessness to adopt guidelines and regulations to incorporate core components of Housing First. (Welf. & Inst. Code (WIC), § 8256, subd. (a).)

3) Provides that agencies and departments administering state programs in existence prior to July 1, 2017, shall collaborate with the council to revise or adopt guidelines and regulations that incorporate the core components of Housing First, if the existing guidelines and regulations do not already incorporate the core components of Housing First. (WIC, § 8256, subd. (b).)

4) Establishes that for the Returning Home Well Program, the Specialized Treatment for Optimized Programming Program, and the Long-Term Offender Reentry Recovery Program, all of which are administered by the Department of Corrections and Rehabilitation, which fund recovery housing, as defined, for parolees, shall do all of the following:

    a) In coordination with the California Interagency Council on Homelessness, consult with the Legislature, the Business, Consumer Services and Housing Agency, the California Health and Human Services Agency, the United States Department of Housing and Urban Development, and other stakeholders to identify ways to improve the provision of housing to individuals who receive funding from that agency or department, consistent with the applicable requirements of state law.

    b) Comply with the core components of Housing First, other than defined components.

    c) Ensure that recovery housing programs meet the following requirements:

        i) A recovery housing program participant shall sign an agreement upon entry that outlines the roles and responsibilities of both the participant and the program administrator to ensure individuals are aware of actions that could result in removal from the recovery housing program. Violations of the agreement shall not automatically result in discharge from the recovery housing program.

        ii) Efforts to link program participants to alternative housing options, including interim sheltering, permanent housing, or transitional housing, shall be documented. If a recovery housing program participant chooses to stop living in a housing setting with a recovery focus, is discharged from the program, or is removed from housing, the

program administrator shall offer assistance in accessing other housing and services options, including options operated with harm-reduction principles, and identifying an alternative housing placement.

iii) The program administrator shall offer program participants who inform the program administrator that they are leaving the program one or more of the following:

(1) Tenant housing navigation services to permanent housing.

(2) Connections to alternative housing providers.

(3) Access to supportive services.

(4) Intake into a locally-coordinated entry system.

(5) Warm handoff to a partner homeless services provider offering housing navigation.

(6) The recovery housing program administrator shall track and report annually, to the program's state funding source, the housing outcome for each program participant who is discharged, including, but not limited to, the following information:

(a) The number of homeless individuals with a housing need served by the program funds that year, as well as the demographics of the population served.

(b) Outcome data for all individuals served through program funds, including the type of housing that the individuals were connected to, the type of housing the individuals were exited to, the percent of housing exits that were successful, and exit types of unsuccessful housing exits. (WIC, § 8256, subd. (c).)

5) States that BSCC shall make every effort to ensure that exits to homelessness are extremely rare. (WIC, § 8256, subd. (v)(1).)

6) Provides that CDCR shall make efforts to reduce recidivism by offering participation to formerly incarcerated persons in recovery housing programs. Connections to safe and supportive housing is a critical priority for successful community reintegration. (WIC, § 8256, subd. (v)(2).)

7) Establishes that beginning on January 1, 2023, a grantee or entity operating any of the following state homelessness programs, as a condition of receiving state funds, shall enter the required data elements on the individuals and families it serves into its local Homeless Management Information System, as required by the United States Department of Housing and Urban Development guidance, unless otherwise exempted by state or federal law. (WIC, § 8256, subd. (d)(1).)

8) Provides that BSCC ARG programs that fund recovery housing subject to this chapter shall apply the requirements prospectively beginning July 1, 2022, through any new contracts or agreements. (WIC, § 8256, subd. (e).)

9) States that HCD may make advance payments to eligible borrowers and grantees under any loan or grant programs for housing established pursuant to this part, if HCD makes all of the following determinations:

   a) The advance payments are necessary to meet the purposes of the housing program.

   b) The advance payments are necessary for the feasibility of the assisted housing.

   c) The use of the advanced funds is adequately regulated by so that the opportunity to accrue interest on the funds is not unnecessarily reduced. (Health & Saf. Code, § 50406.5.)

10) Establishes that HCD is the principal state department responsible for coordinating federal-state relationships in housing and community development. (Health & Saf. Code, § 50407.)

11) States that the Homeless Housing, Assistance, and Prevention program is hereby established for the purpose of providing jurisdictions with one-time grant funds to support regional coordination and expand or develop local capacity to address their immediate homelessness challenges informed by a best-practices framework focused on moving homeless individuals and families into permanent housing and supporting the efforts of those individuals and families to maintain their permanent housing. (Health & Saf. Code, § 50217, subd. (a).)

12) Provides that if the property is transitioned from an emergency shelter or transitional housing to permanent supportive housing, and serves people who are homeless or at risk of homelessness, the loan may also be deferred and forgiven, as if it had remained an emergency shelter or transitional housing. (Health & Saf. Code, § 50801.5, subd. (e)(1)(B).)

13) States that HCD shall determine requirements of the grant contract and shall contract directly with the grant recipient. HCD shall not delegate this function to the designated local boards. (Health & Saf. Code, § 50802.5, subd. (e).)

14) States that the designated local board shall regulate the performance of any grant contract within their region, subject to department oversight and requirements established by HCD. (Health & Saf. Code, § 50802.5, subd. (f).)

15) Establishes that subject to an appropriation in the annual Budget Act, HCD shall allocate funding to county child welfare agencies to help young adults who are 18 to 24 years of age, inclusive, secure and maintain housing, with priority given to young adults formerly in the state's foster care or probation systems. (Health & Saf. Code, § 50807, subd. (a).)

16) Requires funds available for rental assistance to consist of state rental assistance funds made available by HCD in accordance with this chapter and applicable federal law. (Health & Saf. Code, § 50897.1, subd. (a)(1).)

17) Provides that funding for the California Emergency Solutions Grants Program and the Federal Emergency Solutions Grants Program shall be made available upon appropriation to the department for the purpose of addressing the crisis of homelessness in California. (Health & Saf. Code, § 50899.4.)

18) States that special needs housing shall also mean housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Behavioral Health Services Fund. (Health & Saf. Code, § 51312, subd. (b).)

19) Establishes that on or before January 1 of each year, HCD shall report to the budget committees and public safety committees in both houses of the Legislature on the following information from the previous fiscal year's grants:

    a) The number of grants provided.

    b) The institutions receiving grants.

    c) A description of each program and level of funding provided, organized by institution.

    d) The start date of each program.

    e) Any feedback from inmates participating in the programs on the value of the programs.

    f) Any feedback from the program providers on their experience with each institution.

    g) The number of participants participating in each program.

    h) The number of participants completing each program.

    i) Waiting lists, if any, for each program. (Pen. Code, § 5027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "People on parole in California are 17 times more likely to experience homelessness than Californians overall, and individuals who have been incarcerated and are experiencing homelessness are seven times more likely to be re-arrested than those who are housed. Successful programs across the country have demonstrated that people with incarceration histories can become stably housed and avoid reoffending when they have access to longer term rental subsidies and the services they need to build a solid foundation for their lives. These successes rely on implementation of evidence-based practices administered by housing agencies.

    "Building on learnings from those programs, AB 1229 restructures the Adult Reentry Grant Program to become a more targeted program that provides longer term rental subsidies to individuals who need assistance the most and promotes alignment with state healthcare and behavioral health programs that prioritize the justice-involved reentry population, like the CalAIM Justice-Involved Reentry Initiative, CalAIM Enhanced Care Management, CalAIM Community Supports, BH-CONNECT, and the Behavioral Health Services Act. Thus, AB 1229 will use existing ARG funds more effectively, while also leveraging other programs the state is already funding, to reduce people's risk of reoffending."

2) **Effect of the Bill:** In 2018, SB 840 (Committee on Budget) funded the creation of a program at BSCC to provide competitive grant funds to community-based organizations to support people who were formerly incarcerated in prison through rental subsidies, rehabilitation of existing housing, and the warm hand-off of people transitioning from prison to communities.[1] This became known as the Adult Reentry Grant (ARG) program.

   A BSCC evaluation showed recidivism rates were 50% lower for those who received continued supportive services upon reentry and reduced rates of homelessness.[2] Data on the outcomes from one cohort of service participants (Cohort 2), which ended in February 2025, showed more than 7,500 participants enrolled with a 35% rate of employed improvement and 42.5% improved protective factors.[3] 31.1% of program participants were placed in housing.[4]

   In November of 2024, BSCC made $108 million available to community organizations to be divided evenly between Warm Handoff/Reentry Services and Rental Assistance.[5] This bill would shift that divide from 50/50 (Rental Assistance/Warm Handoff Services) to 70/30 in favor of rental assistance. This bill also would move ARG from BSCC to HCD and make changes to how the program is administered, including prerelease planning, to help ensure participants maintain permanent housing. This bill would additionally implement regional administrators to help manage the program's delivery of services. These changes could accelerate the improvements in housing formerly incarcerated individuals.

3) **Incarceration and Homelessness:** There were approximately 182,000 people experiencing homelessness on any given day in California in 2023.[6] Formerly incarcerated individuals are roughly ten times more likely to experience homeless relative to the general population.[7] People on parole are seven times more likely to recidivate when homeless than when housed.[8] According to one report, 83% of study participants who were incarcerated in state prison received no housing services upon discharge.[9]
   The same study found 19% entered homelessness from an institutional setting, such as prolonged jail and prison stays.[10] A larger proportion of participants had institutional stays in the six months prior to homelessness than those who entered directly from institutions,

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[1] *Adult Reentry Grant*, Board of State and Community Corrections <https://bscc.ca.gov/wp-content/uploads/SB-840-Adult-Reentry-Grant-Statute.pdf> [as of Apr. 15, 2025].
[2] *BSCC Releases Over $108 Million in Grant Funding to Support CBO Reentry Services* (Nov. 21, 2024) Board of State and Community Corrections <https://www.bscc.ca.gov/news/bscc-releases-over-108-million-in-grant-funding-to-support-cbo-reentry-services/> [as of Apr. 15, 2025].
[3] *ARG WHO Cohort 2 Participants & Outcomes* (Apr. 9, 2025) Board of State and Community Corrections <https://public.tableau.com/app/profile/kstevens/viz/ARGWHOCohort2ParticipantsOutcomesDashboard/AboutARGWHOCohort2> [as of Apr. 15, 2025].
[4] *Ibid.*
[5] *See supra*, at note 3.
[6] *Fact Sheet: Homelessness in California* (Jan. 2024) <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Homelessness%20in%20CA%202023%20Numbers%20-%201.2024.pdf> [as of Apr. 15, 2025].
[7] *See, supra,* at note 3.
[8] Wang, *Jailing the Homeless: New Data Shed Light on Unhoused People in Local Jails* (Feb. 11, 2025) Prison Policy Initiative <https://www.prisonpolicy.org/blog/2025/02/11/jail_unhoused_bookings/> [as of Apr. 15, 2025].
[9] *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* (June 2023) Benioff Homelessness and Housing Initiative <https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf> [as of Apr. 15, 2025].
[10] *Ibid.*

suggesting that some who became homeless had short housing stays between their institutional stay and homelessness.

This bill would require CDCR to establish a process for engaging an individual scheduled for discharge, within at least 210 days of their expected release date, for the purpose of assessing the individual's risk of homelessness upon discharge. The process would include basic questions about where an individual's plan to live after they leave incarceration. This process could help program administrators work effectively with soon to be formerly incarcerated individuals prevent reentry slides into homelessness.

4) **Duties of HCD:** HCD administers many of California's affordable housing and homelessness programs. HCD administered COVID rental assistance (Health and Safety Code, § 50897.1, subd. (a)(1)), the California Emergency Services Grant (ESG) program (Health and Safety Code, §§ 50899.1-50899.8), and Housing for a Healthy California (Health and Safety Code, §§ 50590-50598) – all programs that provided rental assistance to individuals at risk of or experiencing homelessness. By moving the ARG under the auspices of HCD, as this bill does, the ARG program could benefit from HCD's experience and expertise in administering rental assistance programs in California.

   The Governor recently proposed reorganizing the Business, Consumer Services, and Housing Agency (BCSH) by pulling programs that fund housing out of BCSH and moving them into a new Housing and Homelessness Agency.[11] According to the Governor's office, the new agency will "create a more integrated and effective administrative framework for addressing the state's housing and homelessness challenges."[12] This bill could align with the Governor's reorganization plan and trend towards shifting homelessness programs under HCD.

5) **The Regional Administrators:** This bill would place select regional administrators in the sequence of service delivery and rental assistance. Including another person in the sequence of delivery could result in increased experience and greater efficiency of service delivery, but there is also a possibility that adding an individual to this process could create unintentional bottlenecks and added layers of complexity in the delivery of funds and services.

   In one article, a political science professor at Johns Hopkins University lamented unnecessary complexity as one of the sources of our bureaucratic challenges.[13] Adding more people to the oversight of a system sometimes creates undesirable outcomes. One infamous example of this involved joint administration of the flood-protection system in New Orleans being a significant factor in the system's failure during Hurricane Katrina.[14] "Because administering programs through inter-governmental cooperation introduces pervasive coordination problems into even rather simple governmental functions, the odds are high that programs involving shared responsibility will suffer from sluggish administration, blame-

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[11] *Government Reorganization Plan* (2025) <https://lhc.ca.gov/wp-content/uploads/GRP2025Proposal.pdf> [as of Apr. 15, 2025].
[12] Luna, *4 Takeaways from Newsom's Budget Proposal* (Jan. 11, 2025) Los Angeles Times <https://www.latimes.com/california/story/2025-01-11/4-takeaways-from-newsoms-spending-plan-california> [as of Apr. 15, 2025].
[13] Teles, *Kludgeocracy in America* (2013) National Affairs <https://www.nationalaffairs.com/publications/detail/kludgeocracy-in-america> [as of Apr. 15, 2025].
[14] *Ibid.*

shifting, and unintended consequences."[15] Being mindful of the risks involved with simply adding layers to the delivery of services can be important to maintain the effective administration of government. As James Madison advised, "[i]n framing a government . . . the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[16]

Alternatively, the addition of regional administrators could improve efficiencies in the delivery of services by leveraging the administrators' experience in expertise in how these services operate on the ground. They presumably would have increased exposure and familiarity with the CBOs receiving the funding, which could help smooth the rougher edges of service delivery. Proper and efficient use of the experience the administrators would bring to their positions could also offset issues that may arise due the funding shifts in the bill directing more money towards rental assistance services. As this bill would not create a vast new bureaucratic agency or new network of individuals with unclear or poorly thought out job responsibilities, the risk seems relatively low that in this case the ARG program will experience added complexity leading to incoherence and inefficiencies in the administration of its services.

This bill proposes a relatively modest change in how services are delivered under the ARG program, so the risks of causing bottlenecks and inefficiencies are likely slim relative to the existing system.

6) **Argument in Support**: According to the *California Housing Partnership*, "As of November 2024, 15% of people on parole were unhoused, nearly all unsheltered. People formerly incarcerated in prison experiencing homelessness are seven times more likely to recidivate than people who are housed.

"AB 1229 (Schultz) will restructure the existing Adult Reentry Grant program (ARG), which currently receives ongoing funding to pay for rental assistance and warm hand-off reentry services to individuals who have exited state prison. Restructuring will implement four key changes:

- Moving the program from the Board of State and Community Corrections to the Housing and Community Development department (HCD) to take advantage of HCD's housing specialists who understand the intricacies of rental assistance, as well as HCD's reentry program.

- Investing a greater share of grant funds in rental subsidies to ensure a greater share of participants exit homelessness for good.

- Dedicating program resources to individuals who are at risk of or experiencing homelessness.

- Similar to other successful programs, holding regional administrators that are community or regionally-based organizations, counties, or continuums of care

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[15] *Ibid.*
[16] Madison, *The Federalist No. 51* (Feb. 6, 1788) National Archives <https://founders.archives.gov/documents/Hamilton/01-04-02-0199> [as of Apr. 15, 2025].

accountable for subcontracting with community-based organizations to offer a holistic approach to coordinate reentry services, Justice-Involved Reentry Initiative services, behavioral health care, and housing support services.

"With these changes, AB 1229 would allow roughly 1,200 individuals – about one-third of Californians currently on parole experiencing homelessness – to exit to housing and health stability and reduce their risk of recidivating. Restructuring ARG would enable the state to take a significant step in solving homelessness among formerly incarcerated people without the need for new funding."

7) **Related Legislation**:

a) SB 75 (Smallwood-Cuevas) would require the board to establish a Reentry Pilot Project in the Counties of Alameda, Los Angeles, and San Diego to provide workforce training and transitional support to formerly incarcerated individuals committed to careers in the skilled trades. SB 75 is set to be heard in the Senate Committee on Labor, Public Employment and Retirement.

b) AB 722 (Avila Farias) would establish the Reentry Housing and Workforce Development Program. AB 722 is set to be heard in the Assembly Housing and Community Development Committee.

8) **Prior Legislation**:

a) SB 1254 (Becker), Chapter 465, Statutes of 2024, requires partnership with the Department of Corrections and Rehabilitation and county jails to allow for preenrollment of otherwise eligible applicants for the CalFresh program to ensure that an applicant's benefits may begin as soon as possible upon reentry of the applicant into the community from the state prison or county jail.

b) SB 240 (Ochoa Bogh), Chapter 775, Statutes of 2023, authorizes a local agency or nonprofit affordable housing sponsor to be considered as a potential priority buyer of surplus state real property upon demonstration that the property is to be used by the agency or sponsor for housing for formerly incarcerated individuals.

c) AB 89 (Ting), Chapter 7, Statutes of 2020, appropriated $37 million to the Adult Re-entry Program to be divided evenly between rental assistance and warm handoff services.

d) SB 840 (Committee on Budget), Chapter 29, Statutes of 2018, established the ARG Program.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Brilliant Corners
California Catholic Conference
California Coalition for Women Prisoners

California Housing Partnership
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Corporation for Supportive Housing
Courage California
Disability Rights California
Eah Housing
Ella Baker Center for Human Rights
Essie Justice Group
Felony Murder Elimination Project
Housing California
Initiate Justice
Initiate Justice Action
Justice in Aging
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoner With Children
Local 148 LA County Public Defenders Union
National Alliance to End Homelessness
Path (people Assisting the Homeless)
Policylink
Restoring Hope California
Rubicon Programs
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute
The W. Haywood Burns Institute
Third Sector Capital Partners
Transitions Clinic Network
Uncommon Law
Vera Institute of Justice
Viet Voices
Western Center on Law & Poverty, INC.

Opposition

None submitted.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1376 (Bonta) – As Introduced February 21, 2025

PULLED BY THE AUTHOR.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1396 (Macedo) – As Introduced February 21, 2025

As Proposed to be Amended in Committee

SUMMARY: Increases the penalty for the crime of assault with intent to commit specified sex crimes when committed against a dependent person if committed by a caretaker or other adult who has care or custody of the dependent person, as defined. Specifically, **this bill**:

1) Increases, from 2, 4, or 6 years in state prison, to 5, 7, or 9 years in state prison, the punishment for assault with intent to commit rape, sodomy, oral copulation, or any violation of acting in concert with another person to commit rape or sexual penetration, lewd and lascivious act on a minor or a dependent person, or sexual penetration when committed against a dependent person by a caretaker or other adult who has care or custody of the dependent person and who knows or should have known that the victim is a dependent person..

2) Defines "dependent person" to mean a person, regardless of whether the person lives independently, who has a physical or mental impairment that substantially restricts their ability to carry out normal activities or to protect their rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. The term also includes a person who is admitted as an inpatient to a 24-hour health facility, as defined.

EXISTING LAW:

1) States, except as provided, any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of acting in concert with another person to commit rape or sexual penetration, lewd and lascivious acts on a minor or a dependent person, or sexual penetration shall be punished by imprisonment in the state prison for 2, 4, or 6 years. (Pen. Code, § 220, subd. (a).)

2) States, except as provided, that any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of acting in concert with another person to commit rape or sexual penetration, lewd and lascivious acts on a minor or a dependent person, or sexual penetration shall be punished by imprisonment in the state prison for 5, 7 or 9 years. (Pen. Code, § 220, subd. (b).)

3) Provides that any person who, in the commission of a burglary of the first degree, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of acting in concert with another person to commit rape or sexual penetration, lewd and lascivious acts on a minor or a dependent person, or sexual penetration shall be punished by imprisonment in the state prison for life with the possibility of parole. (Pen. Code, § 220, subd. (a).)

4) States that a person who willfully and lewdly commits any lewd or lascivious act upon or with the body or part of the party of a child who is under the age of 14, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 288, subd. (a).)

5) States that a person who commits a lewd and lascivious act on a child who is under 14 as described above but uses force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person with intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code, § 288, subd. (b)(1).)

6) States that a person who is a caretaker, as defined, and commits a lewd and lascivious act as described above upon a dependent person, as defined, by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the dependent person is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code, § 288, subd. (b)(2).)

7) Defines "dependent person" for purposes of the lewd and lascivious acts on a minor or dependent person statute to mean a person, regardless of whether the person lives independently, who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes a person who is admitted as an inpatient to a 24-hour health facility, as defined. (Pen. Code, § 288, subd. (f)(3).)

8) Defines "caretaker" for purposes of the lewd and lascivious acts on a minor or dependent person statute to mean an owner, operator, administrator, employee, independent contractor, agent, or volunteer of specified public or private facilities when the facilities provide care for elder or dependent persons, including, among other types of facilities, 24-hour health facilities, secondary schools and postsecondary educational institutions, community care facilities, board and care facilities, home health agencies, foster homes and private residences. (Pen. Code, § 288, subd. (f)(1)-(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Dependent individuals are defenseless against predators. It's our duty to protect them. Assembly Bill 1396 is an important step in the right direction in protecting dependent people – individuals with mental or physical disabilities, seniors with diminished capacity, and others who cannot defend themselves—who are particularly susceptible to sexual assault and other heinous crimes. This bill will make predators who harm the most vulnerable face the consequences."

2) **Assault with Intent to Commit Specified Crimes**: The crime of assault with intent to commit rape is an aggravated form of attempted rape. (*People v. Kimball* (1953) 122 Cal.App.2d 211, 264.) The crime requires an assault accompanied by the specific intent to commit the act of forcible rape. The intent must be to have intercourse against the victim's will. It is not enough to prove merely a purpose to have intercourse. (*People v. May* (1989) 213 Cal.App.3d 118, 128.)

   The law punishing this conduct was enacted in 1872 and was later amended several times to change the penalty from indeterminate sentence to a determinate sentence and to add eligible crimes. In 2006, the Legislature passed Sex Offender Punishment, Control, and Containment Act that, among other things, provided that the punishment for assaulting another person with intent to commit several specified sex acts while in the commission of a first degree burglary is imprisonment for life with the possibility of parole. (SB 1128 (Alquist) Ch. 337, Stats. 2006.) That same year, voters approved Proposition 83, known as Jessica's Law which, among other things also provided that punishment for assaulting another person with intent to commit several specified sex acts while in the commission of a first degree burglary is imprisonment for life with the possibility of parole. In 2010, the Legislature enacted the Chelsea King Child Predator Prevention Act which, among other things, made assault with intent to commit specified sex crimes on a person under 18 years of age punishable by imprisonment in state prison for 5, 7, or 9 years. (AB 1844 (Fletcher) Ch. 219, Stats. 2010.)

   The jury instructions for the crime of assault with intent to commit specified sex crimes requires the prosecution to prove the following elements (CALCRIM No. 890):

   a) The defendant did an act that by its nature would directly and probably result in the application of force to a person;

   b) The defendant did that act willfully;

   c) When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;

   d) When the defendant acted, (he/she) had the present ability to apply force to a person; and,

   e) When the defendant acted, (he/she) intended to commit (insert crime specified).

   This bill increases the punishment for assault with intent to commit specified sex crimes when committed on an adult dependent person, as defined, by a caretaker or other adult who has care or custody of the dependent person and who knows or should reasonably know that the victim is a dependent person, to match the punishment for the crime when committed against a minor.

3) **Longer Sentences' Impact on Recidivism and Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime.[1] According to the National

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[1] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [accessed Apr. 14, 2025].

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."[2] 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.[3]

4) **Argument in Support**: According to *California District Attorneys Association*, "As you are aware, the current law already takes into consideration the increased egregiousness of crimes committed against minors, ensuring that sexual assaults against minors are met with stricter penalties. However, the law does not similarly reflect the vulnerability of dependent adults, who, like minors, are often unable to fully protect themselves due to physical or mental limitations. Dependent adults, many of whom are elderly or living with disabilities, are just as vulnerable to exploitation and abuse as children, and their protection under the law should be equally prioritized. By giving the same penalties for sexual assaults against dependent adults as those for crimes committed against minors, this bill would ensure that individuals who commit such heinous acts against dependent adults face appropriate and significant consequences."

5) **Argument in Opposition**: According to *Smart Justice California*, "Existing law already imposes significant sentences for the crime of sexual assault, including sexual assault that occurs against dependent persons. Sexual assault is a felony that is punishable by 2, 4, or 6 years in state prison. Existing law also includes a wide range of additional charges and enhancements that can be applied to further increase punishment. For example, under Penal Code section 288(b)(2), a caretaker who committee lewd acts on a dependent person faces up to ten years in prison.

   "Current law already recognizes the harm of sexual assault against dependent persons and treats it with an appropriate level of seriousness. Increased penalties will not provide any additional public safety for dependent persons."

6) **Related Legislation**: None

7) **Prior Legislation**:

   a) AB 329 (Cervantes), of the 2017-2018 Legislative Session, would make it a felony for a person to willfully cause or permit any elder or dependent adult to suffer or inflict thereon unjustifiable physical pain or mental suffering and expand the definition of "dependent adult." AB 329 was never heard by committee.

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

b) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, among other things, increased the punishment for assault with intent to commit specified sex crimes on a person under 18 years of age.

c) SB 1128 (Alquist), Chapter 337, Statutes of 2006, among other things, provided that punishment for assaulting another person with intent to commit specified sex acts while in the commission of a first degree burglary is imprisonment for life with the possibility of parole.

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
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
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

Oppose

ACLU California Action
All of Us or None Los Angeles
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action

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-1396 (Macedo (A))

Mock-up based on Version Number 99 - Introduced 2/21/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 220 of the Penal Code is amended to read:

220. (a) (1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age~~, or a dependent person,~~ with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Except as provided in subdivision (b), any person who is a caretaker or other adult who has care or custody of a dependent person, who assaults that dependent person with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289, and who knows or should reasonably know that the victim is a dependent person, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

(c) For the purposes of subdivision (a), "dependent person" has the same meaning as in Section 288.

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
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1437 (Macedo) – As Introduced February 21, 2025

PULLED BY THE AUTHOR.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1483 (Haney) – As Amended March 24, 2025

As Proposed to be Amended in Committee

SUMMARY: Prohibits the detention, arrest, or incarceration of a person on supervised release for a technical violation without a revocation order, and eliminates the use of flash incarceration for technical violations of supervised release. Specifically, **this bill**:

1) Provides that a person shall not be detained, arrested, or incarcerated for a technical violation of supervision, unless the person on supervision has had their supervision revoked by a judge after a revocation petition has been filed.

2) Provides that there is a presumption against confinement for technical violations of supervision unless the court finds by a preponderance of the evidence that the defendant cannot be safely be diverted from confinement through less restrictive means.

3) Provides that if a person is accused of a technical violation of supervision, the person's supervision agent shall provide the person with a written summary and explanation of the facts related to the technical violations alleged against them.

4) Provides that a person who absconds while on supervision may be arrested and detained, but the person must have a recognizance hearing within 72 hours of being arrested.

5) Provides that, at the recognizance hearing, the court must consider all available evidence regarding the individual's employment, family, and community ties.

6) Provides that confinement pursuant to a revocation of supervision for a technical violation is limited to a maximum of 7 days for the first revocation, 15 days for the second revocation, and 30 days for the third revocation and any thereafter.

7) Requires a court, if a court imposes a sentence of confinement following a revocation, the basis of which is for one or more technical violations, to consider the employment status of the defendant.

8) Requires a court, whenever practicable, to allow the term of confinement for a technical violation to be served on weekends or other nonwork days for people on supervision who are employed.

9) Defines "supervision" as probation supervision, informal probation, mandatory supervision, postrelease community supervision (PRCS), or parole supervision, or any other kind of

supervision. "Supervision" does not include incarceration in a county jail or state prison.

10) Defines "technical violation" as any conduct that is a violation of a person's conditions of supervision that does not meet all of the elements of a new misdemeanor or felony.

11) Eliminates the authorization for the use of flash incarceration for technical violations of probation, PRCS, parole, and mandatory supervision.

EXISTING LAW:

Supervised Release

1) Defines "probation" as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. (Pen. Code, § 1203, subd. (a).)

2) Defines "conditional sentence" as the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. (Pen. Code, § 1203, subd. (a).)

3) Authorizes the court, or judge thereof, in the order granting probation, to suspend the imposition or the execution of the sentence and to direct that the suspension may continue for a period of time not exceeding two years, and upon those terms and conditions determined by the court. (Pen. Code, § 1203.1, subd. (a).)

4) Authorizes the court, or judge thereof, in the order granting probation and as a condition thereof, to imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)

5) Authorizes the court to impose and require any or all of the terms of imprisonment, fine, and conditions specified, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. (Pen. Code, § 1203.1, subd. (j).)

6) Requires the court, upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, to place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. (Pen. Code, § 1203.1, subd. (j).)

7) Provides that, unless court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence, as specified, shall suspend the execution of a concluding portion of the term for a period selected at the court's discretion, the suspended portion of which is known as mandatory supervision. (Pen. Code, § 1170,

subd. (h)(5)(A) & (B).)

8) Provides that, during the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

9) Provides that a person released from prison shall, upon release from prison and for a period up to three years immediately following release, be subject to PRCS by the county probation department in the county to which the person is released. (Pen. Code, § 3451, subd. (a).)

10) Requires PRCS to be implemented by the county probation department according to a postrelease strategy designated by each county's board of supervisors. (Pen. Code, § 3451, subd. (c)(1).)

11) Provides that persons convicted of the following crimes are not eligible for PRCS and are subject to parole supervision by the Department of Corrections and Rehabilitation (CDCR):

    a) A "serious" or "violent" felony, as defined;

    b) A crime for which the person suffered an increased sentence for having two or more prior "serious" or "violent" felony convictions, as specified;

    c) A crime for which the person is classified as a high-risk sex offender; or,

    d) A crime for which the person is required, as a condition of parole, to undergo treatment by the State Department of State Hospitals (DSH), as specified. (Pen. Code, § 3451, subd. (b)(1)-(5); Pen. Code, § 3000.8, subd. (a)(1)-(5).)

12) Provides that an incarcerated person sentenced to a determinate term shall be released on parole for a period of two years. (Pen. Code, § 3000.01, subd. (b)(1).)

13) Provides that an incarcerated person sentenced to an indeterminate term shall be released on parole for a period of three years. (Pen. Code, § 3000.01, subd. (b)(2).)

Revocation of Supervised Release

14) Provides that the period of mandatory supervision may not be earlier terminated, except by court order, and that any proceedings to revoke or modify mandatory supervision shall be the same as for probation. (Pen. Code, § 1170, subd. (h)(5)(B).)

15) Provides that, at any time during the period of supervision of a person released on probation under the care of a probation officer, released on conditional sentence or summary probation not under the care of a probation officer, placed on mandatory supervision, as specified, subject to revocation forks , or subject to revocation of parole supervision, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of the person's supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring them before the court or the court may, in its discretion, issue a

warrant for their rearrest. (Pen. Code, §§ 1203.2, subd. (a); 3000.08, subd. (c).)

16) Provides that, unless the person on probation is otherwise serving a period of flash incarceration, whenever a person on probation who is arrested, with or without a warrant or the filing of a petition for revocation, as specified, the court shall consider the release of a person on probation from custody. (Pen. Code, § 1203.2, subd. (a).)

17) Provides that, unless the supervised person is otherwise serving a period of flash incarceration, whenever any supervised person who is not on probation is arrested, with or without a warrant or the filing of a petition for revocation, as specified, the court may order the release of the supervised person from custody under any terms and conditions the court deems appropriate. (Pen. Code, § 1203.2, subd. (a).)

18) Authorizes the court, upon rearrest, or upon the issuance of a warrant for rearrest, to revoke the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of their supervision, or has subsequently committed other offenses, regardless of whether the person has been prosecuted for those offenses. (Pen. Code, § 1203.2, subd. (a).)

19) Prohibits the revocation of supervision solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. (Pen. Code, § 1203.2, subd. (a).)

20) Provides that, upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, the court may modify or revoke supervision of the person. (Pen. Code, § 1203.2, subd. (b)(1).)

21) Authorizes the court, upon any revocation and termination of probation, if the sentence has been suspended, to pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

22) All persons released by a court at or after the initial hearing and prior to a formal probation violation hearing, as specified, shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person's future appearance in court. (Pen. Code, § 1203.25, subd. (a).)

23) Prohibits the court from denying release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing, unless the person fails to comply with an order of the court, including an order to appear in court in the underlying case. (Pen. Code, § 1203.25, subd. (d).)

24) Prohibits the court from denying release for a person on probation for felony conduct before the court holds a formal probation revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable

protection of the public and reasonable assurance of the person's future appearance in court. (Pen. Code, § 1203.25, subd. (e).)

25) Provides that, if the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions are not appropriate, the supervising county agency shall petition the court to revoke, modify, or terminate PRCS . (Pen. Code, § 3455, subd. (a).)

26) Provides that, upon a finding that the person has violated the conditions of PRCS or parole, the revocation hearing officer or court has authority to do all of the following:

a) Return the person to PRCS or parole with modifications of conditions, if appropriate, including a period of incarceration in a county jail;

b) Revoke PRCS or parole and order the person to confinement in a county jail; or,

c) Refer the person to a reentry court, as specified, or other evidence-based program in the court's discretion. (Pen. Code, §§ 3455, subd. (a)(1)-(3); 3000.08, subd. (f)(1)-(3).)

Flash Incarceration for Violations of Supervised Release

27) Authorizes the use of flash incarceration for violations of conditions of probation, mandatory supervision, PRCS , and parole. (Pen. Code, §§ 1203.35, subd. (a)(1); 3000.8, subd. (d); 3454, subd. (b).)

28) Defines "flash incarceration" as a period of detention in a county jail due to a violation of an offender's conditions of probation, mandatory supervision, PRCS, or parole, ranging from between one and 10 consecutive days. (Pen. Code, §§ 1203.35, subd. (c); 3000.8, subd. (e); 3454, subd. (c).)

29) Provides that shorter, but if necessary more frequent, periods of detention for violations of an offender's conditions of probation or mandatory supervision shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer periods of detention. (Pen. Code, §§ 1203.35, subd. (c); 3000.8, subd. (e); 3454, subd. (c).)

30) In cases in which there are multiple violations of the terms of probation or mandatory supervision in a single incident, only one flash incarceration booking is authorized and may range between one and 10 consecutive days. (Pen. Code, § 1203.35, subd. (c).)

31) Provides that, in any case in which the court grants probation or imposes mandatory supervision, the county probation department is authorized to use flash incarceration for any violation of the conditions of probation or mandatory supervision if, at the time of granting probation, or ordering mandatory supervision or PRCS, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration. (Pen. Code, § 1203.35, subd. (a)(1); 3453, subd. (q).)

32) Requires each county probation department to develop a response matrix that establishes protocols for the imposition of graduated sanctions for violations of the conditions of

probation to determine appropriate interventions to include the use of flash incarceration. (Pen. Code, § 1203.35, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Technical violations are not new crimes. Instead they are minor infractions such as missing curfew because a bus was late, or having low battery on a GPS monitor. These violations are often beyond an individual's control. In California, people on parole, probation or post-release community supervision (PRCS) are frequently arrested and jailed for technical violations for up to 180 days, and they're sometimes jailed without the benefit of a lawyer or a fair hearing. AB 1483 matches California technical violations standards to other states like New York by ensuring that individuals aren't jailed for technical violations without a fair hearing and establishes that people aren't unnecessarily jailed for extended periods."

2) **Supervised Release:** There are four types of supervised release in California: probation, mandatory supervision, PRCS, and parole. Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Defendants convicted of misdemeanors and most felonies are eligible for probation in the discretion of the court. (Pen. Code, §§ 1203, 1203a.) A defendant granted "formal" probation is under the direction and supervision of a probation officer; a defendant granted "informal" probation is not supervised by a probation officer but instead reports to the court. (Pen. Code, §§ 1203, subd. (a).) "Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes habitation." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) The level of probation supervision general is linked to the level of risk the probationer presents to the community.

   Mandatory supervision is when the court suspends the execution of a concluding portion of a person's felony county jail sentence the remained of which is served in the community under the supervision of a county probation department. (Pen. Code, § 1170, subd. (h)(5)(A) & (B).) Generally, a term of mandatory supervision is treated similarly as a term of probation. (See e.g. Pen. Code, § 1170, subd. (h)(5)(B) [revocation]; *People v. Relkin* (2016) 6 Cal.5th 1188, 1193 [conditions of mandatory supervision].)

   Parole and PRCS apply only to person upon release from state prison upon completion of a determinate term or upon a finding by the Board of Parole Hearings that person sentenced to an indeterminate term is suitable for parole. (See Pen. Code, §§ 3041, subd. (b)(1), 3451, subd. (a).) Historically, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. 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, and affected parole supervision after release from custody. (See Pen. Code, § 17.5, subd. (a)(5).) Realignment shifted the supervision of some individuals released from prison from CDCR parole agents to local probation departments. Now, every person released from state prison is placed on PRCS except those whose terms were for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered

offenders; or who, while on parole, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a), (b) & (c), and 3451, subd. (a) & (b).)

Courts may impose any "reasonable" conditions necessary to secure justice and assist the rehabilitation of the probationer. Under existing law, a judge can impose a condition of probation that a defendant spend a certain amount of time in a residential mental health facility in conjunction with a jail sentence, or as an alternative to a jail sentence. In imposing probation conditions related to mental health, the court is not limited to ordering residential mental health treatment. The court can order outpatient mental health treatment, or other mental health directives the court finds appropriate. When a defendant is placed on probation the court retains jurisdiction over the case to ensure the defendant complies with probation. The court has the power to impose further punishment if the defendant violates the conditions of probation or commits further criminal acts.

3) **Revocation of Supervised Release**: All persons on supervised release are required to abide by reasonable conditions set by the court of supervising authority. Existing law provides that the court may impose any reasonable conditions of probation or mandatory supervision that the court determines are fitting and proper to fulfill the ends of justice, make amends to society, for any injury to a victim, and for rehabilitation of the offender. (Pen. Code, § 1203.1, subd. (j).) Courts have broad general discretion to fashion and impose additional conditions that are particularized to the defendants. (*People v. Smith* (2007) 152. Cal.App.4th 1245, 1249.) Terms need only be reasonably related to the offense. (*People v. Lent* (1975) 15 Cal.3d 481.) BPH can require any conditions of parole that it deems proper. (Pen. Code, § 3052.) CDCR and a supervising county agency determined by the county board of supervisors in the county to which a persons is released determine the conditions of release for a person on PRCS. (Pen. Code, §§ 3453, subd. (a), 3454 (b).) A person violates their release when they fail to comply with set-out terms and conditions, or if they commit a new crime.

Failure to comply with the terms and conditions of release may result in intermediate sanctions or revocation of supervised release. (See Pen. Code, § 1203.2.) Revocation of supervision is usually initiated by an arrest or a petition to revoke the supervision filed by a prosecutor or probation officer. (Pen. Code, §§ 1203.2, subd. (a), 3000.08, subd. (c), 3455, subd. (a); see Pen. Code, § 1170, subd. (h)(5)(B).) Existing law authorizes the court, upon rearrest, or upon the issuance of a warrant for rearrest, to revoke the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of their supervision, or has subsequently committed other offenses, regardless of whether the person has been prosecuted for those offenses. (Pen. Code, § 1203.2, subd. (a).) Generally, a court will preliminarily revoke supervision upon a finding of probable cause that a violation has occurred, pending a formal revocation hearing.

At the hearing, a court must find that the evidence demonstrates the alleged violation by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437.) However, a court is prohibited from revoking supervision solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. (Pen. Code, § 1203.2, subd. (a).) Upon a finding that the defendant violated supervised release, a court can restore supervision, restore and modify supervision with additional terms

or imprisonment, or terminate the supervision (and likely impose a term of imprisonment). (Pen. Code, §§ 1203.2, subd. (b), 3000.08, subd. (f)(1)-(3), 3455, subd. (a)(1)-(3).)

Existing law provides that, if probation or mandatory supervision is revoked, a court may pronounce judgment for any time within the longest period for which the person might have been sentenced, if the sentence has been suspended; or, if the judgement has been pronounced and the execution of the sentence has been suspended, revoke the suspension and order the judgment to be in full force and effect. (Pen. Code, § 1203.2, subd. (c).) Revocation of PRCS and parole can result in re-incarceration of the defendant for up to 180 days, typically in county jail. (Pen. Code, §§ 3056, subd. (a), 3455, subd. (d).)

4) **Effect of the Bill**: Existing law provides for the revocation of supervised release for any violation of the terms and conditions of release, authorizes the arrest and detention of persons for which probable cause exists that they violated those terms. This bill would prohibit the detention, arrest, or incarceration of a person on supervised release for a technical violation without a revocation order, unless the person absconds. It defines "technical violation" as any conduct that is a violation of a person's conditions of supervision that does not meet all of the elements of a new misdemeanor or felony. If supervised release is revoked, this bill provides for maximum terms of confinement of 7 days for the first revocation, 15 days for the second revocation, and 30 days for the third revocation and any thereafter. It provides for a presumption against confinement for technical violations of supervision unless the court finds by a preponderance of the evidence that the defendant cannot be safely diverted from confinement through less restrictive means.

It also requires a court, if a court imposes a sentence of confinement following a revocation, the basis of which is for one or more technical violations, to consider the employment status of the defendant; and requires a court, whenever practicable, to allow the term of confinement for a technical violation to be served on weekends or other nonwork days for people on supervision who are employed.

This bill does not limit existing authority to revoke, modify, or terminate supervised release for people found by a preponderance of the evidence to have committed a non-technical violation.

6) **Flash Incarceration**: Flash incarceration is an intermediate sanction for a violation of the terms and conditions of release. It is defined as a period of detention in a county jail due to a violation of an offender's conditions of parole, PRCS, probation, or mandatory supervision that may range between one and 10 consecutive days. (Pen. Code, §§ 3000.08, subd. (e), 1203.35, subd. (b), 3455, subd. (c).)

The Legislative Analyst's Office explained the context and reasoning behind flash incarceration as part of realignment:

> [T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more

effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings.[1]

The intent of intermediate sanctions, such as flash incarceration, is to hold offenders accountable for violating the conditions of supervision while creating shorter disruptions from work, home, or programming that often result from longer term revocations. After flash incarceration had been used successfully by probation departments on the PRCS population, SB 266 (Block), Chapter 706, Statutes of 2016, extended the use of flash incarceration to individuals granted probation or placed on mandatory supervision. At the time of its enactment, SB 266 drew opposition based on concerns that there would be a lack of due process afforded to individuals on probation or mandatory supervision with respect to the use of flash incarceration. Proponents of the bill argued that the sanction is less punitive than initiating a formal revocation proceeding which takes weeks or months, and during which time the probationer or supervisee is incarcerated in jail.

SB 266 sought to address the due process concerns in several ways. First, an offender has to agree to the use of flash incarceration as a condition of probation or mandatory supervision at the time probation is granted or mandatory supervision is ordered. Additionally, a defendant may refuse the imposition of flash incarceration at the time a condition of release is violated, and instead request a revocation hearing in front of a judge. Finally, SB 266 specifically stated that a refusal to sign a waiver cannot be used as a reason to deny probation.

The existing code section that authorizes the use of flash incarceration for individuals on probation or mandatory supervision sunsets on January 1, 2028. (Pen. Code, § 1203.35, subd. (d).) This bill would eliminate the flash incarceration for violations of probation, parole, PRCS, and mandatory supervision.

7) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "The Ella Baker Center for Human Rights supports AB 1483 because it will limit the use of incarceration for these non-criminal violations and require CDCR to adopt evidence-based, community-centered responses. This bill is a critical step toward ending the revolving door of incarceration, keeping people connected to their communities, and advancing true public safety rooted in care, not punishment.

"Put simply, a technical violation is any violation of probation or parole that is not a new criminal offense. AB 1483 defines a technical violation as any violation of a person's probation or parole conditions that does not meet the elements of a new misdemeanor or felony. Some common examples of technical violations include missing appointments, being late to curfew because a bus was late, or having low battery on one's GPS battery. 27,266 people on parole were incarcerated for technical violations in 2023, amounting to 72% of the entire parole population. Notably, this data does not include incarcerations for technical violations for people on probation, who likely amount to a significant number of incarcerations.

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[1] Legislative Analyst's Office, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders—An Update* (Feb. 22, 2012) <https://lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.aspx > at pp. 8-9. [last visited Apr. 15, 2025].

"People on supervision are routinely arrested and jailed for technical violations, without the benefit of a lawyer or a fair hearing. When there is probable cause that a technical violation has occurred, law enforcement can arrest someone on supervision and detain them in jail, without being appointed a lawyer, regardless of how minor the violation was. If a supervision authority has "good cause" that a technical violations has occurred, they can also jail the person on supervision through a "flash incarceration," which is a period of detention of up to 10 days in a county jail, imposed without the benefit of a lawyer or a hearing. If a supervision authority believes the violations are serious or habitual enough, the authority may, at its discretion, file a formal petition to revoke supervision. Once a revocation petition is filed, the person on supervision is appointed a public defender. After a revocation hearing before a judge, the judge may return the person to jail for a period of up to six months.

"AB 1483 would limit incarceration for non-criminal technical violations of probation and parole. In particular it would:

- Prohibit detention or incarceration for non-criminal technical violations of probation or parole unless someone has had their supervision revoked by a judge at a formal revocation hearing
- Require that parole agents attempt to resolve technical violations with supportive services in the community before filing for a revocation hearing
- Limit the amount of time someone can be incarcerated under a formal revocation for a technical violation to 0 days (first and second revocation); 7 days (third revocation); 15 days (fourth revocation); and 30 days (fifth revocation and any thereafter).
- Create a presumption against confinement for technical violations of supervision
- Require that a judge find that incarceration for the technical violation is necessary to protect public safety and no less restrictive means are feasible before sentencing someone to incarceration

"Importantly, this bill would not affect situations where someone is accused of a new crime.

"Incarcerations for technical violations harm people and their families—and impose significant direct and indirect costs on the state—without any public safety benefit. Rather than helping people address the underlying reason for a technical violation, which usually stems from inadequate resources, incarcerations for technical violations ensure that people remain entangled with the criminal legal system. Studies find that such incarcerations, regardless of how short, can cause someone to lose their job or their home; they prevent parents from caring for their children; and they impose enormous financial and emotional strain, increasing risk of recidivism.

"Technical violations also contribute to unnecessary jail and prison overcrowding at a time when prison and jail populations are projected to increase significantly due to Proposition 36. The estimated annual costs of incarcerating people in California prison (not jail) for technical violations is $149,210,102 for people on probation and $7,375,679 for people on parole. Importantly, this data does not include incarcerations for technical violations that result in jail, which likely account for the majority of incarcerations for technical violations. Therefore, this data is underinclusive.

"Furthermore, people of color are disproportionately incarcerated because of technical

violations, nationally and in California. In California, Black people are 6.7 times more like to be admitted to prison for a revocation than white people. Latine people are 2.1 times more likely to be admitted to prison for a parole revocation than white people. Therefore, reducing punishment for technical violations is likely to alleviate racial disparities in incarceration.

"Research shows that incarceration is no more effective than community-based alternatives at reducing recidivism, and rather, it can deepen illegal involvement for some people, inducing the negative behaviors it is intended to punish. A comprehensive meta-analysis found that, compared with community-based alternatives, incarceration either has no impact on reducing re-arrests or actually increases criminal behavior. Studies also show that technical violations do NOT correlate with future criminal behavior.

"Technical violations punish non-criminal conduct that harms no one. Needlessly incarcerating people for non-criminal conduct is not only unjust—it is bad public policy that leads to worse supervision and public safety outcomes."

8) **Argument in Opposition**: According to >

9) **Related Legislation**:

a) AB 946 (Bryan), would require, 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. AB 946 is scheduled for hearing today in this committee.

b) AB 1376 (Bonta), would provide that a ward may not remain on probation for a period that exceeds 6 months, except that a court may extend the probation period upon proof by a preponderance of the evidence that it is in the ward's best interest to extend probation for a period not to exceed 6 months. AB 1376 is schedule for hearing today in this committee.

c) SB 537 (Archuleta), would exclude a person sentenced to first- or second-degree murder with a maximum term of life imprisonment from the required 3-year parole period applicable to any person released from state prison on or after July 1, 2020. SB 537 is scheduled for hearing today in the Senate Public Safety Committee.

d) SB 759 (Archuleta), would require a county probation department to petition a court to revoke, modify, or terminate PRCS if a supervised person violates the terms of their release for a third time and has committed a new felony or misdemeanor. SB 759 is scheduled for hearing today in the Senate Public Safety Committee.

10) **Prior Legislation**:

a) AB 61 (Bryan), of the 2023-2024 Legislative Session, would have requires that a person must be taken before a court without unnecessary delay, and, at the most, within 48 hours of their arrest. AB 61 died in the Assembly Floor on the inactive file.

b) SB 1133 (Becker), of the 2023-2024 Legislative Session, would have specified that at an automatic bail review hearing, the court shall determine whether there remains clear and convincing evidence of a risk to public safety or the victim, or a risk of flight, and that no less restrictive alternative can reasonably protect against that risk. SB 1133 was vetoed by the Governor.

c) AB 1636 (Bonta), of the 2019-2020 Legislative Session, would have require the court, at the time a defendant appears for arraignment on a felony complaint, to make a determination as to whether there is probable cause for each felony charged in the complaint. AB 1636 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Alliance for Boys and Men of Color
Berkeley Underground Scholars
California Alliance for Youth and Community Justice
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Californians United for a Responsible Budget
Center for Employment Opportunities
Communities United for Restorative Youth Justice (CURYJ)
Community Interventions
Courage California
Ella Baker Center for Human Rights
Essie Justice Group
Fresh Lifelines for Youth
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
Milpa Collective
National Center for Youth Law (NCYL)
Reform Alliance
Rubicon Programs
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Sustainable Economies Law Center
The W. Haywood Burns Institute
Uncommon Law
Underground Scholars Initiative At the University of California, Irvine

Underground Scholars Initiative, University of California Los Angeles
Vera Institute of Justice

Oppose

Chief Probation Officers' of California (CPOC)

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

Amended Mock-up for 2025-2026 AB-1483 (Haney (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 17.5 of the Penal Code is amended to read:

17.5. (a) The Legislature finds and declares all of the following:

(1) The Legislature reaffirms its commitment to reducing recidivism among criminal offenders.

(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.

(3) Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.

(4) California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.

(6) Community-based corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for low-level offender populations. Each county's Local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders.

(7) Fiscal policy and correctional practices should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) "Community-based punishment" means correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Community-based punishment may be provided by local public safety entities directly or through community-based public or private correctional service providers, and include, but are not limited to, the following:

(A) Intensive community supervision.

(B) Home detention with electronic monitoring or GPS monitoring.

(C) Mandatory community service.

(D) Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation.

(E) Work, training, or education in a furlough program pursuant to Section 1208.

(F) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2.

(G) Day reporting.

(H) Mandatory residential or nonresidential substance abuse treatment programs.

(I) Mandatory random drug testing.

(J) Mother-infant care programs.

(K) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

(9) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

(b) The provisions of this act are not intended to alleviate state prison overcrowding.

SEC. 2. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court containing findings and recommendations, including recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in the report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires that person to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation report recommends that registration be ordered at sentencing pursuant to Section 290.006, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(D) The probation officer may also include in the report recommendations for both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report

shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires that person to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender pursuant to Section 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit the person to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases in which the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or the person's arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from

the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which that person has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which that person has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 287, 288, or 288.5, or of former Section 288a, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if that person committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or the person's arrest for the previous crime, the person was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 33215, a machinegun under Section 32625, or a silencer under Section 33410.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in subdivision (b) or (c) of Section 27590.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases in which the determination is applicable. The judge, in their discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court containing findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) A probationer shall not be released to enter another state unless the case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court in which a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report the findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

(l) A person who is granted probation is subject to search or seizure as part of their terms and conditions only by a probation officer or other peace officer.

SEC. 3. Section 1203.2 of the Penal Code is amended to read:

1203.2. (a) At any time during the period of supervision of a person (1) released on probation under the care of a probation officer pursuant to this chapter, (2) released on conditional sentence or summary probation not under the care of a probation officer, (3) placed on mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4) subject to revocation of postrelease community supervision pursuant to Section 3455, or (5) subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of the person's supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring them before the court, except as provided in Section 3057.5, or the court may, in its discretion, issue a warrant for their rearrest, except as provided in Section 3057.5. Whenever a person on probation who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court shall consider the release of a person on probation from custody in accordance with Section 1203.25. Notwithstanding Section 3056, whenever any supervised person who is subject to this section and who is not on probation is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court may order the release of the supervised person from custody under any terms and conditions the court deems appropriate. Upon rearrest, or upon the issuance of a warrant for rearrest, the court may revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of their supervision, or has subsequently committed other offenses, regardless of whether the person has been prosecuted for those offenses. However, the court shall not terminate parole pursuant to this section. Supervision shall not be revoked solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the running of the period of supervision.

(b) (1) Upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, the court may modify, revoke, or terminate supervision of the person pursuant to this subdivision, except that the court shall not terminate parole pursuant to this section. The court in the county in which the person is supervised has jurisdiction to hear the motion or petition, or for those on parole, either the court in the county of supervision or the court

in the county in which the alleged violation of supervision occurred. A person supervised on parole or postrelease community supervision pursuant to Section 3455 may not petition the court pursuant to this section for early release from supervision, and a petition under this section shall not be filed solely for the purpose of modifying parole. This section does not prohibit the court in the county in which the person is supervised or in which the alleged violation of supervision occurred from modifying a person's parole when acting on the court's own motion or a petition to revoke parole. The court shall give notice of its motion, and the probation or parole officer or the district attorney shall give notice of their petition to the supervised person, the supervised person's attorney of record, and the district attorney or the probation or parole officer, as the case may be. The supervised person shall give notice of their petition to the probation or parole officer and notice of any motion or petition shall be given to the district attorney in all cases. The court shall refer its motion or the petition to the probation or parole officer. After the receipt of a written report from the probation or parole officer, the court shall read and consider the report and either its motion or the petition and may modify, revoke, or terminate the supervision of the supervised person upon the grounds set forth in subdivision (a) if the interests of justice so require.

(2) The notice required by this subdivision may be given to the supervised person upon their first court appearance in the proceeding. Upon the agreement by the supervised person in writing to the specific terms of a modification or termination of a specific term of supervision, any requirement that the supervised person make a personal appearance in court for the purpose of a modification or termination shall be waived. Prior to the modification or termination and waiver of appearance, the supervised person shall be informed of their right to consult with counsel, and if indigent the right to secure court-appointed counsel. If the supervised person waives their right to counsel a written waiver shall be required. If the supervised person consults with counsel and thereafter agrees to a modification, revocation, or termination of the term of supervision and waiver of personal appearance, the agreement shall be signed by counsel showing approval for the modification or termination and waiver.

(c) Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. In either case, the person shall be delivered over to the proper officer to serve their sentence, less any credits herein provided for.

(d) In any case of revocation and termination of probation, including, but not limited to, cases in which the judgment has been pronounced and the execution thereof has been suspended, upon the revocation and termination, the court may, in lieu of any other sentence, commit the person to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities if the person is otherwise eligible for that commitment.

(e) If probation has been revoked before the judgment has been pronounced, the order revoking probation may be set aside for good cause upon motion made before pronouncement of judgment. If probation has been revoked after the judgment has been pronounced, the judgment and the order which revoked the probation may be set aside for good cause within 30 days after the court has

notice that the execution of the sentence has commenced. If an order setting aside the judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for that period and with those terms and conditions as it could have done immediately following conviction.

(f) As used in this section, the following definitions shall apply:

(1) "Court" means a judge, magistrate, or revocation hearing officer described in Section 71622.5 of the Government Code.

(2) "Probation officer" means a probation officer as described in Section 1203 or an officer of the agency designated by the board of supervisors of a county to implement postrelease community supervision pursuant to Section 3451.

(3) "Supervised person" means a person who satisfies any of the following:

(A) The person is released on probation subject to the supervision of a probation officer.

(B) The person is released on conditional sentence or summary probation not under the care of a probation officer.

(C) The person is subject to mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170.

(D) The person is subject to revocation of postrelease community supervision pursuant to Section 3455.

(E) The person is subject to revocation of parole pursuant to Section 3000.08.

(g) This section does not affect the authority of the supervising agency to impose intermediate sanctions to persons supervised on parole pursuant to Section 3000.8 or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3.

SEC. 4. Section 1203.35 of the Penal Code is repealed.

SEC. 5. Section 1231 of the Penal Code is amended to read:

1231. (a) Community corrections programs funded pursuant to this chapter shall identify and track specific outcome-based measures consistent with the goals of this act.

(b) The Judicial Council, in consultation with the Chief Probation Officers of California, shall specify and define minimum required outcome-based measures, which shall include, but not be limited to, all of the following:

(1) The percentage of persons subject to local supervision who are being supervised in accordance with evidence-based practices.

(2) The percentage of state moneys expended for programs that are evidence based, and a descriptive list of all programs that are evidence based.

(3) Specification of supervision policies, procedures, programs, and practices that were eliminated.

(4) The percentage of persons subject to local supervision who successfully complete the period of supervision.

(c) Each CPO receiving funding pursuant to Sections 1233 to 1233.6, inclusive, shall provide an annual written report to the Judicial Council, evaluating the effectiveness of the community corrections program, including, but not limited to, the data described in subdivision (b).

(d) The Judicial Council, shall, in consultation with the CPO of each county and the Department of Corrections and Rehabilitation, provide a quarterly statistical report to the Department of Finance including, but not limited to, the following statistical information for each county:

(1) The number of felony filings.

(2) The number of felony convictions.

(3) The number of felony convictions in which the defendant was sentenced to the state prison.

(4) The number of felony convictions in which the defendant was granted probation.

(5) The adult felon probation population.

(6) The number of adult felony probationers who had their probation terminated and revoked and were sent to state prison for that revocation.

(7) The number of adult felony probationers sent to state prison for a conviction of a new felony offense, including when probation was revoked or terminated.

(8) The number of adult felony probationers who had their probation revoked and were sent to county jail for that revocation.

(9) The number of adult felony probationers sent to county jail for a conviction of a new felony offense, including when probation was revoked or terminated.

(10) The number of felons placed on postrelease community supervision, commencing January 1, 2012.

(11) The number of felons placed on mandatory supervision, commencing January 1, 2012.

(12) The mandatory supervision population, commencing January 1, 2012.

(13) The postrelease community supervision population, commencing January 1, 2012.

(14) The number of felons on postrelease community supervision sentenced to state prison for a conviction of a new felony offense, commencing January 1, 2012.

(15) The number of felons on mandatory supervision sentenced to state prison for a conviction of a new felony offense, commencing January 1, 2012.

(16) The number of felons who had their postrelease community supervision revoked and were sent to county jail for that revocation, commencing January 1, 2012.

(17) The number of felons on postrelease community supervision sentenced to county jail for a conviction of a new felony offense, including when postrelease community supervision was revoked or terminated, commencing January 1, 2012.

(18) The number of felons who had their mandatory supervision revoked and were sentenced to county jail for that revocation, commencing January 1, 2012.

(19) The number of felons on mandatory supervision sentenced to county jail for a conviction of a new felony offense, including when mandatory supervision was revoked or terminated, commencing January 1, 2012.

SEC. 6. Section 3000.08 of the Penal Code is amended to read:

3000.08. (a) A person released from state prison prior to or on or after July 1, 2013, after serving a prison term, or whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes is subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released, resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime for which the person is classified as a high-risk sex offender.

(5) Any crime for which the person is required, as a condition of parole, to undergo treatment by the State Department of State Hospitals pursuant to Section 2962.

(b) Notwithstanding any other law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(c) At any time during the period of parole of a person subject to this section, if any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of their parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person and bring them before the court, except as provided in Section 3057.5, or the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section 1203.2, except as provided in Section 3057.5. Notwithstanding Section 3056, whenever a supervised person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (f), the court may order the release of the parolee from custody under any terms and conditions the court deems appropriate.

(d) Upon review of the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated their conditions of parole, the supervising parole agency may impose additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and intermediate sanctions for parole violations. This section does not preclude referrals to a reentry court pursuant to Section 3015.

(e) If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions are not appropriate, the supervising parole agency shall, pursuant to Section 1203.2, petition either the court in the county in which the parolee is being supervised or the court in the county in which the alleged violation of supervision occurred, to revoke parole. At any point during the process initiated pursuant to this section, a parolee may waive, in writing, their right to counsel, admit the parole violation, waive a court hearing, and accept the proposed parole modification or revocation. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of parole, the court shall have authority to do any of the following:

(1) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail, except as provided in Section 3057.5.

(2) Revoke parole and order the person to confinement in a county jail, except as provided in Section 3057.5.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(f) Confinement pursuant to paragraphs (1) and (2) of subdivision ~~(f) shall~~ **(e) shall not exceed a period of 180 days in a county jail,** ~~be~~ subject to the limitation in Section 3057.5.

(g) Notwithstanding any other law, if Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 applies to a person who is on parole and the court determines that the person has committed a violation of law or violated their conditions of parole, the person on parole shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.

(h) Notwithstanding subdivision (a), any of the following persons released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater:

(1) The person is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, and was subject to a period of parole exceeding three years at the time they committed a felony for which they were convicted and subsequently sentenced to state prison.

(2) The person was subject to parole for life pursuant to Section 3000.1 at the time of the commission of the offense that resulted in a conviction and state prison sentence.

(i) Parolees subject to this section who have a pending adjudication for a parole violation on July 1, 2013, are subject to the jurisdiction of the Board of Parole Hearings. Parole revocation proceedings conducted by the Board of Parole Hearings prior to July 1, 2013, if reopened on or after July 1, 2013, are subject to the jurisdiction of the Board of Parole Hearings.

(j) Except as described in subdivision (c), any person who is convicted of a felony that requires community supervision and who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision.

(k) Any person released to parole supervision pursuant to subdivision (a) shall, regardless of any subsequent determination that the person should have been released pursuant to subdivision (b), remain subject to subdivision (a) after having served 60 days under supervision pursuant to subdivision (a).

SEC. 7. Section 3056 of the Penal Code is amended to read:

3056. (a) Prisoners on parole shall remain under the supervision of the department but shall not be returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of Section 3000.09. A parolee awaiting a parole revocation hearing may be housed in a county jail while awaiting revocation proceedings, except as provided in Section 3057.5. If a parolee is housed in a county jail, they shall be housed in the county in which they were arrested or the county in which a petition to revoke parole has been filed or, if there is no county jail in that county, in the housing facility with which that county has contracted to house jail inmates. Additionally, except as

provided by subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a county jail **for a maximum of 180 days per revocation**, subject to the limitations in Section 3057.5. When housed in county facilities, parolees shall be under the sole legal custody and jurisdiction of local county facilities. A parolee shall remain under the sole legal custody and jurisdiction of the local county or local correctional administrator, even if placed in an alternative custody program in lieu of incarceration, including, but not limited to, work furlough and electronic home detention. When a parolee is under the legal custody and jurisdiction of a county facility awaiting parole revocation proceedings or upon revocation, the parolee shall not be under the parole supervision or jurisdiction of the department. Whenever a parolee who is subject to this section has been arrested, with or without a warrant or the filing of a petition for revocation with the court, the court may order the release of the parolee from custody under any terms and conditions the court deems appropriate. When released from the county facility or county alternative custody program following a period of custody for revocation of parole or because no violation of parole is found, the parolee shall be returned to the parole supervision of the department for the duration of parole.

(b) Inmates paroled pursuant to Section 3000.1 may be returned to prison following the revocation of parole by the Board of Parole Hearings until July 1, 2013, and thereafter by a court pursuant to Section 3000.08.

(c) Until July 1, 2021, a parolee who is subject to subdivision (a), but who is under 18 years of age, may be housed in a facility of the Division of Juvenile Justice, Department of Corrections and Rehabilitation.

SEC. 8. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c) and Section 3057.5.

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period that shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation, except as provided in Section 3057.5. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is

undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932, except as provided in Section 3057.5.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit shall be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of former Section 262, Section 264.1, subdivision (c) or (d) of Section 286, subdivision (c) or (d) of Section 287 or of former Section 288a, Section 288, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12022, 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, any provision listed in Section 16590, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

(e) Commencing October 1, 2011, this section shall only apply to inmates sentenced to a term of life imprisonment or parolees that on or before September 30, 2011, are pending a final adjudication of a parole revocation charge and subject to subdivision (c) of Section 3000.09.

SEC. 9. Section 3057.5 is added to the Penal Code, to read:

3057.5. (a) The Legislature finds and declares that incarcerating people for technical violations undermines rehabilitation and public safety and should only be employed where no less restrictive means are available.

(b) A person shall not be detained, arrested, or incarcerated for a technical violation of supervision, unless the person on supervision has had their supervision revoked by a judge after a revocation petition has been filed.

(c) There is a presumption against confinement for technical violations of supervision unless the court finds by a preponderance of the evidence that the defendant cannot be safely diverted from confinement through less restrictive means.

~~(c)~~ **(d)** If a person is accused of a technical violation of supervision, the person's supervision agent shall provide the person with a written summary and explanation of the facts related to the technical violations alleged against them.

~~(d) (1) If a person is accused of a technical violation of supervision, the person's supervision agent may mandate that the person on supervision appear in a supervision office to adjudicate the technical violation informally. This adjudication shall include a reasonable opportunity for the person on supervision to respond to the alleged violation. If the supervision agent determines that a preponderance of the evidence available establishes a violation, the agent may impose an intermediate sanction. Agents may also conduct this adjudication remotely, or in the community. This adjudication shall occur outside of the person on supervision's regular work hours.~~

~~(2) If a person commits a technical violation of supervision and a hearing is to occur for that violation, supervision agents may issue a summons for the person on supervision to appear in court for the hearing.~~

(e) A person who absconds while on supervision ~~or fails to appear at a hearing relating to their technical violation~~ may be arrested and detained. In such circumstances, the person must have a recognizance hearing within ~~48~~ **72** hours of being arrested. **At the recognizance hearing, the court shall consider all available evidence regarding the individual's employment, family, and community ties.**

(f) Confinement pursuant to a revocation of supervision for a technical violation ~~is not permitted for the first or second revocation, and it~~ is limited to a maximum of 7 days for the ~~third~~ **first** revocation, 15 days for the ~~fourth~~ **second** revocation, and 30 days for the ~~fifth~~ **third** revocation and any thereafter. ~~For purposes of this section, multiple technical violations stemming from the same continuous course of conduct shall not constitute separate technical violations.~~

~~(g) There is a presumption against confinement for technical violations of supervision. The court may impose a sentence of confinement upon revocation for a technical violation only if the court finds by a preponderance of the evidence that the defendant committed a technical violation that involves an identifiable threat to public safety and the defendant cannot be safely diverted from total confinement through less restrictive means~~.

~~(h)~~ **(g)** If a court imposes a sentence of confinement following a revocation, the basis of which is for one or more technical violations, the court shall consider the employment status of the

defendant. ~~There is a presumption that courts~~ **The court** shall**, whenever practicable,** allow the term of confinement for a technical violation to be served on weekends or other nonwork days for people on supervision who are employed~~., unless there is a preponderance of evidence that incarceration on days of employment is necessary to protect public safety.~~

~~(i)~~ **(h)** It is the intent of the Legislature that supervision agents respond to technical violations with supportive services and intermediate sanctions in the community, rather than a petition for revocation, except where supportive services and intermediate sanctions will be inadequate to prevent criminal activity.

~~(j)~~ **(i)** For the purposes of this section, the following terms have the following meanings:

(1) "Supervision" means probation supervision, informal probation, mandatory supervision, postrelease community supervision, or parole supervision, or any other kind of supervision. "Supervision" does not include incarceration in a county jail or state prison.

(2) "Technical violation" means any conduct that is a violation of a person's conditions of supervision that does not meet all of the elements of a new misdemeanor or felony.

SEC. 10. Section 3450 of the Penal Code is amended to read:

3450. (a) This act shall be known and may be cited as the Postrelease Community Supervision Act of 2011.

(b) The Legislature finds and declares all of the following:

(1) The Legislature reaffirms its commitment to reducing recidivism among criminal offenders.

(2) Despite the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average.

(3) Criminal justice policies that rely on the reincarceration of parolees for technical violations do not result in improved public safety.

(4) California must reinvest its criminal justice resources to support community corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies,

will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society.

(6) Community corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for offenders paroled from state prison. Each county's local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for persons subject to postrelease community supervision.

(7) Fiscal policy and correctional practices should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) "Community-based punishment" means evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Intermediate sanctions may be provided by local public safety entities directly or through public or private correctional service providers and include, but are not limited to, the following:

(A) Intensive community supervision.

(B) Home detention with electronic monitoring or GPS monitoring.

(C) Mandatory community service.

(D) Restorative justice programs, such as mandatory victim restitution and victim-offender reconciliation.

(E) Work, training, or education in a furlough program pursuant to Section 1208.

(F) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2.

(G) Day reporting.

(H) Mandatory residential or nonresidential substance abuse treatment programs.

(I) Mandatory random drug testing.

(J) Mother-infant care programs.

(K) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

(9) "Evidence-based practices" refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

SEC. 11. Section 3453 of the Penal Code is amended to read:

3453. Postrelease community supervision shall include the following conditions:

(a) The person shall be informed of the conditions of release.

(b) The person shall obey all laws.

(c) The person shall report to the supervising county agency within two working days of release from custody.

(d) The person shall follow the directives and instructions of the supervising county agency.

(e) The person shall report to the supervising county agency as directed by that agency.

(f) The person, and their residence and possessions, shall be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer.

(g) The person shall waive extradition if found outside the state.

(h) (1) The person shall inform the supervising county agency of the person's place of residence and shall notify the supervising county agency of any change in residence, or the establishment of a new residence if the person was previously transient, within five working days of the change.

(2) For purposes of this section, "residence" means one or more locations at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, a house, apartment building, motel, hotel, homeless shelter, and recreational or other vehicle. If the person has no residence, they shall inform the supervising county agency that they are transient.

(i) (1) The person shall inform the supervising county agency of the person's place of employment, education, or training. The person shall inform the supervising agency of any pending or anticipated change in employment, education, or training.

(2) If the person enters into new employment, they shall inform the supervising county agency of the new employment within three business days of that entry.

(j) The person shall immediately inform the supervising county agency if they are arrested or receive a citation.

(k) The person shall obtain the permission of the supervising county agency to travel more than 50 miles from the person's place of residence.

(l) The person shall obtain a travel pass from the supervising county agency before they may leave the county or state for more than two days.

(m) The person shall not be in the presence of a firearm or ammunition, or any item that appears to be a firearm or ammunition.

(n) The person shall not possess, use, or have access to any weapon listed in Section 16140, subdivision (c) of Section 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision (b) of Section 16460, Section 16470, subdivision (f) of Section 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310, 20410, 20510, 20610, 20611, 20710, 20910, 21110, 21310, 21810, 22210, 22215, 22410, 24310, 24410, 24510, 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415, 32420, 32425, 32430 32435, 32440, 32445, 32450, 32900, 33215, 33220, 33225, or 33600.

(o) (1) Except as provided in paragraph (2) and subdivision (p), the person shall not possess a knife with a blade longer than two inches.

(2) The person may possess a kitchen knife with a blade longer than two inches if the knife is used and kept only in the kitchen of the person's residence.

(p) The person may use a knife with a blade longer than two inches, if the use is required for that person's employment, the use has been approved in a document issued by the supervising county agency, and the person possesses the document of approval at all times and makes it available for inspection.

(q) The person shall participate in rehabilitation programming as recommended by the supervising county agency.

(r) The person shall be subject to arrest with or without a warrant by a peace officer employed by the supervising county agency or, at the direction of the supervising county agency, by any peace officer when there is probable cause to believe the person has violated the terms and conditions of release, except as provided in Section 3057.5.

(s) The person shall pay court-ordered restitution and restitution fines in the same manner as a person placed on probation.

SEC. 12. Section 3454 of the Penal Code is amended to read:

3454. (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015.

SEC. 13. Section 3455 of the Penal Code is amended to read:

3455. (a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, their right to counsel, admit the violation of their postrelease community supervision, waive a court hearing, and accept the proposed modification of their postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:

(1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.

(2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(b) (1) At any time during the period of postrelease community supervision, if a peace officer has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of their release, the officer may, without a warrant or other process, arrest the person and bring them before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451, except as provided in Section 3057.5. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.

(2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.

(3) Whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.

(c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending their first court appearance.

(d) Except as provided in Section 3057.5, confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.

(e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when their supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 14. Section 4019 of the Penal Code, as amended by Section 3 of Chapter 685 of the Statutes of 2023, is repealed.

SEC. 15. Section 4019 of the Penal Code, as amended by Section 4 of Chapter 685 of the Statutes of 2023, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to

the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility.

(9) When a prisoner participates in a treatment program pursuant to Section 1203.44.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1488 (Flora) – As Amended March 24, 2025

SUMMARY: Expands when lawful self-defense is permitted to include a party who reasonably perceives an imminent threat of bodily harm, and provides for the purpose of lawful self-defense, that a person does not have to wait until a physical attack has begun before taking reasonable defensive action, among other changes. Specifically, **this bill**:

1) Defines "imminent threat of bodily harm," for the purpose of when a person may lawfully resist a public offense, to mean an action that reasonably indicates a physical attack is about to occur, including, but not limited to, a deliberate feint, fake strike, or other aggressive movement intended to provoke a reaction or create fear of an immediate attack.

2) Provides that a party resisting an imminent threat of bodily harm, as defined, shall not be required to wait until a physical attack has begun before taking reasonable defensive action.

3) Provides that in determining whether a party has taken reasonable defensive action, the party's background, training, and professional fighting skills shall not be taken into account.

4) Specifies that lawful resistance may be made by the party about to be injured to prevent an offense against a member of their family.

5) Specifies that any resistance used by a party about to be injured, to prevent an offense, must be proportional to the reasonably perceived threat and shall cease when the threat is no longer present.

6) Provides that there shall not be any civil liability on the part of, and no cause of action shall accrue against, a person who lawfully resists a public offense, as specified, except this does not apply to a person who was the primary aggressor and subsequently suffers injury or to a person who used force that was not proportional to the reasonably perceived threat.

7) Expands when lawful resistance to the commission of a public offense may be made, to include a party who reasonably perceives an imminent threat of bodily harm.

EXISTING LAW:

1) Provides that any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a spouse, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest. (Civ. Code, § 50.)

2) Permits lawful resistance to the commission of a public offense to be made: 1) by the party about to be injured; and 2) by other parties. (Pen. Code, § 692.)

3) Provides that resistance sufficient to prevent the offense may be made by the party about to be injured:

   a) To prevent an offense against their person, or their family, or some member thereof.

   b) To prevent an illegal attempt by force to take or injure property in their lawful possession. (Pen. Code, § 693.)

4) Authorizes any other person, in aid or defense of the person about to be injured, to make resistance sufficient to prevent the offense. (Pen. Code, § 694.)

5) States that homicide is justifiable when committed by any person in any of the following cases:

   a) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person;

   b) When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein;

   c) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he or she was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

   d) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace. (Pen. Code, § 197)

6) Provides that any person using force intended or likely to cause death or great bodily injury within their residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry occurred. (Pen. Code, § 198.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's self-defense laws should protect individuals who act reasonably to prevent violence against themselves. Under current law, a person must wait until an attack is physically underway before they can legally defend

themselves, even when the threat is clear and imminent. AB 1488 modernizes our self-defense statutes to reflect real-world scenarios, ensuring that individuals are not forced to endure harm before acting. By providing clarity in the law and reinforcing protections against civil liability, this bill helps make Californians safer and ensures that our justice system treats self-defense cases fairly and equitably."

2) **Utilizing Non-Lethal Force in Self Defense:** This bill modifies the provisions of the Penal Code that authorize non-lethal lawful resistance (i.e. self-defense) against "the commission of a public defense." (Pen. Code, § 692.) The lawful resistance statute states that resistance sufficient to prevent the offense may be made by the person about to be injured, as well as other persons, in defense of the person about to be injured. (Pen. Code, § § 693, 694.) Resistance is authorized to prevent an offense against the person, their family member, or that person's lawfully possessed property. (Pen. Code, § 693.) Use of deadly force in self-defense is authorized elsewhere in the Penal Code, and is not addressed by this bill.

   This self-defense statute was adopted by the Legislature in 1872 and has not been substantively amended since. As such, the elements of self-defense has been extensively interpreted in case law. The standard to lawfully resist a public defense requires three elements: 1) the defendant reasonably believed that they or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully; 2) the defendant reasonably believed that the immediate use of force was necessary to defend against that danger; and 3) the defendant used no more force than was reasonably necessary to defend against that danger. (2 CALCRIM 3470 (2025); *People v. Moody* (1943) 62 Cal.App.2d; *People v. Myers* (1998) 61 Cal.App.4th 328, 335, 336; *People v. Sonier* (1952) 113 Cal. App. 2d 277, 278.)

   In terms of the reasonable fear requirement, this is an objective and subjective standard – meaning, that a person must: 1) actually believe that danger is present; and 1) a reasonably person would similarly believe that force is necessary to prevent harm. (*People v. Fisher* (1948) 86 Cal. App. 2d 24, 34; *People v. Cruz-Partida* (2022) 79 Cal. App. 5th 197, 212.) Determining whether there are enough facts to show that a reasonable person would fear danger depends on the circumstances of each case and should be left for the jury to determine. (*People v. Leslie* (1935) 9 Cal. App. 2d 177, 181.)

   In terms of the amount of force that can be used, a person may use all force and means which the person believes is necessary and which a reasonable person in similar circumstances would believe to be necessary to prevent an injury which appears to be imminent. (*People v. Walker* (1950) 99 Cal. App. 2d 238, 243–244.) For example, if an assailant assaults a person with their fist, without purpose to kill or cause great bodily harm, and the assault is not likely to produce harm, responsive deadly force is not justified. (*Ibid.*) Whether force used is excessive is generally a question of fact for the jury to decide. (*People v. Harris* (1971) 20 Cal. App. 3d 534, 537.)

   In terms of deadly force, a person may only use deadly force for the purposes of self-defense when resisting an attempt to commit a violent felony. (Pen. Code § 197; *People v. Ceballos* (1974) 12 Cal. 3d 470, 477–478.) A person is presumed to have a reasonable fear of imminent death or great bodily harm when using deadly force against an intruder who has unlawfully and forcibly entered a residence. (Pen. Code § 198.5; *see also People v. Brown* (1992) 6 Cal. App. 4th 1489, 1494–1499.)

Notably, under California law, a person who reasonably believes someone is about to inflict bodily injury upon them has no duty to retreat. (*People v. Hughes* (1951) 107 Cal. App. 2d 487, 493; *People v. Dawson* (1948) 88 Cal. App. 2d 85, 95). Further, they may defend themselves, even if they could have gained access to safety by fleeing. (*Ibid.*)

3) **Effect of this Bill:** AB 1488 makes several changes to California criminal non-lethal self-defense statute. These changes include: 1) authorizing a party who reasonably perceives an imminent threat of bodily harm to use defensive force; 2) defining "imminent threat of bodily harm," for the purpose of when a person may lawfully resist a public offense, to mean an action that reasonably indicates a physical attack is about to occur, including, but not limited to, a deliberate feint, fake strike, or other aggressive movement intended to provoke a reaction or create fear of an immediate attack; 3) stating that defensive force must be proportional to the reasonably perceived threat and shall cease when the threat is no longer present; 4) prohibiting a party's background, training, and professional fighting skills from being considered in determining if use of force was reasonable; and 5) stating that a person may take reasonable defensive action before a physical attack has begun.

   Additionally, AB 1488 proposes to eliminate any potential civil liability against a person who lawfully uses defensive force, unless that person was the primary aggressor and subsequently suffers injury or if that person who used disproportionate force.

4) **This Bill Lowers the Standard to Use Self Defense and Creates Inconsistencies in the Lawful Self Defense Legal Framework.** AB 1488 undermines longstanding principles of self-defense and casts uncertainty over when lawful self-defense is permitted.

   First, stating that a person "is not required to wait until a physical attack has begun before taking reasonable defensive action" undermines a core premise of lawful self-defense; a person must reasonably believe they are in *imminent* danger of harm before using force. Existing law limits aggressors from claiming self-defense. *See* (People v. Garnier (1950) 95 Cal. App. 2d 489, 496; People v. Steskal (2021) 11 Cal. 5th 332, 277.) Specifically, a person cannot use force against someone else purely because they believe that the person will cause them harm. "Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be." (2 CALCRIM 3470 (2025). Rather "a defendant must have believed there was []*imminent* danger of bodily injury…" (*Ibid.*) (emphasis added). In other words, it is not enough for a person to fear that danger will become imminent, rather, the danger that justifies the defensive force must actually be imminent. *(People v. Steskal* (2021) 11 Cal. 5th 332, 345; *People v. Lucas* (1958) 160 Cal. App. 2d 305, 310; *People v. Keys* (1944) 62 Cal. App. 2d 903, 916; *People v. Trujeque* (2015) 61 Cal. 4th 227, 256.) Expanding lawful self-defense to include persons who strike or punch first, may incentivize violent physical confrontations.

   Second, stating that lawful resistance can be used by a party "who reasonably perceives an imminent threat of bodily harm" is redundant and confusing. The first element of lawful self-defense requires that the defendant subjectively and objectively *believed* that they or someone else was in imminent danger of suffering bodily injury. *People v. Fisher* (1948) 86 Cal. App. 2d 24, 34; *People v. Cruz-Partida* (2022) 79 Cal. App. 5th 197, 212.) This bill would state that self-defense may be used if a person has a reasonable *perception* of harm, which creates uncertainty surrounding whether a person must still subjectively believe that

imminent harm will occur, as currently required in case law. Further, this bill replaces the standard of reasonable fear of imminent *bodily harm* with reasonable perception of a *threat* of harm. This arguably lowers the standard of when self-defense may be used by authorizing defensive force based on a person's perceived threat of harm, rather than their actual subjective fear of harm.

Third, stating that any resistance must be "proportional to the reasonably perceived threat" is unnecessary. Courts already require that self-defense must be proportional to the feared danger. Specifically, a person may use all force and means which the person believes is necessary and which a reasonable person in similar circumstances would believe to be necessary to prevent an injury which appears to be imminent. (*People v. Walker* (1950) 99 Cal. App. 2d 238, 243–244.) *See also People v. Hatchett* (1944) 63 Cal. App. 2d 144, 157–158 (finding the degree of resistance must not be "clearly disproportionate to the nature of the injury offered or given" or "clearly greater than was apparently necessary.") Phrased differently, the amount of appropriate force is based on the amount a person reasonably believes is necessary to prevent an imminent injury. (*People v. Walker* (1950) 99 Cal. App. 2d 238, 243–244.) Here, stating that any defensive force must be proportional to "the reasonably perceived threat" is redundant and risks muddling an otherwise clear standard.

5) **Removes Jury Discretion:** This bill also unnecessarily removes from the jury's purview potential facts that may inform whether a certain person's use of force was reasonable. For example, it is not necessary to define "imminent threat of bodily harm" as "an action that reasonably indicates a physical attack is about to occur, including, but not limited to, a deliberate feint, fake strike, or other aggressive movement intended to provoke a reaction or create fear of an immediate attack." The question of whether the type of harm a person imminently feared was such that they lawfully utilized self-defense is a highly fact-specific matter left for the jury to determine. (*People v. Leslie* (1935) 9 Cal. App. 2d 177, 181.) Identifying specific conduct, such as a fake strike, as sufficient to establish imminent harm, may authorize use of force irrespective of whether a reasonable person would have actually feared imminent bodily harm.

   Similarly, AB 1488 prohibits a jury from considering a "party's background, training, and professional fighting skills" when determining if a person used reasonable force. Information regarding a person's physical condition or background can inform whether their fear of harm and subsequent use of force was reasonable. The need to remove this type of information from a jury's purview is unclear.

6) **Non-Criminal Conduct May Result In Civil Liability**: AB 1488 provides that if a person lawfully uses force to resist a public defense that there shall not be any civil liability on the part of, and no cause of action against, that person, unless that person was the primary aggressor and subsequently suffers injury or to a person who used disproportionate force. For example – take a person who charged with battery of another person, but who ultimately was not convicted because they were found to have acted in self-defense. Under this bill, the injured party could not sue that defendant for civil damages. Notably, the standard to convict a person under criminal law is higher than the standard to find a person liable in civil court. In a criminal case against a person who claims self-defense the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense, or lawful defense of another. (2 CALCRIM 3470 (2025). In contrast, most civil causes of action utilize a preponderance of the evidence standard. Phrased differently, just because the

prosecution cannot prove beyond a reasonable doubt that the defendant's use of force was unlawful does not mean that other civil remedies, which may be available under the preponderance of evidence standard, should be precluded.

7) **Argument in Opposition**: According to *La Defensa*, "Self Defense laws, more commonly referred to as "Stand Your Ground" laws, are rooted in the common law principle of "castle doctrine" which states that individuals have the right to use reasonable force, including deadly force, to protect themselves against an intruder in their home. Eight states, including California, permit the use of deadly force in self-defense if a judge or jury finds that the use of force was in accordance with state law and the circumstances of the use of lethal force. Additionally, some states, including California, have lowered the standard for justifiable deadly force to a "presumption of reasonableness," or "presumption of fear.

"AB 1488 lowers standards further by expanding civil immunity protections for self-defense in almost all circumstances. It allows preemptive acts of self-defense when the other party indicates an "imminent threat of bodily harm" through actions including a deliberate feint, fake strike, or other aggressive movement intended to provoke a reaction or create fear of an immediate attack.

"Finally, the bill does not allow for the background, training, and professional fighting skills of those who exercise lethal force to be taken into consideration when determining whether a party has taken reasonable defensive action. This could include law enforcement personnel who are supposed to be trained to deescalate situations rather than using lethal force.

"Expanding laws to use deadly force threatens public health and safety by encouraging the use of violence and vigilante justice and leads to racially disparate criminal justice outcomes. "Stand Your Ground" laws dramatically escalate violence, leading to increased homicides and violent crime overall. In states with Stand Your Ground laws, the odds that a white-on-black homicide is ruled to have been justified is more than 11 times the odds a black-on-white shooting is ruled justified."

8) **Related Legislation**: AB 1333 (Zbur), would have made specified that homicide is not justifiable when a person was outside their habitation or property and did not retreat when they could have safely done so, when a person used more force than a reasonable person would to defend against a danger, and when the person was the initial aggressor. AB 1333 is pending in Assembly Public Safety Committee.

9) **Prior Legislation**:

   a) SB 1005 (Jackson), Chapter 50, Statutes of 2016, made technical, non-substantive changes to this section.

   b) Chapter 612, Section 12, of the 1873-1874 Legislative Session.

REGISTERED SUPPORT / OPPOSITION:

Support

1 private individual

Oppose

Californians for Safety and Justice (CSJ)
Felony Murder Elimination Project
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Smart Justice California, a Project of Tides Advocacy
Universidad Popular

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1489 (Bryan) – As Introduced February 21, 2025

SUMMARY: Requires a law enforcement agency that issues a firearm to have a policy prohibiting a peace officer from carrying a firearm issued by the agency on or off duty, if their blood alcohol concentration is greater than 0.0 percent; and defines "carry" as having direct physical control of, or be physically connected to a firearm, including, but not limited to, when it is in a holster and that hostler is affixed to an individual's person.

EXISTING LAW:

1) Requires, commencing January 1, 2020, the Commission on Peace Officer Standards and Training (POST) and each local law enforcement agency to conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act. (Pen. Code, § 13650.)

2) Allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person's employing agency, to purchase, possess, or transport any less lethal weapon or ammunition for any less lethal weapon, for official use in the discharge of the person's duties. (Pen. Code, § 19400.)

3) Allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person's employing agency, to purchase, possess, or transport firearms. (Pen. Code, §§ 830.3 - 831.6.)

4) Requires each law enforcement agency to maintain a policy that provides a minimum standard on the use of force which shall include comprehensive and specific guidelines regarding approved methods and devices available for the application of force. (Gov. Code, § 7286, subd. (b).)

5) Requires peace officer and custodial officers, as defined, who are permitted to carry firearms to satisfactorily complete the training course prescribed by POST prior to being assigned to perform their duties. (Pen. Code, §§ 830.3 - 831.6.)

6) States it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

   a) The person's use of cannabis off the job and away from the workplace.

b) This prohibition does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites.

c) An employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. (Gov. Code, § 12954, subd. (a)(1)(A)-(B).)

7) Prohibits discrimination based on a person's use of cannabis off the job and away from the workplace unless the employer is permitted to consider or inquire about that information, as specified. (Gov. Code, § 12954, subd. (c).)

8) States this prohibition does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in existing law. (Gov. Code, § 12954, subd. (d).)

9) Specifies if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined, or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions, as specified. (Gov. Code, § 12926, subd. (n).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There is no standardized and consistent policy prohibiting police officers from carrying agency-issued firearms while consuming alcohol, creating significant risks to public safety and law enforcement accountability. Los Angeles Police Department (LAPD) have only partially addressed the issue by lowering the legal blood-alcohol limit for armed officers from 0.08% to 0.04%. Unfortunately, this approach does not fully prevent firearm-related incidents, as seen in multiple cases where officers used their weapons while under the influence, leading to harmful consequences, internal investigations, and erosion of public trust.

   "AB 1489 addresses the absence of a standardized policy by mandating all law enforcement agencies to implement a policy prohibiting officers—on or off duty—from carrying their service firearms while consuming alcohol. By closing this dangerous loophole, the bill ensures that officers abide by clear, enforceable guidelines that protect both themselves and the communities they serve. National firearm safety organizations, including the NRA, emphasize that alcohol should never be used while handling weapons—yet police officers, entrusted with public safety, currently operate without a universal prohibition. AB 1489 will align law enforcement practices with fundamental firearm safety principles, preventing tragic, avoidable incidents and reinforcing trust and accountability between law enforcement and the public."

2) **Existing Policies**: Cities in California vary regarding whether an officer may consume alcohol while in possession of a firearm. San Francisco Police Department General Order 2.02 prohibits any officer from consuming alcohol, being impaired or being under the influence of alcohol while carrying any firearm. (See SFPD General Order 2.02.03, subd. (D).) The City of Los Angeles recently changed its policy regarding consumption of alcohol when handling firearms in 2023. LAPD Manual, section 610.93 states "Sworn personnel carrying or handling any firearm while off-duty shall not consume alcoholic beverages **to the extent in which it causes impairment**. In addition, sworn personnel shall not be impaired when carrying or handling any firearm. For the evaluation of impairment, only those personnel who exhibit objective symptoms of being under the influence of alcohol, or where there is a reasonable and articulable suspicion that the employee has consumed an alcoholic beverage shall be required to submit to testing."

   The Los Angeles County Sheriff's Department only prohibits consumption of alcohol while on duty, in uniform, or at a Department-sponsored or related event. (LASD Manual, 3-01/030.40 - Use of Alcohol). The City of Sacramento is similar to Los Angeles in that it prohibits carrying a firearm on or off duty when impaired due to being under the influence of alcohol, medication, or other substance. (See SPD General Order 210.04, General and Professional Conduct, subd. (H)(1)(e).)

   This bill would set a state standard that prohibits consumption of alcohol at all while carrying a firearm. A total of 15 states prohibit police officers or any other person from possessing a firearm in an establishment that serves alcohol.[1] However, most states do not prohibit law enforcement officers from consuming alcohol at all when carrying a firearm off duty.

3) **Law Enforcement Officers Safety Act of 2004:** When a police officer is off duty, it is likely, if they carry a firearm, they carry it in a concealed fashion, since they are not wearing their uniform. However, federal law allows qualified law enforcement to conceal carry in all fifty states. The FBI Law Enforcement Bulletin, acknowledged as much in 2011, in describing the Law Enforcement Officers Safety Act:[2]

> The Law Enforcement officers Safety Act of 2004 (LEOSA) allows officers to carry concealed weapons not only in their jurisdictions but in all 50 states, and the territories of the United States, provided certain conditions are met. (18 U.S.C. § 926 B and C.) On July 22, 2004, President George W. Bush signed into law H.R. 218, which created a general nationwide recognition that the public is better served by allowing law enforcement officers to carry their firearms outside of their jurisdictions whether they are on or off duty. The theory behind LEOSA was recognized among a number of states. That is, law enforcement officers retain their identity, training, experience, and dedication to the safety and welfare of the community regardless of whether they are on duty in their employer's jurisdiction, going home to another community, or merely

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[1] https://everytownresearch.org/rankings/law/no-guns-in-bars/
[2] https://leb.fbi.gov/articles/legal-digest/legal-digest-off-duty-officers-and-firearms

> traveling for leisure purposes. However, LEOSA creates a limited privilege to carry concealed weapons for law enforcement officers, not a right to bear arms.

LEOSA applies to qualified active duty and retired officers. Qualification under LEOSA requires employment by or retirement from a local, state, or federal law enforcement agency as someone charged with the ability to investigate, prosecute, and arrest people for violations of law.

If an agency has firearms proficiency standards, the officer must meet them to qualify to carry. The statute also prohibits carrying firearms when under the influence of alcohol or any intoxicating or hallucinatory substance. (See 18 U.S.C. § 926C(c)(6).) If a current or retired officer is prohibited by federal law from possessing a firearm, they are not qualified to carry one under this legislation. It also is important to note that if an officer is under a disciplinary action that may result in suspension or termination by their agency, they are not qualified to carry under the LEOSA. Qualified retired officers must have retired in good standing for reasons other than mental instability and served at least an aggregate of 15 years.

4) **Practical Considerations:** Prohibiting any law enforcement officer from consuming any alcohol while carrying a firearm may create employment and discipline issues in enforcement. If an employer learns an officer had anything to drink, the agency will have to take disciplinary action against them. Demonstrating an officer is impaired is difficult enough. It ordinarily involves seeing indicia of being of under the influence (bloodshot, watery eyes, slurred speech, unsteady gait, etc.) and asking the officer to submit to a medical exam for a blood draw or preliminary alcohol screening test. (See *Kraslawsky v. Upper Deck Co.* (1997) 56 Cal.App.4th 179, 186.) That may be difficult to enforce if an officer is off duty. Any officer that faces discipline is entitled to numerous procedural rights before discipline may be imposed. (See Gov. Code, § 3304.) Any violation of policy or law usually requires showing the violation occurred by a preponderance of evidence. (*Chamberlin v. Ventura County Civil Service Commission* (1977) 69 Cal.App.3d 362.) Demonstrating an officer drank anything off duty while carrying a firearm would be difficult to prove by a preponderance of the evidence unless there were witnesses willing to testify at an administrative hearing, some sort of video recording, or an admission of guilt. This may be difficult to demonstrate and would likely not involve significant discipline.

   Additionally, peace officers are not prohibited from using marijuana, so long as the officer's use of cannabis is off the job and away from the workplace. (Gov. Code, § 12954, subd. (a)(1-2).) Presumably, that includes when carrying a firearm off duty. So, this bill would prohibit use of any alcohol, but allow for use of marijuana. Furthermore, a law enforcement agency may not take an adverse action against an officer so long as the person is found to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. (*Ibid.*) It is possible that only a mere allegation of alcohol use off duty while an officer is carrying a firearm would result in proposed discipline. That seems to be fairly uneven standard.

   This bill makes sense from a safety point of view. Use of alcohol and firearms is clearly very dangerous. A study released by John Hopkins Bloomberg School of Public Health found that

just over thirty percent of victims and a similar number of perpetrators of homicide using a gun had been drinking heavily just before the fatal event.[3] The report also notes that one-fourth of those who died by suicide using a firearm had been drinking heavily before their death. Clearly, alcohol use combined with gun availability represents an avoidable safety threat. However, the practical implications may make it difficult to enforce.

5) **Argument in Support**: According to *Courage California*: "Police officers have a responsibility to protect the public while maintaining the highest standards of professionalism and safety. In California, there is no requirement that police departments prohibit officers from carrying their agency-issued firearms while consuming alcohol, whether on or off duty. Departments across the state take inconsistent approaches to regulating this practice. Predictably, firearms and alcohol make an incredibly dangerous combination, and that combination has led to preventable firearm-related incidents.

   "In 2019, the Los Angeles County Office of Inspector General created a report on the Safety of Firearms. The report cited some examples of law enforcement agencies with strict firearms policies, including the Albuquerque Police Department, which has a zero-tolerance policy when it comes to drinking while armed and applies to on and off-duty personnel. Additionally, in San Francisco, police officers cannot consume alcohol or be impaired while armed. In 2023, the Los Angeles Police Department (LAPD) lowered its blood-alcohol limit for armed officers from 0.08% to 0.04%. These piecemeal approaches have failed to prevent dangerous situations in which officers under the influence have used their firearms irresponsibly.

   "Mixing firearms and alcohol is a recipe for disaster, and police officers are not immune from those risks. And this risk is not simply theoretical. Across California, there have been far too many cases of police officers misusing their weapons while under the influence of alcohol, endangering themselves, civilians, and fellow officers."

6) **Argument in Opposition**: According to the *California Fraternal Order of Police*: "While well-intentioned in theory, AB 1489 overreaches and creates serious risks for both peace officers and the public they serve when confronted with reality. By imposing a zero-tolerance alcohol policy for officers carrying a firearm—on or off duty—the bill criminalizes personal behavior with no connection to misconduct or public safety concerns.

   "This bill would penalize officers performing undercover work, where carrying a firearm is often essential. A blood alcohol concentration (BAC) of just 0.01%—a single drink or less—could put an officer's career at risk under this proposal. Worse, it could discourage officers from carrying their firearm when off duty, potentially compromising public safety in moments when their intervention is urgently needed.

   "Under AB 1489, departments would bear the burden of monitoring, training, and disciplining officers over a policy that addresses no documented, widespread issue. Current laws and departmental policies already ensure accountability without overreaching into the work and personal lives of law enforcement professionals by mandating a zero-tolerance

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[3] https://publichealth.jhu.edu/sites/default/files/2023-05/2023-may-cgvs-alcohol-misuse-and-gun-violence.pdf

policy."

7) **Prior Legislation**:

a) AB 2188 (Quirk), Chapter 392, Statutes of 2022, makes it unlawful for an employer to discriminate against a person in hiring or any term or condition of employment, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace or an employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their urine, hair, or bodily fluids.

b) SB 700 (Bradford), Chapter 408, Statutes of 2023, made it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Prc Baker Places / Black Leadership Council
Prc/black Leadership Council
Rubicon Programs

Oppose

Association of Orange County Deputy Sheriffs
California Association of Highway Patrolmen
California Fraternal Order of Police
California Statewide Law Enforcement Association
Long Beach Police Officers Association
Sacramento County Deputy Sheriff's Association
Sheriff's Employee Benefits Association (SEBA)

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