California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, April 29, 2025
8:30 a.m. -- State Capitol, Room 126

Analysis Packet Part II
AB 433 (Krell) – AB 970(McKinnor)

Date of Hearing: April 29, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 433 (Krell) – As Introduced February 5, 2025

SUMMARY: Makes additional specified crimes ineligible for mental health diversion. Specifically, **this bill:** Excludes a person charged with any of the following from being considered by the court for mental health diversion:

1) Child abuse and endangerment;

2) Inflicting cruel or inhuman corporal punishment on a child resulting in injury;

3) Assault of a child under 8 years of age resulting in death;

4) Human trafficking; or,

5) Any crime that causes great bodily injury.

EXISTING LAW:

1) States that the purpose of mental health diversion is to promote the following:

    a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;

    b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and,

    c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)

2) Authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets the following eligibility and suitability requirements:

    a) The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a diagnosis by a qualified mental health expert within the last five

years;

b) The defendant's mental disorder was a significant factor in the commission of the charged offense, as provided;

c) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;

d) The defendant consents to diversion and waives their right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment due to the their mental incompetence and cannot consent to diversion or give a knowing and intelligent waiver of their right to a speedy trial;

e) The defendant agrees to comply with treatment as a condition of diversion; and,

f) The defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. In making this determination, the court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, violence and criminal history, the current charged offense, and any other factors that the court deems appropriate. (Pen. Code, § 1001.36, subds. (a)-(c).)

3) Contains a presumption that the defendant's mental disorder was a significant factor in the commission of the offense, which can be rebutted with clear and convincing evidence. (Pen. Code § 1001.36, subd. (b)(2).)

4) Excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, an offense requiring sex-offender registration (except for indecent exposure), or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (d).)

5) States that at any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)

6) Provides that the hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. (*Ibid.*)

7) Defines "pretrial diversion" for purposes of mental health diversion as the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to the following conditions:

a) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant;

b) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services;

c) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).)

8) States that an offense may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).)

9) States that if any of the following circumstances exists, the court shall, after proper notice, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant:

a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;

b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion;

c) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or,

d) A qualified mental health expert opines that:

i) The defendant is performing unsatisfactorily in the assigned program; or

ii) The defendant is gravely disabled, as defined. (Pen. Code, § 1001.36, subd. (g).)

10) Requires the court to dismiss the criminal charges if the defendant has performed satisfactorily in diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. (Pen. Code, § 1001.36, subd. (h).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking, child abuse, and spousal abuse resulting in great bodily injury are violent crimes that create long-lasting physical and emotional trauma on victims. The intent of pretrial mental health diversion was to create an alternative method to criminal adjudication. While there are certain cases where pretrial mental health diversion would be an appropriate alternative to criminal sentencing, this law fails to provide justice for victims who have been trafficked, abused as children, and individuals who have sustained great bodily injury. As applied to offenders who are dangerous and seek to continue to abuse their victims, this law creates a major public safety gap."

2) **Incarceration of Offenders with Mental Disorders**: Studies show that people with mental disorders are overrepresented in jails and prisons.[1] According to a 2019 study, more than 30% of the state's prison and 23 % of the jail populations have a mental illness.[2] Not only have the numbers of inmates with mental illness increased, the severity of psychiatric symptoms among inmates is also on the rise.[3] This population tends to serve longer sentences than the general population[4] and have a higher recidivism rate. Promoting treatment over incarceration has shown positive results in reducing recidivism:

> "To avoid incarceration, individuals with serious mental illness need to be diverted from the legal system and offered rehabilitative resources. The homeless comprise a significant share of individuals who come to the attention of law enforcement. A recent review revealed that lifetime arrest rates of homeless individuals with serious mental illness ranged from 62.9% to 90.0%, compared with approximately 15.0% in the general population. For this population, stable housing is a major issue. A recent randomized trial comparing housing first with assertive community treatment with treatment as usual demonstrated significantly decreased rates of arrest among those receiving assertive community treatment at 2 years. These results suggest that efforts to provide stable, affordable, and safe shelter for homeless individuals may lead to lower rates of involvement in the justice system...
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> When individuals with serious mental illness are brought to court attention, several models have demonstrated positive outcomes, including mental health courts, drug courts, and Veterans Treatment Courts. Although they serve different populations, the common goal of all these court formats is to address the causes of behavior that brought an offender to police attention. Mental health courts are becoming more common in different communities, each with slight variations; however, common features include a specialized court docket that emphasizes problem solving, community-based treatment plans that are designed and supervised by judicial and clinical staff, regular follow-up with incentives and sanctions related to treatment adherence, and clearly defined "graduation" criteria. A recent prospective study of 169 individuals showed

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[1] Seth J. Prins, *The Prevalence of Mental Illnesses in U.S. State Prisons: A Systemic Review* (Jul. 2015).
[2] Stanford Justice Advocacy Project, *Confronting California's Continuing Prison Crisis: The Prevalence And Severity Of Mental Illness Among California Prisoners On The Rise* https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf [accessed Feb. 26, 2025].)
[3] *Id.* at p. 2.
[4] *Id.* at p. 1.

that the likelihood of perpetrating violence during the following year was significantly lower among participants processed through a mental health court than among individuals in a matched comparison group who were processed through traditional courts (odds ratio, 0.39; 95% CI, 0.16-0.95; P = .04)."[5]

3) **Competency in Criminal Proceedings and Growing Incompetent to Stand Trial (IST) Population**: The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) In order to be competent to stand trial, "a defendant must have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her." (*People v. Oglesby* (2008) 158 Cal.App.4th 818, 827 citing *People v. Ramos* (2004) 34 Cal.4th 494, 507.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

If after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified.

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[5] Hirschtritt & Binder, Interrupting the Mental Illness–Incarceration-Recidivism Cycle (Feb. 21, 2017) 317 JAMA 695-696, fn. omitted.

(Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

California, similar to the rest of the nation, has seen a significant increase over the last decade in the number of individuals with serious mental illness who become justice-involved and deemed IST on felony charges. A 2017 study conducted by the National Association of State Mental Health Program Directors Research Institute found that from 1999 to 2014, the overall number of forensic patients in state hospitals increased by 74% while the number of IST patients increased by 72% during that same period.[6] Due to increasingly long waiting period to be admitted to the Department of State Hospitals (DSH) for treatment, in 2015, the American Civil Liberties Union sued DSH. (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (Id. at p. 737.) The Court ordered that DSH must begin substantive restoration services within 28 days of being placed on the list. (Id. at p. 730.) The court's order is being implemented in phases, with the original target date being set on February 27, 2024 to meet the 28 day standard.

However, on October 6, 2023, the court modified the interim benchmarks and final target date for compliance with the 28 day standard as follows: March 1, 2024 – provide substantive treatment services within 60 days; July 1, 2024 – within 45 days; November 1, 2024 – within 33 days; and March 1, 2025 – within 28 days.[7]

In 2021, the Legislature charged the California Health & Human Services Agency and the DSH to convene an IST Solutions Workgroup to identify actionable solutions that address this increasing population.[8] The IST Workgroup released a report in November 2021 that outlined system improvements and one of the changes discussed was mental health diversion[9]:

> By FY 2017-18, DSH recognized that the demand for IST treatment services was not going to be met by capacity created within the State Hospital system. At this time the department began working to establish treatment pathways in the community with the long-term goal of decreasing demand for State Hospital services by connecting more people with Serious Mental Illness into ongoing community care. The Budget Act of 2018 included funding for two major new programs to help DSH realize this vision.
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> The Budget Act of 2018 allocated $13.1million for DSH to contract with the Los Angeles County Office of Diversion and Reentry (ODR) for the first community-based restoration (CBR) program in the state. In this program, ODR subcontracts for housing and treatment services for IST patients in the community. Most IST patients in this program live in unlocked residential settings with wraparound treatment services provided on site. The original CBR program provided funding for 150 beds; investments in the LA program

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[6] Wik, A., Hollen, V., Fisher, W.H. (2017) Forensic Patients in State Psychiatric Hospitals: 1999-2016.
[7] See 24-25 Governor's Budget Estimate: Department of State Hospitals (Jan. 10, 2025), p. 2.
[8] AB 133 (Committee on Budget), Chapter 143, Statutes of 2021.
[9] *IST Solutions Workgroup Report of Recommended Solutions*, A report of recommended solutions presented to the California Health and Human Services Agency and the California Department of Finance in Accordance with Section 4147 of the Welfare and Institutions Code (Nov. 2021) pp. 17-18.

since 2018 has increased the program size to 515 beds. In addition, DSH has received funding to implement additional CBR programs across the state. The Budget Act of 2021 included ongoing funding to add an additional 252 CBR beds in counties outside of Los Angeles, bringing the total number of funded CBR beds to 767.

The Budget Act of 2018 also allocated DSH $100 million (one-time) to establish the DSH Felony Mental Health Diversion (Diversion) pilot program. Of this funding, $99.5 million was earmarked to send directly to counties that chose to contract with DSH to establish a pilot Diversion program (the remaining $500,000 was for program administration and data collection support at DSH). Assembly Bill 1810 (2018) established the legal (Penal Code (PC) 1001.35-1001.36) and programmatic (Welfare & Institutions Code (WIC) 4361) infrastructure to authorize general mental health diversion and the DSH-funded Diversion program. The original Diversion pilot program includes 24 counties who have committed to serving up to 820 individuals over the course of their three-year pilot programs.

The report noted that IST restoration of competency is not an adequate long-term treatment plan. The Workgroup looked at the 3-year post discharge recidivism rates using the Department of Justice's criminal offender record information data and found that recidivism rates are still high – about 70% rearrest post-discharge – which shows that whatever circumstances led to an individual's prior arrest have likely not changed and most IST patients are stuck looping through the criminal justice system and DSH.[10] The solutions identified by the report included expanding community-based treatment and diversion options for felony ISTs that will help end the cycle of criminalization by connecting patients to comprehensive behavioral health treatment.[11]

This bill would make people charged with child abuse and endangerment, inflicting cruel or inhuman corporal punishment on a child resulting in an injury, assault of a child under 8 years of age resulting in the death of the child, human trafficking, and any crime that causes great bodily injury ineligible for mental health diversion. As discussed above, mental health diversion is an alternative to an IST finding. Removing diversion as an option will likely result in more people proceeding with the IST process with the goal of restoration of competency. This will place more burdens on an already overburdened system that are currently under a court order to provide services within a shortened time frame in order to meet constitutional standards that has already been shown to not be a long-term solution for the individual or the community in addressing public safety.

4) **Mental Health Diversion**: Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

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[10] *Id.* at p. 11.
[11] *Id.* at p. 28.

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) in the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment; 4) the defendant must consent to diversion and waive the right to a speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subds. (b)-(c).) The law also states that a defendant is not eligible if they are charged with specified crimes, including murder, voluntary manslaughter, specified sex crimes and any crime requiring sex offender registration. (Pen. Code, § 1001.36, subd. (d).)

In 2022, the Legislature amended the mental health diversion law to, among other things restate that granting diversion is in the trial court's discretion in subdivision (a) (the original law provided the court's discretion in subdivision (h)) and to require the court to find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not.[12] The cited reason for this change was a recommendation from the Committee on the Revision of the Penal Code.[13] One of the Committee's recommendations, after staff's exhaustive research and receiving public testimony from expert witnesses including crime victims, law enforcement leaders, judges, and criminal defense experts and advocates, was to strengthen the mental health diversion law by increasing its use in appropriate cases, with include consideration of risk to public safety. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.[14]

In addition to the eligibility requirements of the defendant, mental health treatment program must meet the following requirements: 1) the court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant; 2) the defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources; 3) and the program must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).) The court has the discretion to select the specific program of diversion for the defendant. The county is not required to create a mental health program for the purposes of diversion, and even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must agree to receive the defendant for treatment. (Pen. Code, § 1001.36, subd. (f)(1)(A).)

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[12] SB 1223 (Becker), Ch. 735, Stats. 2022.
[13] The Committee on the Revision of the Penal Code was established within the Law Review Commission through SB 94, Ch. 25, Stats. 2019 to study the Penal Code and recommend statutory reforms.
[14] *Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf, p. 17 (accessed Apr. 9, 2025).

The diversion program cannot last more than two years for a felony and cannot last for more than a year on a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).) If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

The stated purpose of the diversion program is "to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (Pen. Code, § 1001.35, subd. (b).) The law states that courts have discretion to grant diversion if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements[15]:

> There may be times because of the defendant's circumstances, where the interests of justice do not support diversion of the case. The defendant's criminal or mental health history may reflect an unsuitability of the crime or the defendant for diversion. It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. (See § 1001.36, subd. (k) [the court may consider past performance on diversion in determining suitability].) The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (f)(1)(A)(ii)) [the court may consider interests of the community in selecting a program].) The court is not limited to excluding persons only because of the risk of committing a "super strike." (*Qualkinbush*, *supra*, 79 Cal.App.5th at pp. 888-889.) In exercising its discretion to grant or deny mental health diversion under subdivision (a), the court may consider any factor relevant to whether the defendant is suitable for diversion.4 (See *Qualkinbush*, *supra*, 79 Cal.App.5th at pp. 889-890.)

(J. Couzens, *Memorandum RE: Mental Health Diversion* (Penal Code §§ 1001.35-1001.36) (AB 1810 & SB 215) [revised] (May 2024), p. 4, fn. omitted.) While the court retains discretion to deny or grant diversion even where the defendant meets the threshold requirements for diversion (Pen. Code, § 1001.36, subd. (a)), this discretion must be exercised "consistent with the principles and purpose of the governing law." (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 892.)

In *Sarmiento*, the defendant requested mental health diversion after she was charged with attempted robbery. (*Id.* at p. 886.) Although the trial court found defendant met many of the requirements for diversion, it denied her request, finding her inability to remain drug free after prior treatment indicated she would not respond well to mental health treatment. (*Id.* at pp. 887, 890.) However, the undisputed evidence indicated the defendant never received any coordinated treatment for her two primary mental health diagnoses (PTSD and major depressive disorder from childhood sexual abuse), and the doctor's report submitted in support of her request for diversion made clear that defendant was unable to remain sober

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[15] J. Couzens, *Memorandum RE: Mental Health Diversion Under Penal Code Sections 1001.35-1001.36* [revised] (May 2024), p. 14.

because her underlying mental health conditions were never addressed. The prosecutor presented no evidence to the contrary. (*Id.* at pp. 887-889.) Thus, there was insufficient evidence to conclude defendant's symptoms would not respond to treatment. The evidence was also insufficient to support the trial court's finding that defendant's recommended treatment plan would not meet her "specialized mental health treatment needs" (§ 1001.36, subd. (f)(1)(A)(i)) because she had a history of receiving prior substance abuse treatment and then reoffending. The court found that this does not rationally support a conclusion that mental health treatment coupled with substance abuse treatment would not be sufficient, and the alleged failure of prior *drug* treatment plans says nothing about the adequacy of the current proposed treatment plan. (*Id.* at p. 893-895.)

The trial court in *Sarmiento* also relied on its discretion to find that the defendant posed an "unreasonable risk to public safety," although it recognized that the term was expressly defined in the statute to mean a likelihood that if the defendant is granted diversion, she will commit one of the enumerated "super strike" violent felonies. (*Id.* at 895.) The court did not make a finding of such a likelihood and instead relied purely on its discretion without any further analysis. (*Ibid.*) In defining the parameters of the court's discretion, the court held:

> [W]hile it is clear a trial court retains "residual" discretion to deny diversion even if all the threshold requirements are met, that does not mean, as the court suggested here, that it could reject a request for diversion based on an alternative meaning of "public safety" inconsistent with the specific statutory definition in section 1001.36, subdivision (c)(4). In the guise of exercising its "residual" discretion, a court is not permitted to redefine public safety in a manner inconsistent with the Legislature's expressed intent.

(*Id.* at p. 896.) Thus, when exercising its discretion to deny diversion, the court's conclusion that a defendant is not suitable for diversion must be supported by substantial evidence based on the individual facts of the case. If the facts do not support such a conclusion, the court's denial may be overturned under an abuse of discretion standard which is a deferential standard: "A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard, or bases its decision on express or implied factual findings that are not supported by substantial evidence." (*Id.* at pp. 901-901, citing *People v. Moine* (2021) 62 Cal.App.5th 440, 449.)

In other words, a court has discretion to deny diversion to a person even if person meets the threshold requirements of the statute, including being charged with a crime that is not otherwise statutorily excluded, however, the court's conclusion that a person is not suitable for diversion must not be arbitrary or capricious and must be supported by substantial evidence.

5) **Argument in Support**: According to *California State Sheriffs' Association*, the sponsor of this bill, "Existing law allows a court, when dealing with most crimes, to grant pretrial diversion to a defendant if the defendant has been diagnosed with a specified mental disorder and the defendant's mental disorder was a significant factor in the commission of the charged offense. Existing law provides that a person charged with murder or voluntary manslaughter, a registerable sex offense, rape, lewd or lascivious act on a child under 14 years of age, assault with intent to commit a sex crime, rape in concert, continuous sexual abuse of a child, or use of a weapon of mass destruction is statutorily ineligible for mental health diversion.

"Despite the existence of several types of diversion programs, mental health diversion was recently created to specifically address defendants with mental health disorders. We understand the desire to support treatment of the mentally ill, but this program allows defendants to escape culpability based on a wide array of behavioral health diagnoses and is too limited in the manner in which it excludes people accused of very serious and violent crimes, including child abuse and other offenses resulting in great bodily injury.

"With the current pretrial mental health diversion program, so long as a defendant completes the program, the charge never goes on their criminal record. In such a case, it will be as if the arrest and proceedings never happened and cannot be used to deny a person employment, benefits, licenses, or certificates (e.g., teaching certificate, etc.), with very limited exception. This can obviously have considerable consequences to public safety and accountability, especially considering the broad spectrum of offenses that do not disqualify a defendant from seeking mental health diversion."

6) **Argument in Opposition**: According to *Smart Justice*, "Under the current mental health diversion law, a court can only grant diversion if the accused person has been diagnosed with a mental disorder, that mental disorder was a significant factor in the commission of the charged offense, a treatment program is available, and the individual can be safely treated in the community. Before issuing such an order, courts are required to consider public safety, as well as the opinions of qualified mental health experts, in order to determine if a diversion grant is appropriate.

"AB 443 seeks to limit the discretion of judges to apply mental health diversion to candidates that are currently eligible. Current law never requires courts to grant diversion, it merely gives the court the ability, where appropriate, to use its informed discretion to divert mentally disordered people out of the criminal system and into the mental health treatment system.

"Mental Health Diversion has been extremely successful, reducing recidivism rates, lowering transfer rates to state hospitals, reconnecting families, and providing patients with the long-term support they need to restart their lives. Placing mentally ill people into treatment improves public safety for all. Sending mentally ill people to jail or prison leads to decompensation and re-offending, and creates additional challenges within the facility."

7) **Related Legislation**:

   a) AB 46 (Nguyen), would make various changes to the Mental Health Diversion program including requiring a defendant to have been diagnosed with a mental health disorder within the prior 15 years in order for the presumption to apply that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense. AB 46 is pending hearing by this Committee.

   b) SB 483 (Stern), would add another suitability factor for granting mental health diversion, requiring the court be satisfied that the recommended mental health treatment program is consistent with the purpose of diversion and will meet the defendant's specialized treatment needs. SB 483 is pending hearing in Senate Appropriations Committee.

8) **Prior Legislation**:

a) AB 1412 (Hart), Chapter 687, Statutes of 2023, removed borderline personality disorder as an exclusion for mental health diversion.

b) AB 1323 (Menjivar), Chapter 646, Statutes of 2024, require a court to determine whether the restoration of the defendant's mental competence is in the interests of justice, and if it finds that it is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant.

c) AB 455 (Quirk-Silva), Chapter 236, Statutes of 2023, authorizes the prosecution to request an order from the court to prohibit a defendant subject to pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion or their firearm rights are restored.

d) SB 1223 (Becker), Chapter 735, Statutes of 2022, added a presumption for purposes of mental health diversion eligibility that the defendant's mental disorder was a significant factor in the commission of the offense which could be overcome by clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.

e) SB 666 (Stone), of the 2019-202 Legislative Session, would have added offenses which would preclude an individual from being eligible for mental health diversion. SB 666 was held in the Senate Public Safety Committee.

f) SB 215 (Beall), Chapter 1005, Statutes of 2018, specified ineligible offenses for mental health diversion and required the court to determine whether restitution is owed to any victim of the diverted offense.

g) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, created mental health diversion in statute and specified that when a defendant is determined to be IST, the court can find that they are an appropriate candidate for mental health diversion.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs (ALADS)
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Peace Officers Association
California Police Chiefs Association
California Reserve Peace Officers Association

Chief Probation Officers' of California (CPOC)
Child Abuse Prevention Center and its Affiliates Safe Kids California, Prevent Child Abuse California and the California Family Resource Association; the
Claremont 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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Probation Association
Sacramento County Sheriff Jim Cooper
San Diego County District Attorney's Office
Santa Ana Police Officers Association

Oppose

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
County Behavioral Health Directors Association (CBHDA)
Ella Baker Center for Human Rights
Fair Chance Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Universidad Popular
Vera Institute of Justice

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

Date of Hearing: April 29, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 461 (Ahrens) – As Amended March 24, 2025

SUMMARY: Repeals the criminal offense for parents who fail to reasonably supervise and encourage pupil school attendance resulting in chronic truancy and revises the requirement for school attendance for children in an assistance unit (AU) in California Work Opportunity and Responsibility to Kids (CalWORKs). Specifically, **this bill**:

1) Repeals the criminal offense that makes a parent or guardian of a pupil of 6 years of age or more who is in kindergarten or any of grades 1 to 8, inclusive, and subject to compulsory full-time or continuing education, whose child is a chronic truant, as defined, who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered support services to address the pupil's truancy, guilty of a misdemeanor punishable by a fine of up to $2,000 or imprisonment in county jail for up to one year, or both that fine and imprisonment.

2) Repeals, starting July 1, 2026, the requirement under CalWORKs for a child in an AU to attend school and the prohibition against considering the needs of a child in an AU who is 16 years of age or older who did not attend school, thereby allowing the needs of that child to be considered in computing the monthly family grant.

3) Provides, commencing July 1, 2026 or the date when the Department of Social Services notifies the Legislature that the Statewide Automated Welfare System can perform the necessary automation to implement this section, whichever is later, if a county human services agency is informed that any child in the AU is not attending school as required by the Compulsory Education Law, both of the following shall apply:

    a) The county human services agency shall screen the family to determine eligibility for family stabilization services and in accordance with county policy and procedures;

    b) The child, if they are 16 years of age or older, may voluntarily participate in the welfare-to-work program. A child who participates in that program pursuant to this paragraph shall be eligible to participate in all welfare-to-work activities available to an adult participant, including, but not limited to, substance abuse services, mental health services, vocational education, or job readiness activities, as long as activities support, but do not interfere with, the child's compliance with the Compulsory Education Law or attendance or progress in school, and that all welfare-to-work activities support the goal of the child completing their secondary education, or its equivalent.

4) States that a child who is not attending school as required by the Compulsory Education Law shall remain eligible for services that may lead to attendance in school.

EXISTING LAW:

1) Establish that each person between the ages of 6 and 18 years unless exempt is subject to compulsory full-time education. (Ed. Code, § 48200.)

2) Defines a "truant" as any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse, as specified, on three occasions in one school year, or any combination thereof. (Ed. Code, § 48260.)

3) Defines "chronic truant" as any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for 10% or more of the schooldays in one school year, as specified. (Ed. Code, § 48263.6.)

4) Establishes a process for notifying a pupil's parent of the pupil's truancy and provides that, upon the fourth truancy report, a pupil shall be within the jurisdiction of the juvenile court, which may adjudge the pupil to be a ward of the court. (Ed. Code, §§ 48260.5, 48264.5.)

5) States that any parent, guardian, or other person having control or charge of any pupil who fails to comply with this chapter, unless excused or exempted therefrom, is guilty of an infraction and shall be punished as follows:

   a) Upon a first conviction, by a fine of not more than $100;

   b) Upon a second conviction, by a fine of not more than $250;

   c) Upon a third or subsequent conviction, if the person has willfully refused to comply with this section, by a fine of not more than $500. In lieu of imposing the fines prescribed, the court may order the person to be placed in a parent education and counseling program. (Ed. Code, § 48293, subd. (a).)

6) Provides that a parent or guardian of a pupil six years of age or older and in kindergarten or any of grades 1 through 8, whose child is a chronic truant, and who has failed to reasonably supervise and encourage the pupil's school attendance, is guilty of a misdemeanor punishable by a fine not exceeding $2,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 270.1.)

7) States that every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to (become a dependent or delinquent ward of the juvenile court[1]) or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the (jurisdiction of the dependency or delinquency court, as specified), is guilty of a

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[1] Specifically, come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions **Code.**

misdemeanor and shall be punished by a fine not exceeding $2,500, or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years. (Pen. Code, § 272.)

8) Provides that for purposes of the above, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable case, supervision, protection, and control over their minor child. (*Ibid.*)

9) Requires any individual who is required to participate in welfare-to-work activities to enter into a written welfare-to-work plan with the county welfare department after assessment, but no more than 90 days after the date that a recipient's eligibility for aid is determined or the date the recipient is required to participate in welfare-to-work activities. (Welf. & Inst. Code, § 11325.21.)

10) Establishes qualifying welfare-to-work activities to include employment, on-the-job training, community service, adult basic education, and other specified activities, and requires a specified number of weekly hours of welfare-to-work participation to remain eligible for aid. (Welf. & Inst. Code, § 11322.6.)

11) Provides that a recipient is eligible to participate in family stabilization if the county determines that the recipient's family is experiencing an identified situation or crisis that is destabilizing the family and would interfere with participation in welfare-to-work activities and services. A situation or a crisis that is destabilizing the family may include, but shall not be limited to:

    a) Homelessness or imminent risk of homelessness.

    b) A lack of safety due to domestic violence.

    c) Untreated or undertreated behavioral needs, including mental health or substance abuse-related needs. (Welf. & Inst. Code, § 11325.24.)

12) Requires all children in a CalWORKs AU for whom school attendance is compulsory to be required to attend school, as specified. (Welf. & Inst. Code, § 11253.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Criminalizing parents for their children's truancy ignores the root causes of absenteeism and only deepens family hardships, especially as many immigrant families now fear sending their children to school. AB 461 ensures support and resources to keep students in school and on track for success."

2) **Compulsory Education**: In California, education is mandatory for children between 6 and 18 years of age unless exempt for limited reasons. (Ed. Code, § 48200.) California enforces this by holding families who receive CalWORKs benefits accountable by withholding aid amount and makes it a misdemeanor punishable by imprisonment of up to one year in county

jail or a fine of up to $2,000 for a parent or guardian whose child is a chronic truant and who has failed to reasonably supervise and encourage the pupil's school attendance.

In recent years, there has been an effort to take more of a carrot approach rather than a stick approach. For example, SB 691 (Portantino), Chapter 863, Statutes of 2024, revised truancy notices to include language explaining the importance of attendance and notifying the family of possible services available, including school personnel availability and mental health services, rather than a threatening approach notifying them that they may be prosecuted.

3) **Truancy**: The existing criminal liability on parents of truant children was enacted in 2010 by SB 1317 (Leno) which was sponsored by then-San Francisco District Attorney Kamala Harris.[2]

> In San Francisco, where she was the district attorney from 2004 to 2010, [Harris] implemented a truancy initiative that introduced the threat of prosecution of parents and guardians when children habitually missed school. That initiative became the model for a 2010 state law that Harris sponsored which adopted strict penalties for parents of truant students: a fine not to exceed $2,000, jail time not to exceed one year, or both.
>
> The penalties could be applied if a student was habitually truant, meaning they missed 10% or more of the school year and only after parents had been offered a range of support services to address the student's truancy. Truancy courts were created where the penalties could be deferred so long as the students begin attending school. While attorney general from 2011 to 2017, her office created an on-line truancy hub with truancy reports from 2013 to 2016.
>
> The first arrests under the law were in 2011 of five parents in Orange County. The arrest option has since become controversial as districts focus first on how to solve the problems leading to truancy.

In 2013, the Department of Justice (DOJ) released a report on truancy in California detailing the legal framework for prosecution and relevant statistics[3]:

> California law provides district attorneys with broad discretion whether to investigate, charge, and prosecute any type of case in his or her county. As a public prosecutor, this discretionary power also includes the ability to seek alternative methods to resolve a matter–even in a situation in which a crime has been committed. After prosecutorial proceedings have begun, district attorneys can pursue many options to achieve their goal of getting a child back into the classroom on a full-time basis.
>
> Nearly all of the district attorneys surveyed for this report said they rarely prosecute violations of Penal Code section 270.1. On average, district attorneys reported prosecuting

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[2] Rosales, *California Districts Try Many Options Before Charging Parents for Student Truancy*, EdSource (Aug. 7, 2024) California districts try many options before charging parents for student truancy | EdSource [accessed Apr. 22, 2025].

[3] *In School and On Track: Attorney General's 2013 Report on California's Elementary School Truancy and Absenteeism Crisis*, p. 108.

3-6 Section 270.1 cases per year. This low number of prosecutions is due to the fact that early intervention strategies like assemblies, SART meetings and SARB hearings, and mediation programs are highly successful.

There may be extreme cases in which every effort to get a child back to school has been exhausted that are appropriate for prosecution. For example, using Penal Code 270.1, the Kings County District Attorney's office prosecuted a mother whose two elementary school children had a combined 116 absences in a single school year. The mother had disregarded and failed to respond to 15-20 previous outreach efforts. However, the district must engage in multiple intervention steps before a parent is prosecuted to provide extensive opportunities for families to correct attendance problems.

The DOJ report noted that Education Code sections 48291, 48292, and 48293; Education Code sections 48264 and 48264.5, subd. (d) and Welfare and Institutions Code sections 601 and 602 provide for the prosecution of truant students. Their research indicated that, understandably, prosecutors rarely, if ever, prosecute elementary school students for truancy; therefore, this report focuses on the laws relating to, and the prosecution of, the parents of truant elementary school students, rather than the prosecution of students themselves."[4]

According to an EdSource article[5], of over 234,000 students enrolled in Santa Clara County during the 2023-2024 school year, the Santa Clara District Attorney's office heard 130 truancy cases — although some of those cases were from the previous school year. Infractions were issued to 34 parents; 28 were dismissed as student attendance improved, and six parents pleaded guilty. Those six were issued fines, and their court fees were waived. The remaining cases were continued.

However, some other counties took a more punitive approach. Merced County in 2017 initiated an anti-truancy effort that included the arrest of 10 parents for failing to send their children to school. They were charged with misdemeanors, contributing to the delinquency of a minor.[6]

This bill repeals Penal Code section 270.1 which subjects a parent or guardian who allows their child to become chronically truant, which is defined as being absent from school without a valid excuse for 10% or more of the schooldays in one school year, to misdemeanor penalties. According to the sponsors of this bill, criminal penalties and loss of crucial aid pushes families deeper into poverty and increases chances of family separation.

4) **CalWORKs**: *CalWORKs* is the state's primary cash assistance program. CalWORKs implements the federal [Temporary Assistance for Needy Families] TANF program and provides eligible low-income families with cash grants and supportive services aimed at helping them to secure education, training, and employment. Among others, the supportive services include mental health counseling, substance use disorder treatment, or domestic violence services; job skills training; attendance in a secondary school or in a course leading to a certificate of general educational development.

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[4] *Id.* at p. 66, fn. 31.
[5] *Supra,* footnote 2.
[6] *Ibid.*

Unless deemed exempt or otherwise not required to participate per CalWORKs rules, parents are required to develop and participate in a welfare-to-work plan. CalWORKs-approved welfare-to-work activities can include public or private sector subsidized or unsubsidized employment; on-the-job training; community service; secondary school, adult basic education and vocational education and training when the education is needed for the recipient to become employed; specific mental health, substance use disorders, or domestic violence services if they are necessary to obtain or retain employment; and a number of other activities necessary to assist a recipient in obtaining unsubsidized employment

This bill revises the requirement for school attendance for children in an AU in CalWORKs. This aspect of the bill is within the jurisdiction of the Human Services Committee and its impact has been fully analyzed by that committee which heard and passed out the bill on April 8.

5) **Argument in Support**: According to *Western Center on Law and Poverty*, "This bill ensures that families facing school attendance challenges receive the support they need, rather than punishment. By eliminating harmful penalties such as fines of up to $2,000, jail time of up to one year, and sanctions in the California Work Opportunity and Responsibility to Kids (CalWORKs) program, this bill removes barriers that move families deeper into hardship. Instead of criminalization, this bill paves the way for families and children to be offered more help, not less.

"Our organizations are members of the Reimagine CalWORKs coalition made up of poverty fighting organizations, CalWORKs parents, labor, and welfare rights advocates fighting for the resources and strategies to ensure CalWORKs builds freedom and security for families. We collectively are working towards transforming CalWORKs into a trauma-informed program, replacing racist sanctions that don't work and empowering families to choose their pathway out of poverty.

"Current law criminalizes parents of children six and older for school attendance issues, imposing fines and jail time instead of offering support. Data show deep racial disparities in which kids are deemed chronically absent, put in a position for the criminal penalties for parents even if the child's attendance is not under their control. Several recent reports highlight the threat to school attendance for vulnerable populations including immigrant children and families, LGBTQ+ youth, and other populations of students that also experience disproportionate rates of poverty.

"The current federal administration's intent to remove the sensitive locations policy, which previously protected schools from immigration enforcement, has heightened fears of deportation among immigrant families, leading many parents to keep their children home and resulting in increased chronic truancy.

"In early April, Department of Homeland Security agents attempted to enter two elementary schools in South Central LA but thanks to LAUSD school officials, were denied entry. According to LAUSD school officials, this has led to a decline in average daily attendance in schools where immigration actions occurred nearby or where related incidents took place.

"In Salinas, California, school attendance dropped from 95% in August to just over 91% by January, reflecting the community's anxiety. Recognizing the detrimental effects of punitive

measures, California school districts are adopting supportive approaches to address truancy. Instead of penalizing families, they are providing resources such as food, counseling, and legal referrals to encourage consistent attendance. This shift underscores the importance of support over punishment in fostering a safe and inclusive educational environment for all students."

6) **Related Legislation**: None

7) **Prior Legislation**:

a) AB 2771 (Maienschein) Chapter 154, Statutes of 2024, requires the Department of Education to post information on its website about methods of reducing chronic absenteeism by the beginning of the 2026-27 school year, including but not limited to the formation of schoolsite absence intervention teams.

b) SB 691 (Portantino), Chapter 863, Statutes of 2024, revised truancy notices to include language explaining the importance of attendance and notifying the family of possible services available, including school personnel availability and mental health services.

c) AB 2141 (Hall), Chapter 987, Statutes of 2014, requires that when a parent or student is referred to a district attorney's office or charges are considered to enforce state school attendance laws, the prosecuting agency must provide a report on the outcome of the referral.

d) SB 1317 (Leno), Chapter 647, Statutes of 2010, enacted a misdemeanor offense for parents of K-8 children who are chronically truant and authorized a court to establish a deferred entry of judgement program to handle such cases.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice Southern California
Back to The Start
Bridges of Hope CA
California Attorneys for Criminal Justice
California for Safety and Justice
Child Care Law Center
Coalition of California Welfare Rights Organizations
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
End Poverty in California (EPIC)
Glide
Grace End Child Poverty Institute

Grace Institute - End Child Poverty in CA
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Parent Voices California
Rubicon Programs
Seiu California
Seiu California State Council
Service Employees International Union California
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
The Children's Partnership
Western Center on Law & Poverty

Opposition

None received

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

Date of Hearing: April 29, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 476 (Mark González) – As Amended April 23, 2025

As Proposed to be Amended in Committee

SUMMARY: Increases the criminal fines associated with the unlawful purchase of specified metals, and the unlawful possession of specified public agency materials, among other changes. Specifically, **this bill**:

1) Increases the criminal fines that may be imposed on a dealer or collector of junk, metals, or secondhand materials, that buys or receives any wire, cable, copper, lead, solder, mercury, iron, or brass which they know or reasonably should know is ordinarily used by or ordinarily belongs to a county, city, or a public utility or transportation company, as specified, without using due diligence to ascertain that the person selling or delivering the property has the legal right to do so, by specifying that a person shall be punished by up to a $1,000 fine if the offense is prosecuted as a misdemeanor, and up to a $10,000 fine, if the offense is prosecuted as a felony.

2) Expands the crime of knowingly possessing stolen public utility materials, which prohibits a person engaged in the salvage, recycling, purchase, or sale of scrap metal from possessing stolen parts of fire hydrants, fire department connections, maintenance holds, or backflow devices owned by a public agency, city, country, or specified district or utility, knowing the materials to be stolen, or fails to report possession of such materials, as follows:

   a) Expands the list of materials covered by this crime to include streetlights and other attachments related to street lighting, including, but not limited to: ubicquia smart nodes, light-emitting diode (LED) fixtures, ornamental or historical, modern, or pedestrian poles made of concrete, steel, brass, cast iron, or aluminum, solar street lighting components, such as solar panels, steel poles, and battery packs, colocation equipment, fiber optic cables, electric vehicle chargers, cameras, air quality sensors, digital banners, pedestrian and cycling counters, traffic signals and active grade crossing signals, sewer flow monitoring station equipment, sewer pump station instrumentation and controls, storm-water auto sampling equipment and instrumentation, storm-water pump station instrumentation and controls, irrigation wiring, plaques, communications or broadband infrastructure or equipment.

   b) Increases the additional maximum fine that may be imposed for this offense from $3,000 to $5,000.

3) Requires every junk dealer and every recycler to include in the written record for the sale or purchase of junk the amount paid for each sale or purchase and the name of the employee handling the transaction.

4) Requires every junk dealer and every recycler to include the type, number of units, weight, identifying marks engraved or etched on the metal, if any, and serial numbers, if any, in the description of the item or items of junk purchased or sold, in lieu of the type and quantity, and identification number, if visible.

5) Requires the statement indicating either that the seller of the junk is the owner of it, or the name of the person the seller obtained the junk from, to be signed and include the legal name, date of birth, and place of residence, including street number, street name, city, state, and zip code, of the seller.

6) Prohibits a junk dealer or recycler from purchasing nonferrous metals from a person under 18 years of age.

7) Prohibits a junk dealer or recycler from possessing street lights and other attachments related to street lighting, as specified, that was owned or previously owned by an agency, in the absence of a written certification on the letterhead of the agency owning or previously owning the material described in the certification that the agency has either sold the material described or is offering the material for sale, salvage, or recycling, and that the person possessing the certification and identified in the certification is authorized to negotiate the sale of that material.

EXISTING LAW:

1) States that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. Divides theft into two degrees, petty theft and grand theft. (Pen. Code §§ 484, subd. (a) 486.)

2) Punishes petty theft as a misdemeanor, punishable by fine not exceeding $1,000, or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)

3) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950, and punishes grand theft as a "wobbler" – subject to imprisonment in county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)

4) Makes it a crime to buy or receive stolen property. If the value of the property is less than $950, the offense is a misdemeanor punishable by imprisonment in county jail for one year. If the value of the property is over $950, the offense is punishable as an alternate misdemeanor-felony (wobbler) – subject to imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489, 496.)

5) Creates additional penalties for theft of certain metals, including copper:

    a) Makes it an alternate misdemeanor-felony, punishable by a fine not exceeding $2,500 or imprisonment in a county jail not exceeding one year, or by 16 months, or two, or three

years in county jail, and a $10,000 fine, for any person to steal, carry, or take away copper materials of another, including, but not limited to, copper wire, copper cable, copper tubing and copper piping, which are of a value exceeding $950. (Pen. Code, § 487j.)

b) Makes it a crime to unlawfully purchase or receive certain metal materials, as follows:

   i) Prohibits a dealer or collector of junk, metals, or secondhand materials, from buying or receiving any wire, cable, copper, lead, solder, mercury, iron, or brass which they know or reasonably should know is ordinarily used by or ordinarily belongs to a county, city, or a public utility or transportation company, as specified, without using due diligence to ascertain that the person selling or delivering the property has legal right to do so.

   ii) Punishes this crime as an alternate misdemeanor-felony, punishable by up to one year in county jail, or 16 months, or two, or three years in county jail, or by a fine not more than $1,000.

   iii) Requires a person who buys or receives the above materials to obtain evidence of identity from the seller, including, that person's name, signature, address, driver's license number, and vehicle license number, and the license number of the vehicle delivering the material.

   iv) Requires the record of the transaction to include an appropriate description of the material purchased and the record to be maintained, as specified. (Pen. Code, § 496a.)

c) Makes it a crime to possess certain stolen public agency-related materials, as follows:

   i) Prohibits any person who is engaged in the salvage, recycling, purchase, or sale of scrap metal from possessing any of the following items that were owned or previously owned by any public agency, city, county, city and county, special district, or private utility that have been stolen or obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or failing to report possession of the items, as specified:

      (1) A fire hydrant or any reasonably recognizable part of that hydrant.

      (2) Any fire department connection, including, but not limited to, reasonably recognizable bronze or brass fittings and parts.

      (3) Manhole covers or lids, or any reasonably recognizable part of those manhole covers and lids.

      (4) Backflow devices and connections to that device, or any part of that device.

   ii) Punishes this offense by up to a $3,000 fine, in addition to any other penalty provided by law. (Pen. Code, § 496e.)

6) Requires every junk dealer and every recycler to keep a written record of all sales and purchases made in the course of their business. (Bus. & Prof. Code, § 21605.)

7) Requires every junk dealer and every recycler to include the following in the above written record:

   a) The place and date of each sale or purchase of junk made in the conduct of their business as a junk dealer or recycler.

   b) Methods of identification, as specified.

   c) The name and address of each person to whom junk is sold or disposed of, and the license number of any motor vehicle used in transporting the junk from the junk dealer's or recycler's place of business.

   d) A description of the item or items of junk purchased or sold, including the item type and quantity, and identification number, if visible.

   e) A statement indicating either that the seller of the junk is the owner of it, or the name of the person they obtained the junk from, as shown on a signed transfer document. (Bus. & Prof. Code, § 21606, subd. (a).)

8) Makes it a misdemeanor to make, or cause to be made, any false or fictitious statement regarding any information in the above written record. (Bus. & Prof. Code, § 21606, subd. (b).

9) Requires every junk dealer and every recycler to report the information in the written record to the chief of police or to the sheriff, as specified. (Bus. & Prof. Code, § 21606, subd. (c).)

10) Requires every junk dealer and recycler to preserve written records for at least two years after making the final entry of any purchase or sale of junk or scrap metals and alloys. (Bus. & Prof. Code, § 21607.)

11) Specifies that a junk dealer or recycler who fails in any respect to keep written records, or to include any of the information required to be included, is guilty of a misdemeanor and every junk dealer or recycler who refuses to share those written records with law enforcement, as specified, or who destroys that record within two years, is guilty of a misdemeanor, and punishes any knowing and willful violation as follows:

   a) For a first offense, by a fine of not less than $1,000, or by imprisonment in the county jail for not less than 30 days, or by both that fine and imprisonment.

   b) For a second offense, by a fine of not less than $2,000, or by imprisonment in the county jail for not less than 30 days, or by both that fine and imprisonment. In addition to any other sentence imposed, the court may order the defendant to stop engaging in business as a junk dealer or recycler for a period not to exceed 30 days.

   c) For a third or any subsequent offense, by a fine of not less than $4,000, or by imprisonment in the county jail for not less than six months, or by both that fine and imprisonment. In addition to any other sentence imposed, the court must order the defendant to stop engaging in business as a junk dealer or recycler for at least one year. (Bus. & Prof. Code, § 21608.)

12) Prohibits a junk dealer or recycler from providing payment for nonferrous material, which includes materials such as copper, unless, in addition to meeting the written record requirements above, all of the following requirements are met:

   a) The payment for the material is made by cash, a general-use prepaid card, or a check, as specified.

   b) At the time of sale, the junk dealer or recycler obtains a clear photograph or video of the seller.

   c) The junk dealer or recycler obtains specified identification from the seller.

   d) The junk dealer or recycler obtains a clear photograph or video of the nonferrous material being purchased.

   e) The junk dealer or recycler preserves the aforementioned information for a period of two years after the date of sale.

   f) The junk dealer or recycler obtains a thumbprint of the seller, as prescribed by the Department of Justice (DOJ), as specified (Bus. & Prof. Code, § 21608.5, subd. (a).)

13) Requires a junk dealer or recycler to request to receive theft alert notifications regarding the theft of commodity metals, including, but not limited to, ferrous metal, copper, brass, aluminum, nickel, stainless steel, and alloys, in the junk dealer's or recycler's geographic region from the theft alert system maintained by the Institute of Scrap Recycling Industries, Inc., or its successor. This requirement does not apply if the institute or its successor requires payment for use of the theft alert system. (Bus. & Prof. Code, § 21608.7, subd. (a).)

14) Prohibits a junk dealer or recycler from possessing any reasonably recognizable, disassembled, or inoperative fire hydrant or fire department connection, as specified, that was owned or previously owned by an agency, in the absence of a written certification on the letterhead of the agency owning or previously owning the material described in the certification that the agency has either sold the material described or is offering the material for sale, salvage, or recycling, and that the person possessing the certification and identified in the certification is authorized to negotiate the sale of that material. (Bus. & Prof. Code, § 21609.1, subd. (a).)

15) Requires a junk dealer or recycler who unknowingly takes possession of one or more of the items listed above as part of a load of otherwise non-prohibited materials without a written certification to notify the appropriate law enforcement agency by the end of the next business day upon discovery of the prohibited material. Written certification shall relieve the junk dealer or recycler from any civil or criminal penalty for possession of the prohibited material. (Bus. & Prof. Code, § 21609.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Copper theft is a growing crisis in California, threatening public safety, straining municipal resources, and literally leaving

communities in the dark. Despite existing laws, cities across the state continue to face a surge in thefts, costing taxpayers millions in infrastructure repairs and emergency responses.

"The consequences of these thefts are far-reaching. In my district, the City of Los Angeles has seen a dramatic increase in streetlight outages, more than doubling since 2021. The city's Bureau of Street Lighting reported approximately 45,000 service requests in 2024 alone, many of which were due to theft or vandalism. One particularly egregious case involved the theft of 38,000 feet—nearly seven miles—of copper from the Sixth Street Bridge, resulting in repair costs of approximately $2.5 million, despite the stolen metal's street value being a mere $11,000. These crimes go beyond financial losses; they create unsafe conditions for residents and businesses by leaving streets, neighborhoods, and business corridors in complete darkness.

"AB 476 takes a comprehensive approach to combating this issue by strengthening theft prevention and enforcement. This bill enhances reporting requirements for junk dealers and recyclers, establishes a licensing requirement for copper sellers, modernizes restrictions on the possession of scrap metal from critical public infrastructure, and revises penalties to better reflect the true cost of damages to the public. These measures will increase transparency, discourage illicit sales, and ensure accountability throughout the recycling and resale process.

"When copper is stolen from streetlights, traffic signals, and telecommunications lines, it directly endangers residents by depriving them of essential public services. AB 476 prioritizes public safety and ensures that taxpayer dollars are no longer wasted on preventable infrastructure repairs. This legislation is a necessary step toward safeguarding our communities, protecting public infrastructure, and putting an end to the cycle of copper theft that has burdened our cities for far too long."

2) **Need for this Bill:** Recent reports suggest that theft of copper wiring from certain public utility infrastructure has led to significant interruptions in telecommunications services and other public utility services such as street lighting. According to the Bureau of Street Lighting, which maintains over 200,000 streetlights in the City of Los Angeles:[1]

> Over several years, a dramatic increase in the number of theft and vandalism incidents has significantly impacted the street lighting network. In the span of just four years between Fiscal Year 2017/2018 (where the Bureau saw 607 theft-related incidents) and FY2021/2022 (where the Bureau saw 6344 [Copper Wire & Power Theft] CWPT theft-related incidents) was a 10-fold increase in reported issues. And while these types of incidents are endemic to electrical and lighting systems due to the value of metals and electricity, the cumulative damage – and the time and resources required to fix such an issue – has led to months-long backlogs of lighting outages.
>
> Generally speaking, routine maintenance requires a couple hours of work. In comparison, copper theft may take several days, and in some cases, weeks to repair. It is akin to rewiring your house, rather than replacing a light bulb.
>
> Copper Wire necessitates proper coordination among different disciplines (Wire Pulling

[1] LA Lights, *About* (accessed April 22, 2025), available at: https://lalights.lacity.org/about/

Crews, Cement Crews, and Welding Crews). Secondly, circuit configurations and existing pole types can influence the repair times and complicate electrical repairs. Welders might need to fabricate vandal-proof doors for ornamental poles, and in some instances, the need to procure materials can result in further delays. Lastly, encampments, field conditions, and other obstructions might prevent crews from completing work in a timely manner…

The increasing incidents of theft and vandalism create unsafe conditions by leaving communities in the dark for extended periods of time which can contribute to community safety issues like crime, pedestrian safety, and vehicle collisions. These types of repairs are extensive and costly which contributes to the backlog, requires additional resources, and exacerbates repair timelines.[2]

3) **Effect of this Bill:** AB 476 seeks to deter theft of copper wire from public utility infrastructure by increasing the criminal fines that may be imposed for the unlawful purchase of specified metals, and increasing the fine for, and expanding the type of materials prohibited by, unlawful possession of stolen public agency materials. First, it increases the criminal fine that may be imposed on dealers or collectors of junk and metals who knowingly purchase specified metals that ordinarily belong to public utilities. Existing law prohibits a dealer or collector of junk, metals, or secondhand materials, from buying or receiving any wire, cable, copper, lead, solder, mercury, iron, or brass which they know or reasonably should know is ordinarily used by or ordinarily belongs to a county, city, or a public utility or transportation company, as specified, without using due diligence to ascertain that the person selling or delivering the property has legal right to do so. (Pen. Code, § 496a, subd. (a).)Violation of this prohibition is punishable as a misdemeanor by up to one year in county jail, or a felony by 16 months, or two, or three years in county jail, or by a fine of not more $1,000. (*Ibid.*) This bill specifies that that a person shall be punished by up to a $1,000 fine if the offense is prosecuted as a misdemeanor, and up to a $10,000 fine, if the offense is prosecuted as a jail-eligible felony. While this does increase the maximum fine associated with this crime from $1,000 to $10,000, this is largely consistent with the typical maximum fines that are imposed misdemeanors ($1,000) and felonies ($10,000). (Pen. Code, § § 18, 19, 672.)

Second, this bill increases the fine associated with, and the type of materials encompassed by, the offense of knowingly possessing certain stolen public agency materials. Existing law prohibits a person engaged in the salvage, recycling, purchase, or sale of scrap metal from possessing the following items that were owned or previously owned by any public agency, city, county, city and county, special district, or private utility that have been stolen or obtained through theft or extortion, knowing the property to be so stolen or obtained, or failing to report possession of the items, as specified. (Pen. Code, § 496e, subd. (a).)This prohibition applies to the following items

- A fire hydrant or any reasonably recognizable part of that hydrant.
- Any fire department connection, including, but not limited to, reasonably recognizable bronze or brass fittings and parts.

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[2] LA Lights, *Outages and Issues* (Accessed April 22, 2025), available at: https://lalights.lacity.org/residents/outages_and_issues.html

- Manhole covers or lids, or any reasonably recognizable part of those manhole covers and lids.

- Backflow devices and connections to that device, or any part of that device.

This offense is not a stand-alone crime, but rather, is punishable by a $3,000 criminal fine, in addition to any other penalty provided by law. (Pen. Code, § 496e.) In practice, a person who violates this prohibition could likely be prosecuted for either knowingly possessing certain stolen metals under Penal Code section 496e (as described in the preceding paragraph), or for receiving stolen property, which prohibits a person from buying or receiving stolen property, knowing that property to be stolen. (Pen. Code, 496, subd. (a).).

Specifically, receipt of stolen property requires three elements: 1) the defendant bought, received, or sold property that had been stolen or obtained by extortion; 2) the defendant knew that the property had been stolen or obtained by extortion; and 3) the defendant actually knew of the presence of the property. (1 CALCRIM 1750 (2025).) If the value of the stolen property is under $950 this crime is a misdemeanor, punishable by imprisonment in a county jail not exceeding one year or up to a $1,000 fine. If the value of received stolen property exceeds $950 it is punishable as an alternate misdemeanor-felony – subject to imprisonment in a county jail not exceeding one year or a fine up to $1,000, or by imprisonment in county jail for 16 months, two years, or three years, or a fine up to $10,000. (Pen. Code, §§ 487, 489, 496.).

This bill would increase the fine that may be imposed for the offense of knowingly possessing certain stolen public agency materials from $3,000, to $5,000. Notably, this is in addition to the potential $1,000 or $10,000 fine that a person could receive, depending upon whether the value of the stolen property exceeds $950 and whether the crime was charged as receipt of stolen property.

Additionally, this bill expands the type of materials encompassed by this offense to include streetlights and other attachments related to street lighting. Specific materials proposed to be encompassed, include but are not limited to: ubicquia smart nodes, light-emitting diode (LED) fixtures, ornamental or historical, modern, or pedestrian poles made of concrete, steel, brass, cast iron, or aluminum, solar street lighting components, such as solar panels, steel poles, and battery packs, colocation equipment, fiber optic cables, electric vehicle chargers, cameras, air quality sensors, digital banners, pedestrian and cycling counters, traffic signals and active grade crossing signals, sewer flow monitoring station equipment, sewer pump station instrumentation and controls, storm-water auto sampling equipment and instrumentation, storm-water pump station instrumentation and controls, irrigation wiring, plaques, communications or broadband infrastructure or equipment.

Third, this bill creates new requirements for junk dealers and recyclers in the Business and Professions Code, including: 1) requiring every junk dealer and every recycler to include specified information in the written record for sale including the amount paid and any identifying marks engraved on the metal; 2) requiring the dealer or recycler to obtain specified identifying information from the person the junk was obtained from; 3) prohibiting a junk dealer or recycler from purchasing nonferrous metals from a person under 18 years old; and 4) prohibiting a junk dealer or recycler from possessing street lights and other

attachments related to street lights (as described in the above paragraph), without a specified written certificate of sale.

4) **Criminal Fines and Fees:** This bill increases the maximum fine that may be imposed on dealers or collectors of junk and metals who knowingly purchase specified metals that ordinarily belong to public utilities, from $1,000 to $10,000. Additionally, it increases the additional fine that may be imposed for knowingly possessing certain stolen public utility materials from $3,000, to $5,000.

   Notably, the financial costs of a criminal fine is far higher than the base fine outlined in statute.

   For example, a base fine of $10,000 would be subject to the following additional fees and assessments:

Pen. Code, § 1464 state penalty on fines:	10,000 ($10 for every $10)
Pen. Code, § 1465.7 state surcharge:	2,000 (20% surcharge)
Pen. Code, § 1465.8 court operation assessment:	40 ($40 fee per criminal offense)
Gov. Code, § 70372 court construction penalty:	5,000 ($5 for every $10)
Gov. Code, § 70373 assessment:	35 ($35 for felony or misdemeanor)
Gov. Code, § 76000 penalty:	7,000 ($7 for every $10)
Gov. Code, § 76000.5 EMS penalty:	2,000 ($2 for every $10)
Gov. Code, § 76104.6 DNA fund penalty:	1,000 ($1 for every $10)
Gov. Code, § 76104.7 additional DNA fund penalty:	4,000 ($4 for every $10)
Total Fine with Assessments:	**$31,075**

   Here, this bill authorizes a $10,000 fine to be imposed on a dealer or collector of junk who is charged with a felony for knowingly purchasing specified stolen copper, which could result in that person owing over $30,000, in addition to jail time. Such a significant criminal fine may not ultimately be paid, especially since individuals released from incarceration already face barriers to secure, jobs, housing, and economic stability. Difficulties collecting fines and fees from criminal defendants is well documented - the judicial branch reported that $8.6 billion in fines and fees remained unpaid at the end of 2019-20.[3]

5) **Argument in Support**: According to the *League of California Cities*, "Assembly Bill 476 (Gonzalez)… would enhance enforcement measures against precious metal theft. This legislation is a crucial step toward protecting California's public infrastructure and ensuring the safety and functionality of essential services that communities rely on daily.

   "Metal theft has become a widespread and costly issue, severely impacting critical infrastructure components such as streetlights, fire hydrants and fire department connections, manhole covers, electric vehicle (EV) charging stations, and backflow prevention devices. Thieves often target these public assets due to the high value of precious metal, specifically copper, leaving behind significant damage that endangers public safety and imposes burdensome repair costs on local governments and businesses.

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[3] *Overview of Criminal Fine and Fee System* (May 13, 2021) Legislative Analyst's Office <https://lao.ca.gov/Publications/Detail/4427> [as of Feb. 25, 2025].

"The consequences of metal theft are far-reaching:

- **Streetlight Tampering:** Stolen copper wiring from streetlights creates hazardous conditions by leaving streets and neighborhoods in darkness, increasing risks for pedestrians, motorists, and law enforcement.

- **Fire Protection System Compromise:** The theft of metal components from fire hydrants or fire department connections weakens emergency response capabilities, endangering lives and property in the event of a fire.

- **Manhole Cover Theft:** The removal of manhole covers poses severe hazards to drivers, bicyclists, and pedestrians, leading to potential accidents and injuries.

- **Backflow Device Damage:** Backflow prevention devices protect drinking water supplies from contamination, and theft-related damages compromise water quality and public health.

"The financial burden of repairing and replacing stolen infrastructure components falls on taxpayers, utility providers, and municipalities, draining resources that could otherwise be used for community development and essential services. AB 476 provides much-needed enforcement tools to deter copper wire theft and hold perpetrators accountable for the harm they cause to public safety and infrastructure reliability."

6) **Related Legislation**:

a) AB 1218 (Soria), makes it a crime to possess copper materials which are a value in excess of $950, without proof of lawful possession, among other changes. AB 1218 will be heard in this Committee today.

7) **Prior Legislation**:

a) SB 1387 (Berryhill), Chapter 656, Statutes of 2012, this bill prohibits junk dealers and recyclers from possessing fire hydrants, manhole covers or backflow devices without proper certification, as specified; and provides that possession of stolen fire hydrants, manhole covers or backflow devices by persons engaged in the salvage, recycling, purchase or sale of scrap metal, shall be punishable by an additional fine up to $3000.

b) AB 1971 (Buchana), Chapter 82, Statutes of 2012, increases the maximum fine for junk and second-hand dealers who knowingly purchase metals used in transportation or public utility services without due diligence from $250 to $1,000, among other changes.

c) AB 316 (Carter), Chapter 317, Statutes of 2011), creates a separate section for grand theft of copper materials and adds a fine of up to $2,500 on to the existing penalties as specified.

d) SB 447 (Maldonado), Chapter 732, Statutes of 2009, assists local law enforcement officials in quickly investigating stolen metal and apprehending thieves by requiring scrap metal dealers and recyclers to report what materials are being scraped at their facilities and by whom on a daily basis. These rules already apply to pawn shop dealers.

e) SB 691 (Calderon), Chapter 720, Statutes of 2009, requires junk dealers and recyclers to take thumbprints of individuals selling copper, copper alloys, aluminum and stainless steel. Sellers must also show a government identification (ID) and proof of their current address. Recyclers who violate the law face suspension or revocation of their business license and increased fines and jail time.

f) AB 1859 (Adams), Chapter 659, Statutes of 2008, creates a fine of not more than $3,000 for any person who knowingly receives any part of a fire hydrant, including bronze or brass fittings and parts.

g) AB 844 (Berryhill), Chapter 731, Statutes of 2009, requires recyclers to hold payment for three days, check a photo ID and take a thumbprint of anyone selling scrap metals. AB 844 also requires any person convicted of metal theft to pay restitution for the materials stolen and for any collateral damage caused during the theft.

h) AB 2724 (Benoit), of the 2007-08 Legislative Session, required any person convicted of grand theft involving the theft of wire, cable, copper, lead, solder, mercury, iron or brass of a kind ordinarily used by, or that ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company or county, city, city and county, or other political subdivision of this state engaged in furnishing public utility service, or farm, ranch or industrial facility or other commercial or residential building, to pay a fine of $100 for a first offense and $200 for any subsequent offense. AB 2724 failed passage in the Senate Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Calbroadband
Calcom Association
California Central Valley Flood Control Association
California Contract Cities Association
California Legislative Conference of Plumbing, Heating & Piping Industry
California Municipal Utilities Association (CMUA)
Central City Association of Los Angeles
City of Alameda
City of Buena Park
City of LA Mirada
City of Lakewood CA
City of Lathrop
City of Los Alamitos
City of Manteca
City of Norwalk
City of Paramount
City of Redding
City of Sacramento Department of Utilities
City of Thousand Oaks
City of Willows
CTIA
Downtown LA Industrial District Bid

Electric Vehicle Charging Association
Fresno County Board of Supervisors
Fresno; County of
Independent Energy Producers Association
Lakewood; City of
Large-scale Solar Association
League of California Cities
Los Angeles Cleantech Incubator
Los Angeles County Sanitation Districts
Mayor Matt Mahan, City of San Jose
National Electrical Contractors Association (NECA)
Northern California Allied Trades
Norwalk; City of
Placentia; City of
Southern California Glass Management Association (SCGMA)
Southern California Public Power Authority (SCPPA)
Swana California Chapters Legislative Task Force
Tustin, City of
United States Telecom Association Dba Ustelecom - the Broadband Association
Valley Ag Water Coalition
Wall and Ceiling Alliance
Western Line Constructors Chapter, Inc., Neca, INC.
Western Painting and Coating Contractors Association

Opposition

None submitted.

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

Amended Mock-up for 2025-2026 AB-476 (Mark González (A))

Mock-up based on Version Number 97 - Amended Assembly 4/23/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 21606 of the Business and Professions Code is amended to read:

21606. (a) Every junk dealer and every recycler shall set out in the written record required by this article all of the following:

(1) The place, date, time, and amount paid of each sale or purchase of junk made in the conduct of their business as a junk dealer or recycler and the name of the employee handling the transaction.

(2) One of the following methods of identification:

(A) The name, valid driver's license number, and state of issue or California- or United States-issued identification card number.

(B) The name, identification number, and country of issue from a passport used for identification and the address from an additional item of identification that also bears the seller's name.

(C) The name and identification number from a Matricula Consular used for identification and the address from an additional item of identification that also bears the seller's name.

(3) The vehicle license number, including the state of issue, of any motor vehicle used in transporting the junk to the junk dealer's or recycler's place of business.

(4) The name and address of each person to whom junk is sold or disposed of, and the license number of any motor vehicle used in transporting the junk from the junk dealer's or recycler's place of business.

(5) A description of the item or items of junk purchased or sold, including the item type, number of units, weight, identifying marks engraved or etched on the metal, if any, and serial numbers, if any.

(6) A signed statement indicating either that the seller of the junk is the owner of it, or the name of the person the seller obtained the junk from, as shown on a signed transfer document. The signed statement shall include the legal name, date of birth, and place of residence, including street number, street name, city, state, and ZIP Code, of the seller.

(b) A junk dealer or recycler shall not purchase nonferrous metals from a person under 18 years of age.

(c) Any person who makes, or causes to be made, any false or fictitious statement regarding any information required by this section, is guilty of a misdemeanor.

(d) Every junk dealer and every recycler shall report the information required in subdivision (a) to the chief of police or to the sheriff in the same manner as described in Section 21628.

SEC. 2. Section 21609.1 of the Business and Professions Code is amended to read:

21609.1. (a) A junk dealer or recycler shall not possess any of the following material that was owned or previously owned by an agency, in the absence of a written certification on the letterhead of the agency owning or previously owning the material described in the certification that the agency has either sold the material described or is offering the material for sale, salvage, or recycling, and that the person possessing the certification and identified in the certification is authorized to negotiate the sale of that material:

(1) A fire hydrant or any reasonably recognizable part of a fire hydrant.

(2) A fire department connection, including, but not limited to, reasonably recognizable bronze or brass fittings and parts.

(3) A maintenance hole cover or lid or reasonably recognizable part of a maintenance hole cover or lid.

(4) Backflow devices and connections to that device, or any part of that device.

(5) Street lights and other attachments related to street lighting, including, but not limited to, all of the following:

(A) Ubicquia smart nodes.

(B) Light-emitting diode (LED) fixtures.

(C) Ornamental or historical, modern, or pedestrian poles made of concrete, steel, brass, cast iron, or aluminum.

(D) Solar street lighting components, such as solar panels, steel poles, and battery packs.

(E) Colocation equipment.

(F) Fiber optic cables.

(G) Electric vehicle chargers.

(H) Cameras.

(I) Air quality sensors.

(J) Digital banners.

(K) Pedestrian and cycling counters.

(6) Traffic signals and active grade crossing signals.

(7) Sewer flow monitoring station equipment.

(8) Sewer pump station instrumentation and controls.

(9) Stormwater auto sampling equipment and instrumentation.

(10) Stormwater pump station instrumentation and controls.

(11) Irrigation wiring.

(12) Plaques.

(13) Communications or broadband infrastructure or equipment.

(b) A junk dealer or recycler who unknowingly takes possession of one or more of the items listed in subdivision (a) as part of a load of otherwise nonprohibited materials without a written certification has a duty to notify the appropriate law enforcement agency by the end of the next business day upon discovery of the prohibited material. Written certification shall relieve the junk dealer or recycler from any civil or criminal penalty for possession of the prohibited material. The prohibited material shall be set aside and not sold pending a determination made by a law enforcement agency pursuant to Section 21609.

(c) For purposes of this section, the following definitions apply:

(1) "Agency" means a public agency, city, county, city and county, special district, or private utility regulated by the Public Utilities Commission.

(2) "Appropriate law enforcement agency" means either of the following:

(A) The police chief of the city, or their designee, if the item or items listed in subdivision (a) are located within the territorial limits of an incorporated city.

(B) The sheriff of the county or their designee if the item or items listed are located within the county but outside the territorial limits of an incorporated city.

(3) "Written certification" means a certification in written form by the junk dealer or recycler to a law enforcement agency, including electronic mail, facsimile, or a letter delivered in person or by certified mail.

SEC. 3. Section 496a of the Penal Code is amended to read:

496a. (a) Every person who is a dealer in or collector of junk, metals, or secondhand materials, or the agent, employee, or representative of such dealer or collector, and who buys or receives any wire, cable, copper, lead, solder, mercury, iron, or brass which they know or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company, or a county, city, city and county, or other political subdivision of this state engaged in furnishing public utility service, without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving that property, and shall be punished by **a fine not exceeding one thousand dollars ($1,000), or by** imprisonment in a county jail for not more than one year**, or by both that fine and imprisonment,** or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) Any person who buys or receives material pursuant to subdivision (a) shall obtain evidence of their identity from the seller, including, but not limited to, that person's full name, signature, address, driver's license number, and vehicle license number, and the license number of the vehicle delivering the material.

(c) The record of the transaction shall include an appropriate description of the material purchased and the record shall be maintained pursuant to Section 21607 of the Business and Professions Code.

SEC. 4. Section 496e of the Penal Code is amended to read:

496e. (a) Any person who is engaged in the salvage, recycling, purchase, or sale of scrap metal and who possesses any of the following items that were owned or previously owned by any public agency, city, county, city and county, special district, or private utility that have been stolen or obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or fails to report possession of the items pursuant to Section 21609.1 of the Business and Professions Code, is guilty of a crime:

(1) A fire hydrant or any reasonably recognizable part of that hydrant.

(2) Any fire department connection, including, but not limited to, reasonably recognizable bronze or brass fittings and parts.

(3) Maintenance hole covers or lids, or any reasonably recognizable part of those maintenance hole covers and lids.

(4) Backflow devices and connections to that device, or any part of that device.

(5) Streetlights and other attachments related to street lighting, including, but not limited to, all of the following:

(A) Ubicquia smart nodes.

(B) Light-emitting diode (LED) fixtures.

(C) Ornamental or historical, modern, or pedestrian poles made of concrete, steel, brass, cast iron, or aluminum.

(D) Solar street lighting components, such as solar panels, steel poles, and battery packs.

(E) Colocation equipment.

(F) Fiber optic cables.

(G) Electric vehicle chargers.

(H) Cameras.

(I) Air quality sensors.

(J) Digital banners.

(K) Pedestrian and cycling counters.

(6) Traffic signals and active grade crossing signals.

(7) Sewer flow monitoring station equipment.

(8) Sewer pump station instrumentation and controls.

(9) Stormwater auto sampling equipment and instrumentation.

(10) Stormwater pump station instrumentation and controls.

(11) Irrigation wiring.

(12) Plaques.

(13) Communications or broadband infrastructure or equipment.

(b) A person who violates subdivision (a) shall, in addition to any other penalty provided by law, be subject to a criminal fine of not more than ten thousand dollars ($**5**,000).

SEC. 5. 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 29, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 619 (Ransom) – As Introduced February 13, 2025

SUMMARY: Requires the Department of Forestry and Fire Protection (CAL FIRE) and the Department of Corrections and Rehabilitation (CDCR) to jointly evaluate the Ventura Training Center (VTC) and report to the Legislature on its evaluation. Specifically, **this bill**:

1) Requires a joint evaluation of VTC, which shall include, but not be limited to, an evaluation of all of the following:

   a) How to streamline the enrollment of formerly incarcerated individuals into the program after their successful participation in the California Conservation Camps (CCC) program;

   b) Ways to increase the rate of graduated trainees entering the firefighter workforce; and,

   c) The feasibility of establishing one or more centers in other regions of the state.

2) Requires preparation of a report describing the evaluation to be submitted by January 1, 2026, to the Senate Committee on Public Safety, Assembly Committee on Public Safety, Senate Committee on Organization, and Assembly Committee on Emergency Management.

3) Sunsets the evaluation and reporting requirements on January 1, 2030.

4) Establishes bill as an urgency statute in order to address the shortage of firefighters occurring while there is an increasing number of catastrophic fires in California.

EXISTING LAW:

1) Authorizes any department, division, bureau, commission or other agency of the State of California or the Federal Government may use or cause to be used convicts confined in the state prisons to perform work necessary and proper to be done by them at permanent, temporary, and mobile camps to be established under this article. (Pen. Code, § 2780)

2) Establishes CAL FIRE in the California Natural Resources Agency (NRA) to provide fire protection and prevention services, as specified. (Pub. Res. Code, §§ 701-701.6.)

3) Establishes the CCC in the NRA and requires the CCC to implement and administer the conservation corps program. (Pub. Res. Code, § 14001.)

4) Establishes the CCC for the purpose of having incarcerated persons work on projects supervised by CAL FIRE. (Pub. Res. Code, § 4951.)

5) Requires CAL FIRE to utilize inmates and wards assigned to conservation camps in performing fire prevention, fire control, and department work. (Pub. Res. Code, § 4953.)

6) Establishes the Education and Employment Reentry Program within the CCC and authorizes the director of CCC to enroll formerly incarcerated individuals who successfully served on a California Conservation Camp program crew for participation as a program member by the Director of CAL FIRE and the Secretary of CDCR. (Pub. Res. Code, § 14415.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Every fire season, incarcerated individuals serve alongside professional firefighting crews risking their lives to protect communities across California. Through this service, they gain critical, hands-on experience in battling wildfires, which is invaluable especially as the state faces increasingly severe and frequent wildfires. Despite their training and experience, too many of these individuals face unnecessary barriers when seeking permanent employment in fire services after release. The Ventura Training Center (VTC) was established to bridge this gap by offering formerly incarcerated firefighters a pathway to full-time firefighting careers. However of the 432 program graduates, only 63% secured full-time employment, and just 45% found work in the firefighting field.

   "AB 619 addresses this issue by directing CAL FIRE and the California Department of Corrections and Rehabilitation to assess the VTC program and identify gaps in training, certification, and job placement. The goal is to remove the roadblocks that prevent participants from securing careers in firefighting. At this time when California faces an ever growing wildfire crisis, we must strengthen our firefighting workforce by creating a clear pathway for formerly incarcerated firefighters to continue their service in full time professional roles."

2) **Ventura Training Center:** This bill would require CAL FIRE and CDCR to jointly evaluate VTC and report to the Legislature on its evaluation. The VTC began training participants in October 2018.[1] It accepts trainees who have recently been part of a trained firefighting workforce housed in fire camps or institutional firehouses operated by CAL FIRE and CDCR.[2] To offer formerly-incarcerated firefighters an opportunity to continue using the skills and knowledge they worked to achieve while participating in the Conservation Camp Program, CALFIRE, CCC, and CDCR, in partnership with the Anti-Recidivism Coalition (ARC), developed an enhanced firefighter training and certification program at the VTC in Ventura County.[3] Participants in the 18-month certification program are provided with additional rehabilitation and job training skills to help them be more successful after

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[1] *Ventura Training Center,* California Department of Corrections and Rehabilitation (CDCR) <https://www.cdcr.ca.gov/facility-locator/conservation-camps/ventura/> [as of Apr. 24, 2025].
[2] *Ibid.*
[3] *Ibid.*

completion of the program.[4] Cadets who complete the program will be qualified to apply for entry-level firefighting jobs with local, state, and federal firefighting agencies.[5]

CDCR parole agents are on duty at VTC on a daily basis. Through a contract with CDCR's Division of Rehabilitative Programs (DRP), ARC provides life skills training and resources, including education and employment assistance, and community service referrals. VTC has enrolled 432 cadets to date, and only 272 currently have jobs – 78 of which are not employed in a fire related role.[6] That results in a 63% employment rate. Requiring an evaluation of VTC could identify obstacles that prevent more VTC graduates from securing full-time employment, which could facilitate the reintegration of trained individuals into the workforce and augment the state's firefighting capacity.

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

> CDCR initiated the Conservation (Fire) Camp Program to provide able-bodied incarcerated people the opportunity to work on meaningful projects throughout the state. The CDCR road camps were established in 1915. During World War II, much of the work force that was used by the Division of Forestry (now known as CAL FIRE), was depleted.
>
> CDCR provided the needed work force by having incarcerated people occupy "temporary camps" to augment the regular firefighting forces. During WWII, were 41 "interim camps," which would become the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983. The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980's.[7]

CCC participants make up 27% of the state's firefighting force.[8] The demographics are similar to the demographics of California's general incarcerated population: while most people involved are adult males, women and juveniles may also participate in fire camps. CDCR employees oversee the fire camps, which are all minimum-security facilities. [9]

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[4] *Ibid.*
[5] *Ventura Training Center,* Anti-Recidivism Coalition (ARC) <https://antirecidivism.org/our-programs/vtc/> [as of Apr. 24, 2025].
[6] *Ibid.*
[7] *Frequently Asked Questions: Conservation (Fire) Camp Program*, California Department of Corrections and Rehabilitation (CDCR) <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/> [as of Apr. 24, 2025].
[8] *Ibid.*
[9] *Ibid.*

When responding to a wildfire or working on conservation projects, a Cal Fire captain is responsible for the incarcerated inmates' custody. The fire captain acts as the supervisor for the hand crew, which can include up to 17 people.[10] Custody transfers back to correctional staff when the hand crews end their shift and return to either the fire location camp or a base camp. Cal Fire assigns conservation projects for the crews.[11] Prior to the start of a project, CDCR and Cal Fire staff members evaluate the project site to ensure there are no security issues.[12]

Incarcerated people convicted of homicide, kidnapping, rape, child molestation, any offense for which sex offender registration is required, any offense punishable by death or life in prison, escape, or arson are automatically ineligible for fire camps. (Pen. Code, § 1203.4b, sub. (a)(1)(A-H).) Fire camp participants must also have "minimum custody" status, or the lowest-security classification based on their sustained good behavior in prison and participation in rehabilitative programming.[13] Participants must also have eight years or less remaining on their sentence to be considered. Participants also have to be medically cleared to participate in a fire crew.[14]

Through the evaluation, this bill could help identify areas where additional application of VTC's successes with training inmate fire crews could be deployed.

4) **Argument in Support**: According to the *Vera Institute of Justice,* "On behalf of the Vera Institute of Justice, a national organization that works to end mass incarceration, protect immigrants' rights, ensure dignity for people behind bars, and build safe, thriving communities, I write in support of AB 619 by Assemblymember Ransom. This bill will address the significant gaps between the number of incarcerated firefighters, those who enroll in the Ventura Training Center (VTC) after release, and those who ultimately secure firefighting jobs. By requiring CAL FIRE and CDCR to identify barriers to employment, this bill aims to improve enrollment in post-release training and job placement for VTC graduates, strengthening California's firefighting workforce.

"Having served two seasons as an incarcerated firefighter, I can personally attest to the life-changing and rehabilitative powers of the California Conservation Fire Camp program. However, I have also experienced the demoralizing inability to apply the skills I learned there to a career after release. I took great pride in serving my community during emergencies while incarcerated, yet I was barred from continuing that work after release. The sole outlet for becoming a wildland firefighter remains joining a 25-person cohort at the Ventura Training Center, which has strict eligibility criteria and long waitlist.

"Further, the 18-month Ventura Training Center program can only accommodate two to three cohorts a year for a total of 80 participants at maximum. (For comparison, California deployed roughly 1,100 incarcerated firefighters during the Los Angeles fires in January.) This leaves the bulk of incarcerated firefighters to endure the harsh realities of reentry with

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[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

no way of applying the niche skillset learned while serving as incarcerated firefighters."

5) **Related Legislation**: AB 247 (Bryan) requires incarcerated individual hand crew members, from county jails, to be paid an hourly wage of $19 and to have the wage rate updated on an annual basis. AB 247 is pending in the Assembly Appropriations Committee.

6) **Prior Legislation**: AB 2147 (Reyes), Chapter 60, Statutes of 2020, provides an expedited expungement pathway for formerly incarcerated people who have successfully participated as incarcerated firefighters in the state's Conservation Camp Program. Many former incarcerated firefighters from fire camps go on to gain employment with CAL FIRE, the USFS and interagency hotshot crews.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
California Public Defenders Association (CPDA)
Vera Institute of Justice

Opposition
None submitted

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

Date of Hearing: April 29, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 634 (Jeff Gonzalez) – As Introduced February 13, 2025

SUMMARY: Makes tianeptine a Schedule I controlled substance under California's Uniform Controlled Substances Act (UCSA).

EXISTING LAW:

1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code, §§ 11054-11058.)

2) Makes possession of most Schedule I controlled substances a misdemeanor, except that a person with at least one prior conviction for a serious or violent felony, or a crime requiring sex offender registration, is guilty of a felony punishable by 16 months, two years, or three years. (Health & Saf. Code, § 11350.)

3) Makes possession of a Schedule I controlled substance when the person has two or more prior convictions of specified drug crimes, including possession, an alternate felony/misdemeanor punishable by up to one year in county jail or by 16 months, two years, or three years. (Health & Saf. Code, § 11395, subd. (b)(1).)

4) Makes a second or subsequent conviction of the above punishable in state prison if a felony. (Health & Saf. Code, § 11395, subd. (b)(2).)

5) Makes the possession for sale or purchase for purposes of sale of most Schedule I controlled substances punishable by two, three, or four years. (Health & Saf. Code, § 11351.)

6) Makes transporting, importing into the state, selling, furnishing, administering, or giving away, or attempting to import into this state or to transport, most Schedule I controlled substances a felony punishable by imprisonment for three, four, or five years. (Health & Saf. Code, § 11352.)

7) Provides that every person 18 years of age or over, who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle most Schedule I controlled substances, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor, shall be punished by imprisonment in the state prison for three, six, or nine years. (Health & Saf. Code, § 11353.)

8) Provides that any person 18 years of age or over who is convicted specified violations related to, among other acts, the sale, transport, or furnishing of most Schedule I controlled

substances, or of a conspiracy to commit one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, shall receive an additional punishment of three, four, or five years at the court's discretion. (Health & Saf. Code, § 11353.6, subd. (a).)

9) Any person 18 years of age or older who is convicted of the above violation which involves a minor who is at least four years younger than that person, as a full and separately served enhancement to that provided above, shall be punished by imprisonment for three, four, or five years at the court's discretion. (Health & Saf. Code, § 11353.6, subd. (b).)

10) Enacts the Sherman Law, enforced by Department of Public Health, which provides broad authority for DPH to enforce food safety requirements, including that food is not adulterated, misbranded, or falsely advertised. Food labeling requirements generally adopt federal food labeling laws as the state requirement, including nutrition labeling and allergen labeling, but DPH is permitted, by regulation, to adopt additional food labeling regulations. (Health & Saf. Code, § 109875, et seq.)

11) Prohibits any person from engaging in the manufacturing, packing, or holding of any processed food unless the person has a valid registration as a food processing facility from the DPH under the Sherman Law. (Health & Saf. Code, § 110460.)

12) Establishes penalties for violations of the Sherman Law, including a fine of up to $1,000, or up to $10,000 for repeated violations. (Health & Saf. Code, § 111825.)

13) Prohibits any manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing specified dietary supplements. (Health & Saf. Code, § 110423.2.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 634 aims to combat the growing threat posed by Tianeptine, also known as "gas station heroin." This legislation will add Tianeptine to the Schedule 1 list of controlled substances in California. Tianeptine has been increasingly misused, particularly by individuals seeking an opioid-like effect, despite its unregulated status and the severe risks it poses to the public. The opioid epidemic continues to ravage communities across the nation, and Tianeptine has become a disturbing new threat in this ongoing crisis. This Bill seeks to address this emerging danger and prevent further harm to vulnerable populations, especially those already at risk due to the opioid crisis. With AB 641, California will strengthen its response to the opioid epidemic by closing a dangerous loophole and taking decisive action to safeguard public health and safety."

2) **Tianeptine**: Tianeptine is an antidepressant approved for use to treat major depressive disorder in countries in Asia, Europe, and Latin America but has been not approved for use in

the United States.[1] "[It] has shown potential benefits in addressing anxiety and irritable bowel disease" as well.[2] In the United States, it is generally sold online or at convenient stores as a powder, a pill, or a liquid. At high doses, it can produce a high and feelings of euphoria.[3] Misuse can lead to dependence and, in rare cases, death.[4]

According to the Drug Enforcement Administration:

> In August 2018, CDC published an analysis of the tianeptine-related calls to the NPDS between 2000 and 2017. During the first 14 years of the study period (2000– 2013), NPDS reported a total of 11 tianeptine exposure calls. From 2014 through 2017, NPDS reported 207 calls [2014 (5 calls); 2015 (38); 2016 (83); 2017 (81)]. In addition, NPDS reported 29 withdrawal-associated calls, of which 21 (72.4%) calls involved tianeptine only. Among these withdrawal-associated calls, the most commonly reported adverse effects included agitation, nausea, vomiting, tachycardia, hypertension, diarrhea, tremor, and diaphoresis.[5]

According to the FDA, between 2015 and 2022, "Two deaths were reported [nationwide] as a result of tianeptine use."[6] In 2024, the CDC issued a report after tianeptine exposure calls in New Jersey increased to 20 calls from 17 patients, up from two or fewer cases per year.[7] Six of the patients reported "coingesting [tianeptine with] other substances."[8] Seven of the patients required intubation, although the report does not state how many of those patients were among the coingesting group.[9] Fourteen patients reported consuming a brand of tianeptine that contained kava, another unregulated substance.[10] Notably, analyses of samples of that brand of tianeptine also found synthetic weed, which is illegal to sell in California.[11] (See Health & Saf., § 11357.5) None of the exposures resulted in death.[12]

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[1] Edinoff et al., *Tianeptine, an Antidepressant with Opioid Agonist Effects: Pharmacology and Abuse Potential, a Narrative Review* (Jul. 15, 2023) <https://pmc.ncbi.nlm.nih.gov/articles/PMC10444703/> [last visited Apr. 25, 2025].

[2] *Ibid.*

[3] Tianeptin: Is safe use possible? Mayo Clinic < https://www.mayoclinic.org/healthy-lifestyle/consumer-health/in-depth/tianeptine-is-safe-use-possible/art-20562252#:~:text=When%20taken%20in%20small%20doses,of%20tianeptine%20can%20be%20fatal.> [last visited Apr. 25, 2025].

[4] *Ibid.*

[5] DEA, Tianeptine (Apr. 2025) <https://www.deadiversion.usdoj.gov/drug_chem_info/tianeptine.pdf> [last visited Apr. 25, 2025].

[6] Hoffman-Pennesi et al., Tianeptine Product Adverse Event Reports from FDA CFSAN Adverse Event Reporting System (CAERS), 2015-2022, FDA; see also, Musa, Some tianeptine products recalled as CDC links drug to 'cluster of sever illness', CNN.com (Feb. 1, 2024) < https://www.cnn.com/2024/02/01/health/tianeptine-illness-recall/index.html> [last visited Apr. 25, 2025].

[7] Hoffman-Pennesi, *supra*.

[8] *Ibid.*

[9] *Ibid.*

[10] Musa, *supra*.

[11] *Ibid.*

[12] Counts et al, Notes from the Field: *Cluster of Severe Illness from Neptune's Fix Tianeptine Linked to Synthetic Cannabinoids—New Jersey, June-November 2023*, CDC (Feb. 1, 2024) https://www.cdc.gov/mmwr/volumes/73/wr/mm7304a5.htm?s_cid=mm7304a5_e&ACSTrackingID=USCDC_921DM121333&ACSTrackingLabel=This%20Week%20in%20MMWR%3A%20Vol.%2073%2C%20February%201%2C%202024&deliveryName=USCDC_921-DM121333 [last visited Apr. 25, 2025].

3) **The California Uniform Controlled Substances Act**: In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which established a framework for federal regulation of controlled substances. Title II of the act is the Controlled Substances Act (CSA), which placed controlled substances in one of five "schedules."

> The schedule on which a controlled substance is placed determines the level of restriction imposed on its production, distribution, and possession, as well as the penalties applicable to any improper handling of the substance… [W]hen DEA places substances under control by regulation, the agency assigns each controlled substance to a schedule based on its medical utility and its potential for abuse and dependence.[13]

Substances are added to or removed from schedules through agency action or by legislation.[14]

State laws generally follow the federal scheduling decisions, and "they are relatively uniform across jurisdictions because almost all states have adopted a version of a model statute called the Uniform Controlled Substances Act (UCSA)."[15] California adopted the UCSA in 1972. (Stats. 1972, ch. 1407, § 3.)

With few exceptions, California generally has aligned its Uniform Controlled Substances Act (UCSA) with the federal government's scheduling decisions. (See *People v. Ward* (2008) 167 Cal.App.4th 252, 259 ["In the California Uniform Controlled Substances Act, California adopted the five schedules of controlled substances used in federal law and in the Uniform Controlled Substances Act"]; *Williamson v. Bd. Of Medical Quality Assurance* (1990) 271 Cal.App.3d 1343, 1352, fn. 1. ["Effective January 1, 1985, Schedules I through V of the California Uniform Controlled Substances Act were revised so as to generally parallel the five schedules contained in the Federal Controlled Substances Act."].) The federal government has not listed tianeptine on any of the five schedule under the CSA.

4) **Effect of the Bill**: This bill would make tianeptine a Schedule I controlled substance under the UCSA. By placing it on Schedule I, this bill would create significant criminal penalties for such conduct. In most cases, possession of a Schedule I controlled substance generally is a misdemeanor. (Health & Saf. Code, § 11350.) However, after the passage of Prop 36, the possession of a Schedule I controlled substance when the person has two or more prior convictions of specified drug crimes, including possession, is an alternate felony/misdemeanor punishable by up to one year in county jail or by imprisonment for up to three years, generally in county jail. (Health & Saf. Code, § 11395, subd. (b)(1).) A second or subsequent conviction of the above is punishable in state prison if a felony. (Health & Saf. Code, § 11395, subd. (b)(2).)

Possession for sale or purchase for purposes of sale of most Schedule I controlled substances is punishable by imprisonment for two, three, or four years. (Health & Saf. Code, § 11351.) Transporting, importing into the state, selling, furnishing, administering, or giving away, or attempting to import into this state or to transport, a Schedule I controlled substance is

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[13] The Controlled Substances ACT (CSA): A Legal Overview for the 118th Congress, Congressional Research Service (Jan. 19, 2023) p. 2 <https://crsreports.congress.gov/product/pdf/r/r45948> [last visited Mar. 28, 2024].
[14] *Id.* at p. 9.
[15] *Id.* at 4.

punishable by imprisonment for three, four, or five years. (Health & Saf. Code, § 11352.) A person 18 years of age or over who is convicted specified violations related to, among other acts, the sale, transport, or furnishing of a Schedule I, or of a conspiracy to commit one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, could receive an additional punishment of up to five years. (Health & Saf. Code, § 11353.6, subd. (a).)

Currently, there are no existing criminal penalties for tianeptine-related conduct. As such, this bill would take a currently legal substance and apply the most serious criminal penalties to conduct related to that substance. The author may wish to consider a more modest approach.

For example, like Tianeptine, Kratom is a legal substance with effects similar to those of opioids. Per the United States Drug Enforcement Administration (DEA), consumption of kratom tree leaves produces a stimulant effect in low doses, and a sedative effect in high doses. Consumption of kratom in high doses can also lead to psychotic symptoms, and psychological and physiological dependence. According to the DEA, the abuse of kratom has increased markedly in recent years. Several cases of psychosis resulting from use of kratom have been reported, where individuals addicted to kratom exhibited psychotic symptoms, including hallucinations, delusion, and confusion. And Kratom has resulted in fatal overdoses.[16] Yet Kratom has not been placed on any schedule under the federal Controlled Substances Act.

Unlike this bill, however, AB 1088 (Bains) would add kratom products to the Sherman Food, Drug, and Cosmetic Law, prescribe specified quantities of alkaloids present in kratom products, prohibits the sale of kratom products to those under 21 years of age, require the packaging of kratom products to be child resistant, and prohibit the sale and manufacture of a kratom product that is attractive to children. This approach may better achieve the goal of reducing harmful public health outcomes without burdening the state and law enforcement with increased incarceration and enforcement costs.

5) **Criminal Penalties and Drug Use**: Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found "[n]o relationship between drug imprisonment rates and states' drug problems," finding that "high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths."[17] According to PEW, "[A] large body of prior

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[16] Freund et al., *Hundreds died using kratom in Florida. It was touted as safe.* Tampa Bay Times (Dec. 7, 2023) <https://project.tampabay.com/investigations/deadly-dose/kratom-overdose-deaths-florida-mitragynine-testing/> [last visited Apr. 25, 2025].

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

research…cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations."[18] PEW concludes:

> Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime.[19]

Based on this research, one might reasonably question whether creating stiff penalties for tianeptine would meaningfully impact the drug's availability or the number of people who use it.

4) **Argument in Support**: According to *California Narcotic Officers' Association*, "U.S. poison control centers are reporting a dramatic spike in cases involving tianeptine — a drug that isn't FDA approved, and poses overdose and dependency risks. Tianeptine, however, doesn't just bind to the mu opioid receptor, It actually activates the receptor like other opioids do, like morphine or like oxycodone or like fentanyl.

"It's currently illegal to market or sell tianeptine ***as a drug***, but it's also ***not*** on the list of federally controlled substances. As a result, it is widely available at gas stations, vape shops and online as a 'supplement.' The FDA refers to tianeptine as 'an unapproved drug associated with serious health risks and even death.'

"Tianeptine has never been cleared by the U.S. Food and Drug Administration for medical use, so it's sold in the U.S. as a nootropic, a substance promising to enhance users' mood and cognitive function.

"Experts warn that it's dangerous to consume any unapproved drug, particularly one that poses the risk of dependency, withdrawal, respiratory depression and even death as does tianeptine. It's often packaged in colorful, shot-sized bottles, containing the drug in varying concentrations without proper disclosures to the public about the true contents. Many tianeptine products have been found to include dangerous synthetic cannabinoids as well.

"Lack of a federal ban on tianeptine has forced states to act on their own. In 2018, Michigan became the first state to ban sales of the drug, classifying it as a Schedule II controlled substance, the same category as drugs like cocaine and fentanyl. The FDA says at least 12 states have enacted similar bans to protect their residents. California should do the same. Tianeptine is a dangerous, addictive and unregulated product that should not be made available for sale in our state."

5) **Argument in Opposition**: According to the *Drug Policy Alliance*, "**We all want our loved ones and communities to be safe, but criminalizing tianeptine and other commonly-available substances will not effectively protect or improve the health of those seeking such substances, and instead will cause other harms.** It will result in increased criminalization of people who use drugs, exposing them to additional criminal charges and

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[18] PEW, *supra*. See generally, Przybylski, *Correctional and Sentencing Reform for Drug Offenders* (Sept. 2009)
[19] *Ibid.*

potentially increased sentences, and have the unintentional consequence of fostering an illicit market for such substances and substantially similar chemical compounds.

"Tianeptine is an antidepressant drug approved for the treatment of major depressive disorder in some countries outside of the United States. It has been shown to have potential benefits in addressing anxiety, irritable bowel disease, and declines mental cognition.1,2 Tianeptine has been shown to be comparable with fluoxetine, or 'Prozac" in a number of studies on its efficacy as an antidepressant and been shown to treat Major depressive disorder (MDD), one of the most common mental disorders in the United States, which can lead to severe impairments thatinterfere with one's ability to carry out major life activities.3,4 Patients without access to "first-line antidepressant treatments" tend to have a more severe course of illness and are at an increased risk of suicide.

"At this time, however, tianeptine is not approved for any use by the United States Federal Drug Administration (FDA) and is not regulated in many states. As a result, manufacturers and distributors of products containing the substance are not subject to controls on product marketing, concentrations, testing, age verification, requirements for bundling naloxone with the product, or per-consumer quantity limits.

"One of the consequences with scheduling substances on Schedule I, the most strictly controlled category, designates them as having no medical use and subject to the highest penalties. Criminalizing certain formulations simply incentivizes more innovation so that suppliers will produce new and different molecular compounds to avoid criminalization. This could actually lead to the development and dissemination of more potent or risky drugs.

"**Scheduling tianeptine, particularly on Schedule I, will also create barriers to critically needed research on the drug at a time when we need more research to understand its effects and uses.** Scheduling drugs makes them more difficult for researchers to access and procure for research purposes, and can have a chilling effect on research for fear of legal repercussions or barriers to Institutional Review Board (IRB) approval. There is still a great amount information that is not well understood about Tianeptine, including how various doses act in the body, potential interaction with medications and other drugs, how to treat and manage withdrawal among dependent users, medication treatments for people who are addicted to these drugs, and also potential novel medical uses.

"The schedules of controlled substances in California and elsewhere are generally designed to weigh the "potential for abuse", accepted medical use, and public health risks of a drug. Adding Tianeptine as a controlled substance without conducting scientific and medical evaluations that are necessary in the drug scheduling process undermines the process for scheduling drugs and imposing criminal penalties. It remains uncertain how the classification of Tianeptine on Schedule I could be justified without additional research.

"**Instead of hastily criminalizing tianeptine as a controlled substance, policymakers should focus on health-centered approaches:** improving access to mental health services, expanding overdose-prevention and harm-reduction services (including community-based drug checking programs), peer-led outreach and street-medicine programs, strengthening our good samaritan statute, and increasing access to Medically Assisted Treatment (i.e. methadone and buprenorphine), and expanding access to and training around naloxone, and evidence-based drug education and voluntary treatment.

"Overdose deaths are preventable, but expanded criminalization causes more harm and stands in the way of saving lives. Criminalization creates instability, blocks access to jobs and housing, increases overdose risk, and leads to more dangerous substances. A vast body of evidence has found that adding criminal penalties does not reduce overdose rates or the supply of drugs.5 Instead, it creates a dangerous cycle that exposes people who use drugs to newer and potentially more dangerous alternatives from unknown sources. Criminalizing tianeptine will likely lead to the emergence of other, potentially more deadly substances in the illicit drug supply. Effective solutions center support, not punishment."

6) **Related Legislation**:

a) AB 1088 (Bains) would, among other things add kratom and other specified products to the Sherman Food, Drug, and Cosmetic Law (Sherman Law), prohibit the sale of those products to persons under 21 years of age, and require the packaging of those products to be child resistant. AB 1088 is pending a hearing in the Assembly Appropriations committee.

b) SB 6 (Ashby) would make xylazine also known as "tranq," a Schedule III drug under UCSA.

7) **Prior Legislation**:

a) AB 2018 (Rodriguez), Chapter 98, Statutes of 2024, removed fenfluramine as a controlled substance under the UCSA.

b) AB 2217 (Weber), of the 2023-2024 Legislative Session, would have provided that, commencing on January 1, 2027, no person or entity may manufacture, sell deliver, distribute, hold, or offer for sale, in commerce a food product for human consumption that contains tianeptine, subject to civil penalties of between $5,000 and $10,000 for each violation. The hearing on AB 2217 was canceled at the request of the author.

c) AB 2365 (Haney), of the 2023-2024 Legislative Session, would have established the Kratom Consumer Protection Program to provide a regulatory structure for kratom products, as provided. AB 2365 was held on the Senate Appropriations Committee suspense file.

d) AB 3029 (Bains) would make xylazine, also known as "tranq," a Schedule III drug under California's UCSA, contingent on the federal government adding xylazine to Schedule III of the federal CSA. AB 3029 was held in suspense in the Senate Appropriations Committee.

e) SB 1502 (Ashby), of the 2023-2024 Legislative Session, would have made xylazine also known as "tranq," a Schedule III drug under UCSA. AB 1502 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Narcotic Officers' Association
California State Sheriffs' Association
Union Station Homeless Services

Oppose

ACLU California Action
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Universidad Popular

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

Date of Hearing: April 29, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 746 (McKinnor) – As Introduced February 18, 2025

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to establish the Inmate Cooperative Program. Specifically, **this bill:**

1) Requires CDCR to establish the Inmate Cooperative Program (ICP or program) to facilitate operations of inmate cooperatives within state prison facilities.

2) Authorizes an applicant who seeks to establish an inmate cooperative to apply to the program by submitting an application to the warden of the facility.

3) Mandates the warden review the applicant's submission and provide written feedback.

4) Requires the warden to approve an application only if the applicant, or a cooperative community partner acting on their behalf, submits a plan of operation to the warden containing all of the following:

   a) The chosen name of the cooperative.

   b) The cooperative's draft bylaws containing specified information.

   c) A draft business plan including specified information.

   d) A safety plan.

   e) A letter of partnership from the cooperative community partner, as specified.

5) Requires, following approval of an application by the warden, the applicant to incorporate as a worker cooperative, as specified, with the support of its cooperative community partner.

6) Mandates the program to certify the worker cooperative following approval of an application by the warden and incorporation of the cooperative.

7) Requires the CDCR to enter into a contract with a certified inmate cooperative to outline the terms of operation, responsibilities, and compliance requirements, and authorizes the cooperative community partner to act as a liaison during the contract process and provide ongoing support in maintaining compliance with the contract and applicable regulations.

8) Requires, as a condition to operate in a state prison facility, a certified inmate cooperative to write into their bylaws that their cooperative community partner is required to deduct 40 percent from each inmate's gross wages and deposit the wages into the Green Cooperative Reentry Reserve.

9) States the California Employee Ownership Hub must choose the cooperative institution, which shall meet all of the following:

   a) Have at least 10 years of cooperative development experience.

   b) Assist in the selection of a financial institution that will steward and manage the Green Cooperative Reentry Reserve.

   c) Appoint the cooperative community partner.

   d) Provide technical assistance, financial support, and other services to cooperative community partners involved in the establishment, operation, and governance of certified inmate cooperatives.

10) Requires, as a condition of stewarding the Green Cooperative Reentry Reserve, the financial institution to only use moneys given to it by inmate wages to further the goal of reducing recidivism and create economic opportunities for system-impacted individuals and survivors of crime with grants, low-interest loans, or technical assistance to start or expand environmentally sustainable cooperative projects.

11) Provides that the financial institution submit an annual report to the Governor detailing the Green Cooperative Reentry Reserve's activities, resource allocations, and measurable outcomes of funded initiatives.

12) Requires the compensation for inmate workers to be determined by the certified inmate cooperative and to be consistent with California minimum wage laws.

13) Mandates an inmate worker receive compensation managed by the certified inmate cooperative through its cooperative community partner.

14) States the cooperative community partner must deduct 40 percent from each inmate's gross wages to be deposited into a Green Cooperative Reentry Reserve before issuing wage checks; and requires the remaining wages to then be transferred to the CDCR for structured distribution, as specified.

15) Requires CDCR to structure the distribution of wages received from the cooperative community partner as follows, with deductions taken from the gross wages prior to distributing the net wages:

   a) Federal, state, and local taxes shall be withheld from gross wages.

   b) Mandatory deductions for restitution fines and orders and other applicable laws shall be withheld from the gross wages, as specified.

   c) After the above deductions, the net wages shall be distributed as follows:

      i. Twenty percent of the net wages shall be deposited into the inmate cooperative worker's trust account.

      ii. Twenty percent of the net wages shall be deposited into the inmate passbook savings account or another savings account to be released by the CDCR to the

inmate cooperative worker upon parole. In the event the inmate passes away while incarcerated or is ineligible for parole, the balance shall be allocated to a designated individual or next of kin, as determined by departmental regulations.

16) Provides that CDCR grant certified inmate cooperatives access to necessary equipment, materials, and resources to support their operations, with no obligation for the CDCR to fund these resources.

17) Requires certified inmate cooperatives to comply with all labor, safety, and governance standards, and requires the CDCR to assist certified inmate cooperatives in meeting the Prison Industry Enhancement Certification Program requirements to ensure eligibility for interstate commerce and adherence to federal labor requirements, including fair wages and worker protections.

18) Requires certified inmate cooperatives to provide training in financial literacy, decision making, and teamwork to enhance inmate workers' post-release economic opportunities.

19) Authorizes certified inmate cooperatives to engage in the production of goods, agricultural products, or services for the cooperative's use and sale, in compliance with applicable regulations.

20) Mandates inmate workers to be deemed to fulfill their work assignment responsibilities through their involvement in inmate cooperative activities.

21) Authorizes inmate workers to take responsibility for their work assignments with oversight by the warden or their designee, provided that safety and regulatory compliance are maintained.

22) Requires, notwithstanding any law restricting the sale of inmate-provided services or inmate-manufactured goods, inmate workers be exempt from restrictions on producing and selling goods or services through the certified inmate cooperative.

23) Provides that, notwithstanding any other law, an inmate who participates in the Inmate Cooperative Program is ineligible for unemployment benefits upon their release from prison based upon participation in that program.

24) Prohibits an employee of the CDCR from serving as a member, officer, or board member of any certified inmate cooperative established under the Inmate Cooperative Program, as well as prohibits them from having any direct or indirect financial interest in the cooperative or its operations.

25) Makes related findings and declarations.

26) Defines the following terms:

    a) "Applicant" means a group of inmates applying to the Inmate Cooperative Program.

    b) "Certified inmate cooperative" means a worker cooperative operating within a state correctional facility that has been certified by the Inmate Cooperative Program.

c) "Cooperative community partner" means a nonprofit organization, cooperative association, cooperative corporation, or individual that supports the inmates with the establishment, operation, and governance of certified inmate cooperatives.

d) "Cooperative institution" to mean a nongovernmental nonprofit organization, cooperative association, or similar entity that is dedicated to supporting, overseeing, and promoting cooperative enterprises.

e) "Green Cooperative Reentry Reserve" to mean an account with a community development financial institution, cooperative, credit union, or nonprofit corporation that has at least five years of experience lending to or funding worker cooperatives.

f) "Inmate Cooperative Program" to mean a collaborative initiative involving inmates, correctional staff, and external cooperatives or nonprofits to establish and operate cooperatives within state prison facilities.

g) "Inmate worker" means an inmate working in a certified inmate cooperative.

h) "System-impacted individual" means a person who's legal, economic, or familial circumstances have been significantly influenced by the incarceration, arrest, or conviction of themselves or a close relative. This also includes individuals affected by interactions with the criminal justice system, irrespective of incarceration.

EXISTING LAW:

1) Establishes the CDCR to consist of Adult Operations, Adult Programs, Health Care Services, Juvenile Justice, the Board of Parole Hearings, the Board of Juvenile Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board. (Gov. Code, § 12838.)

2) Outlines the deductions from a prisoner's wages and trust account deposits to pay restitution fines and orders. (Pen. Code, § 2085.5.)

3) Creates specified programs that employ inmates, including the joint venture program, which is established by the Secretary of the CDCR within state prisons that allows a public entity, nonprofit or for-profit entity, organization, or business to employ inmates confined in the state prison system for the purpose of producing goods or services. (Pen. Code, § 2700.)

4) Establishes the Prison Industry Authority within the CDCR for the purpose of developing and operating industrial, agricultural, and service enterprises employing prisoners in institutions under the jurisdiction of the CDCR and for the purpose of creating and maintaining working conditions within the enterprises to ensure prisoners employed have the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. (Pen. Code, § 2800.)

5) Makes it unlawful for any person to sell, expose for sale, or offer for sale within this state, any article or articles manufactured wholly or in part by convict or other prison labor, except articles the sale of which is specifically sanctioned by law. (Pen. Code, § 2812.)

6) Requires, upon appropriation by the Legislature, the Office of Small Business Advocate (OSBA) within the Governor's Office of Business and Economic Development (GO-Biz) to establish the California Employee Ownership Hub that would, among other things, work with all California state agencies whose regulations and programs affect employee-owned companies, and businesses with the potential to become employee owned, to enhance opportunities and reduce barriers (Gov. Code, § 12100.30.)

7) Establishes the Cooperative Corporation Law, which governs the organization and operation of cooperatives, including, among others, worker cooperatives. (Corporations Code § 12200 et seq.)

8) Defines a worker cooperative as a corporation formed under the Cooperative Corporation Law that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to or other work performed for the corporation. (Corporations Code § 12253.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California legislation allows prisoners to participate in programs under the Joint Venture Program and the Prison Industry Authority (PIA). While these allow prisoners to work and earn a salary, they do not permit prisoners to form, own, and operate their own enterprise. Prisoners are being made to be economically reliant by not being able to develop the necessary skill set for self-determination. Although California's cooperative corporation code supports worker cooperatives and the California Employee Ownership Hub, there is not a legal pathway for incarcerated individuals to participate in or benefit from these cooperative structures.

   "AB 746 addresses these deficiencies by formalizing a program under which, with the approval of the Warden and assistance from nonprofit community allies, incarcerated individuals can form certified worker cooperatives. The bill will also establish a Green Cooperative Reentry Reserve, funded by 40 percent of wages and surplus, that will provide seed capital to facilitate crime survivors, reentering citizens, and underserved communities in the creation of their own ecologically regenerative cooperatives.

   "PIA and JVP have had a positive impact on reducing recidivism, however, both programs fail to stymie the root cause of the systemic problem that leads to an increase in recidivism, and a decrease in both public safety and long-term community stability. Below is an overview and side-by-side chart for easy reference of the most critical ways that AB 746 is distinct from the existing models.

   "AB 746 is about creating job programs that truly rehabilitates and repairs. We are creating real opportunities for people both inside and outside of prison to earn dignified wages, contribute to their communities, and build a brighter future. This bill invests in communities hit hardest by poverty and incarceration, supports restitution for victims, and lifts up green businesses that can drive our economy forward. It's a commonsense step toward justice, safety, and dignity for all."

2) **Worker Cooperatives**: According to the National Center for Employee Ownership, "Worker cooperatives are enterprises solely owned and democratically governed by their workers. Generally, employees join the cooperative by paying a fee, and each worker gets one vote. They are most common in startups, small companies, and companies with social missions, although they are possible at companies with thousands of workers."

   Worker cooperatives offer a way for groups of people to start and own a small business together when they may lack the means or expertise to do so alone. Worker-owners share in the profits, oversight, and often management of the organization using democratic practices. In contrast to traditional companies, worker cooperatives have been shown to provide better working conditions and wages, as well as increase household wealth for low-income workers.

   The US Federation of Worker Cooperatives estimates that there are more than 900 worker cooperatives in the United States employing over 10,000 people.

   In 2022, the Legislature passed and governor signed SB 1407 (Becker), Chapter 733, Statutes of 2022, which created the California Employee Ownership Act. This legislation, in part, established, upon appropriation by the Legislature, the California Employee Ownership Hub and a Hub Manager within the OSBA at the Governor's Office of Business and Economic Development aimed at increasing awareness and understanding of employee ownership of businesses, assisting business owners and employees in navigating available resources, and streamlining and reducing barriers to employee ownership.

   In addition, in 2022 the Legislature passed and governor signed AB 2849 (Bonta), Chapter 808, Statutes of 2022, which enacted the Promote Ownership by Workers for Economic Recovery (POWER) Act. The legislation established a panel convened by the Labor & Workforce Development Agency (LWDA) to study the creation of an Association of Cooperative Labor Contractors for the purpose of facilitating the growth of democratically run high-road cooperative labor contractors.

3) **PIA Joint Venture Program:** The Joint Venture Program (JVP) is responsible for implementing the Prison Inmate Labor Initiative, Proposition 139, passed by the voters in 1990. Under its provisions, private businesses can set up operations inside California correctional facilities and hire incarcerated individuals. This includes only those businesses that are starting a new enterprise, expanding an existing business or relocating within California.

   This relationship is a cooperative effort between private industry and the state of California benefiting businesses, victims, and the state while preparing incarcerated individuals for successful reintegration into the community.

   Incarcerated individuals are paid a comparable wage that is then subject to deductions for room and board, crime victim compensation, prisoner family support, and mandatory incarcerated individual savings for release. In addition, incarcerated individual-employees pay federal and state taxes. According to the PIA website regarding the JVP:

   > CDCR holds the Prison Industry Enhancement certificate on behalf of the JVP. The Prison Industry Enhancement

> Certification Program (PIECP) was authorized in 1979 to encourage joint ventures between correctional industries and private sector companies and to establish employment opportunities for prisoners that approximate private sector work opportunities. Congress selected the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice to administer the PIECP. BJA is charged with ensuring that these programs are in compliance with federal law and regulations. BJA selected the National Correctional Industries Association (NCIA) to assist in the administration of PIECP, to provide limited technical assistance, and conduct compliance assessments of cost accounting centers (CACs) or Joint Venture Programs in PIE certified jurisdictions.
>
> Certification by the BJA exempts projects from certain federal restrictions on the marketability of prison-made goods, including the Ashurst-Sumners Act (18 U.S.C. 1761(a) and the Walsh-Healey Act (41 U.S.C. 35). Prison-made goods can be sold across state lines.
>
> The PIECP was first authorized under the Justice System Improvement Act of 1979 (Public Law 96-157, Sec. 827) and later expanded under the Justice Assistance Act of 1984 (Public Law 98-473, Sec. 819). The Crime Control Act of 1990 (Public Law 101-647) authorized continuation of the program indefinitely.
>
> BJA Federal Guidelines require that all projects pay incarcerated individuals a comparable wages defined as that wage rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed. In no case can the wage be less than the federal minimum wage or the California state minimum wage whichever is higher.[1]

4) **Prison Worker Cooperatives:** The Sustainable Economies Law Center (SELC) has advocated for replicating prison worker cooperatives utilized in other countries here in the United States. According to the SELC website:

> The exploitation inherent in the California prison labor system perpetuates cycles of poverty. This election cycle 2024, voters had an opportunity to reform California prison labor laws. Specifically, Proposition 6 would have repealed a current provision in the California Constitution allowing slavery as a punishment for crime. We were disheartened when the results came in. 54% of Californians voted against Proposition 6, allowing slavery and exploitation to continue.

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[1] https://jointventureprogram.calpia.ca.gov/about/history/

> Incarcerated workers get paid meager wages - often a few cents per hour - which is not enough to support their families, pay for basic needs, or save for their eventual reentry into society. Without securing dignified earnings, people in prison may become a financial burden on their loved ones, further straining the resources and cohesion of struggling households and communities. This economic strain exacerbates intergenerational cycles of trauma, violence, homelessness, and incarceration. Prison cooperatives stand out as a powerful alternative to this exploitative system.
>
> Case studies from around the world show how cooperatives inside prisons benefit society and reduces recidivism. For example, prison coops in Italy, England, Iran, and Puerto Rico allow incarcerated workers to earn a living wage and gain valuable skills. (Shout out to the research of Jessica Gordon-Nembhard and Esther West, who have shed light on these examples). Unfortunately, people in prison are not allowed to operate worker owned coops in California.
>
> When California leaders look to Norwegian models of incarceration to replicate, they miss the fact that their success is largely due to the economic opportunities made available to those being released from prison. That's why the creation of cooperatives run for and by formerly incarcerated people is a critical component of this work.[2]

Proposition 6 (2024) proposed to amend the California Constitution to remove language in the California Constitution Article 1, section 6 which prohibits slavery but allows for involuntary servitude "to punish crime." Proposition 6 failed passage by a vote of 53 percent to 26 percent in 2024.

5) **Argument in Support**: According to *Sustainable Economies Law Center*, "In many underserved areas, limited job opportunities lead to higher levels of poverty, which in turn contribute to social instability and increased crime rates. Brookings Institute research shows that boys born into poverty are 20 times more likely to be incarcerated as adults than boys born into wealth. By providing meaningful employment through AB 746, we can address the root causes of poverty and reduce the conditions that foster criminal behavior.

   "AB 746 will break down barriers to employment for those who are returning from prison while also increasing economic opportunities for vulnerable communities who face high rates of unemployment and poverty. By investing in industries such as clean energy, sustainable infrastructure, and environmentally responsible agriculture, AB 746 will create well-paying, stable jobs that provide individuals with the financial independence needed to build better futures.

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[2] https://www.theselc.org/cooperatives_in_prisons_a_liberationist_strategy

"AB 746 will create new streams of revenue for the state and for reinvestment into struggling communities by granting wardens the power to allow incarcerated people to form work co-ops. The prison work co-op model is an international best practice used to support public safety around the world in nations such as Canada, Italy, and England. AB 746 will improve upon this international best practice by channeling 40% of the wages in surplus generated by California's prison co-ops into a Green Reentry Coop Fund.

"The Green Reentry Coop Fund will be dedicated to stimulating entrepreneurship and innovation in struggling communities. It will do this by disbursing start-up grants to system-impacted people who have business ideas that will advance industries such as green construction and green manufacturing. Studies have shown that manufacturing and construction are the two industries in California that are the most effective at reducing recidivism. Through targeted business investment practices like this, the Green Reentry Coop Fund will help California respond to ecological crises while also breaking intergenerational cycles of poverty, trauma, and crime.

"California's prison work coops will reduce recidivism and help offenders make amends by training incarcerated people to create and operate new green enterprises, while expanding access to dignified work opportunities, and increasing restitution payments to crime survivors. We strongly support AB 746 because it represents a forward-thinking approach to addressing systemic inequities in California. This bill provides a unique opportunity to reduce poverty, create economic mobility, and enhance public safety by ensuring that low-income communities have access to the green economy."

6) **Prior Legislation**:

a) AB 2849 (Bonta), Chapter 808, Statutes of 2022 created the POWER Act that establishes a panel, within state government, to conduct a study regarding the creation of an Association of Cooperative Labor Contractors for the purpose of facilitating the growth of democratically run high-road cooperative labor contractors.

b) SB 1407 (Becker), Chapter 733, Statutes of 2022 established the Hub and a Hub Manager within OSBA at the Governor's Office of Business and Economic Development aimed at increasing awareness and understanding of employee ownership of businesses, assisting business owners and employees in navigating available resources, and streamlining and reducing barriers to employee ownership.

REGISTERED SUPPORT / OPPOSITION:

Support

All of US or None (HQ)
Arizmendi Association of Cooperatives
Beloved Community Incubator
California Center for Cooperative Development
Colmenar Cooperative Consulting
Cooperative Professionals Guild
Csu-erfsa

Ella Baker Center for Human Rights
Grazing School of the West
Gundzik Gundzik Heeger Llp
Let US Contribute Initiative
Network of Bay Area Worker Cooperatives
Nextgen California
Norcal Resist
Planting Justice
Regenerative Landscape Alliance
Sustainable Economies Law Center
Transformative Programming Works
Veggielution
Ventures
Wholehearted Bookkeeping, LLC
Worksafe

Opposition

None submitted

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Date of Hearing: April 29, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 847 (Sharp-Collins) – As Amended April 21, 2025

As Proposed to be Amended in Committee

SUMMARY: Grants access to a civilian law enforcement oversight board or commission and any office of inspector general, as specified, to peace officer personnel records. Specifically, **this bill:**

1) Authorizes a sheriff oversight board to conduct closed session pursuant to the Brown Act, as specified, to review confidential records obtained or otherwise related to its oversight duties, if those sessions comply with applicable confidentiality laws.

2) Requires the oversight board or commission and inspector general to have access to peace and custodial officer personnel records related to their oversight duties.

3) Requires an oversight board and inspector general to maintain the confidentiality of peace officer records, consistent with existing law requiring such records be confidential.

EXISTING LAW:

1) Provides that the board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, but that in doing so, the board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. (Gov. Code, § 25303.)

2) Provides that whenever a county board of supervisors deems it necessary or important to examine any person as a witness upon any subject or matter within the jurisdiction of the board, or a document in the possession or under the control of the person or officer relating to the affairs or interests of the county, the chairman of the board shall issue a subpoena, commanding the person or officer to appear before it, at a time and place therein specified, to be examined as a witness. (Gov. Code, § 25170.)

3) States any department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a)(1).)

4) States any department or agency that employs custodial officers, as specified, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided, however, that any procedure so established shall comply with rules pertaining to confidentiality of personnel records for

peace officers. (Pen. Code, § 832.5, subd. (a)(2).)

5) Requires any complaints and reports or findings relating citizen complaints against law enforcement or custodial personnel, including all complaints and any reports currently in the possession of the department or agency, be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct. (Pen. Code, § 832.5, subd. (b).)

6) Prohibits any personnel record from being destroyed while a request related to that record is being processed or any process or litigation to determine whether the record is subject to release is ongoing. All complaints retained may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. (Pen. Code, § 832.5, subd. (b).)

7) States that prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints deemed frivolous shall be removed from the officer's general personnel file and placed in a separate file designated by the department or agency, in accordance with all applicable requirements of law. (Pen. Code, § 832.5, subd. (b).)

8) States, except as specified in provisions of law related to the public's access to peace officer personnel records, as specified, the personnel records of peace officers and custodial officers and records maintained by a state or local agency pertaining to citizen complaints, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to the Evidence Code. (Pen. Code, § 832.7, subd. (a).)

9) Clarifies that confidentiality in peace officer personnel records pertaining to any citizen's complaint 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. (Pen. Code, § 832.7, subd. (a).)

10) States, notwithstanding exceptions in the California Public Records Act, 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:

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

    b) 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.

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

d) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive. (Pen. Code, § 832.7, subd. (b)(1)(A)(i-iii).)

11) States the following peace officer personnel records shall also be made available to the public: 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. (Pen. Code, § 832.7, subd. (b)(1)(B).)

12) States 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. (Pen. Code, § 832.7, subd. (b)(1)(C).)

13) Provides 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. (Pen. Code, § 832.7, subd. (b)(1)(D).)

14) Requires all records pertaining to the following are subject to release: 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. (Pen. Code, § 832.7, subd. (b)(3).)

15) Requires records subject to release also 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)(4).)

16) States as a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of their right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. (Gov. Code, § 54957, subd. (b)(2).)

17) States if notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. (Gov. Code, § 64957, subd. (b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The Legislature provided counties to establish law enforcement oversight commissions either by a vote of county supervisors or the voters in that county. It further provided these commissions with subpoena power so they can require individuals to appear. Despite this, it appears that in some counties the commissions are not receiving the information necessary to carry out their function. AB 847 provides access to records needed to effectively provide oversight of law enforcement bodies as asked for by counties.

2) **Los Angeles County Sheriff Civilian Oversight Commission (COC)**: The COC was initially created and appointed in 2016. According to the COC website:

> On January, 12, 2016 the Los Angeles County Board of Supervisors (LACBOS) voted to implement the COC with the mission to improve public transparency and accountability with respect to the Los Angeles County Sheriff's Department. The Commission is comprised of nine members representing the Board, with four members of the Commission recommended by community and other affiliated groups. The cornerstone of the Commission's work is community engagement and such engagement is encouraged and valued.
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> In its November 1, 2016 action, the LACBOS appointed nine commissioners to serve on the panel and approved hiring an executive director. Five members are nominated from each Supervisorial District, and four additional members are appointed by the entire Board. Commissioners' diverse backgrounds include community & faith leaders, a retired Sheriff's Department Lieutenant, a former federal judge & attorneys with a broad range of experiences—from former prosecutors & public defenders to professors & executives from nonprofit organizations.
>
> The COC provides ongoing review, analysis and oversight of the Sheriff's Department's policies, practices and procedures. They build bridges between the department and the public, and recommend solutions to advise the Board, the Sheriff's Department and the public. Striving to perform its duties in a thorough, impartial, and transparent manner, the Commission demonstrates credibility, and enhances trust and respect. The

> COC welcomes community involvement and provides for opportunities for robust public engagement.[1]

The Office of Inspector General (OIG) serves as the investigative branch of the COC and was created by ordinance 6.44.190 in 2014, as part of the LACBOS' duty to supervise the official conduct of County officers under Government Code section 25303.

> The purpose of the OIG is to promote constitutional policing and the fair and impartial administration of justice, and to facilitate the BOS' responsibility. The OIG provides independent and comprehensive oversight, monitoring of, and reporting about the Sheriff's Department and Probation Department, and serve as the investigative arm of the Los Angeles County Sheriff Civilian Oversight Commission and Probation Oversight Commission. The Inspector General serves as special counsel to the Board of Supervisors, the COC, and the Probation Oversight Commission.[2]

The COC was added to the LA County Ordinances in 2016 and amended in 2020. Section 3.79.030 specifies the COC, *inter alia,* investigate through the OIG or through its own staff; analyze; solicit input; and make recommendations to the BOS and the Sheriff on systemic Sheriff-related issues or complaints affecting the community. (Los Angeles County Code, section 3.79.030, subd. (B).)

3) **Los Angeles County Ordinance Section 3.79:** As noted above, the Los Angeles County Ordinances was amended in 2016 and 2020 to grant authority to the COC to engage in analysis and oversight of the Department's policies, practices, and procedures, and provide advice to the LACBOS. The COC, through the OIG, may investigate complaints and assist the COC. The COC also serves as a liaison and mediator between the Sheriff's Office and community, obtains community input about the Sheriff's Office's operations.

   The Los Angeles County Ordinance also states any personnel records in possession of the COC be treated as confidential. Since the COC is not allowed pursuant to the Brown Act to hear matters in closed session, any confidential personnel records, or reports based on those records, may not be released. (Los Angeles County Code, section 3.79.035.) If the COC needs access to records that are not public records, the law would likely have to be amended, including sections 832.5 and 832.7 to specify that regardless of whether those records are "confidential," pursuant to other statutes, any citizen complaints and any investigation conducted by the Department or anyone else, be provided to any lawfully established civilian oversight commission regardless of who investigated the complaint and regardless of whether the complaint was investigated.

4) **County Authority to Create Oversight Boards and Government Code section 25303.7**: This bill amends Government Code section 25303.7 which was enacted in 2020. Depending on whether a county is a general law or charter county, a county's ability to establish a

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[1] https://coc.lacounty.gov/mission-vision-and-values
[2] https://oig.lacounty.gov/about

civilian oversight commission is largely based on statute. Government Code section 25303.7 also allows a civilian oversight board to subpoena witnesses and documents.

In 1994, the Supreme Court of California weighed in on the authority of a county to establish civilian, law-enforcement oversight boards and bestow such boards with subpoena power. (*Dibb v. County of San Diego*, (1994) 8 Cal. 4th 1200.) The *Dibb* case dealt specifically with the County of San Diego, a charter county, and looked to the California Constitution, statutory law, as well as the county charter itself before determining that San Diego County could lawfully establish such an oversight board and also grant that board the power of subpoena. (*Id.*)

In *Dibb*, the Court quickly determined that the California Constitution grants to the counties the authority to create a civilian law-enforcement review board, irrespective of whether it is a charter county or a general law county. (*Id.*, at 1207-08.) The Court then looked at whether the County could also grant the law-enforcement oversight board the ability to issue a subpoena. In making that determination, the Court first looked to see whether the Legislature had granted counties the authority to vest oversight boards with subpoena power statutorily. (*Id.* at 1210.) The Court found that, at the time, that there was no such statutory authority. Regardless, the court ruled in favor of San Diego County, finding that the county charter could establish such subpoena power, even in the absence of statutory authority.

The clear implication of the Court's decision is that the Legislature can in fact grant such subpoena power to oversight boards through the county. In fact, the Court cited to a variety of instances in which Legislature has granted subpoena power to county entities. (*Id.*) Government Code section 25303 codified *Dibb* to the extent that it applies to charter counties, providing statutory authority to establish an oversight commission, which its charter may already allow. In addition, Government Code section 25303.7 clarified that general law counties have the statutory authority to create sheriff-specific oversight boards and inspector general offices that both have statutory subpoena power.

5) **Peace Officer Personnel Records Generally:** Penal Code section 832.7 generally pertains to access to peace officer personnel records. Peace officer personnel records include: (a) personal data, including marital status, family members, educational and employment history, home addresses, or similar information; (b) medical history; (c) election of employee benefits; (d) employee advancement, appraisal, or discipline; (e) complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which they perceived, and pertaining to the manner in which he or she performed their duties; and (f) any other information the disclosure of which would constitute an unwarranted invasion of personal privacy. (Pen. Code, § 832.8, subd. (a)(1-6).) Penal Code section 832.7, subdivision (a) generally makes citizen complaints against a peace officer, and peace officer personnel records **confidential**. (Pen. Code, § 832.7, subd. (a).)

However, there are several exceptions making peace officer personnel records, specifically, records of discipline, investigations, and other complaints accessible by the public. Additionally, Penal Code section 832.7, subdivision (a) states it does not apply to investigations or proceedings conducted by a grand jury, a district attorney, the Attorney General's Office (DOJ), and the Commission on Peace Officer Standards and Training (POST).

In 2018, the Legislature amended the Public Records Act to allow public access to certain peace officer disciplinary records despite the language in Penal Code section 832.7, subdivision (a).[3] SB 1421 (Skinner), Chapter 988, Statutes of 2018 and SB 16 (Skinner), Chapter 402, Statutes of 2021 allows for public disclosure of the following records: (a) any incident involving the discharge of a firearm at a person by an officer; (b) any incident involving the use of force against a person that resulted in death or great bodily injury; (c) any **sustained** finding involving a complaint that alleges unreasonable or excessive force; (d) any **sustained** finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive; (e) any record related to a sustained finding where a peace officer engaged in sexual assault against a member of the public; (f) any **sustained** finding of an incident in which a law enforcement officer engaged in dishonesty related to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer; (g) any **sustained** finding of prejudice or discrimination based on a person's membership in a protected classification; [4] and (h) any **sustained** finding that a peace officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, §§ 832.7, subd. (b)(1)(A); (B)(i-iii); (D) and (E).)

Personnel records now subject to public disclosure are no longer considered "confidential" regardless of whether the request is a public records request.

> Here, we may reasonably infer from the entire text of section 832.7(b)(1) that its call for disclosure is intended to supersede, at minimum, those exemptions like section 832.7(a) and Government Code section 7923.600 that would "nullify" its application to a wide or significant swath of officer-related records. (*First Amendment Coalition v. Superior Court (Bonta)* (2023) 98 Cal.App.5th 593, 610, citing *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1042–1044; See also Essick v. County of Sonoma (2022) 80 Cal. App. 5th 562.)

This bill amends Government Code section 25303.7 which generally allows a county to establish a sheriff oversight commission to assist the board of supervisors with its duties, as specified in Government Code section 25303. Section 25303 requires a Board of Supervisors to supervise the official conduct of all county officers, and officers of all districts as it relates to assessing, collecting, safekeeping, management, or disbursement of public funds. "The Board of Supervisors shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection."

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[3] Before 2018, the only way to access peace officer personnel records was to file a written motion demonstrating "good cause" pursuant to Evidence Code section 1043 and 1046 (also known as a *Pitchess* motion). (See *Pitchess v. Superior Court (Echeverria)* (1974) 11 Cal.3d 531.) Also, the California Supreme Court aggressively rejected any public access to peace officer disciplinary records under any circumstances short of filing a *Pitchess* motion. (See *Copley Press, Inc. v. Superior Court (County of San Diego)* (2006) 39 Cal.4th 1272, 1299.)

[4] "Protected classification" in the context of Penal Code section 832.7, means 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.

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds.

It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection. This provision, however, may not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors also may not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

The COC alleges the Los Angeles County Sheriff refuses to provide confidential peace officer personnel records, particularly related to citizen complaints, but it violates existing confidentiality requirements such as Evidence Code sections 1043 and 1046 (also known as *Pitchess* statutes).[5] This bill proposes to fix that issue by clarifying any oversight commission or inspector general may access peace officer personnel records as part of their oversight duties.

6) **Brown Act and Closed Session:** This bill specifically allows the COC to meet in closed session pursuant to a specific exception. The Los Angeles County Ordinance specifies that the COC may not convene in closed session and accordingly, may not access any information that is otherwise confidential pursuant to Penal Code section 832.7. This bill states the COC may meet in closed session for the purpose of hearing confidential documents not otherwise public in accordance with Penal Code section 832.7.

The Brown Act was enacted in 1953 to ensure a greater degree of public scrutiny over legislative action on the local level. The Legislature stated its intent to create more transparency in government decisions:

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[5] Pitchess statutes, as noted in footnote 3 is the general requirement that a moving party demonstrate good cause pursuant to written motion before a court may order review or production. The statutes governing this process are Evidence Code sections 1043 and 1046 and Penal Code section 832.7. Evidence Code section 1043 states: "In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure **shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency that has custody and control of the records**."

Before the Legislature changed the law, even other county agencies had to file a *Pitchess* to access police personnel records. (See *People v. Superior Court (Gremminger)* (1997) 58 Cal. App. 4th 397 [holding the exemption from the requirements of Evidence Code section 1043, provided in Pen C § 832.7, applies only to investigation or proceedings concerning the conduct of a police officer; since defendant was not a police officer at the time the killing occurred, the exemption did not apply. The statutory scheme for discovery of peace officer personnel records (Evid. Code, §§ 1043, 1045; Pen Code, §§ 832.7, 832.8) balances two directly competing interests, the peace officer's claim to confidentiality and the criminal defendant's equally compelling interest in all information pertinent to his or her defense. The scope of the district attorney's exemption from the confidentiality provisions of Pen Code, § 832.7, subd. (a), is **limited to the district attorney's investigations of police officer or police agency conduct**. (Emphasis added)].)

> The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (Pen. Code, § 54950.)

In enacting the Brown Act, the Legislature declared public commissions, boards, councils, and other public agencies in California exist to aid in the conduct of the people's business, stating that the intent of the law was that public agencies take open actions and conduct public deliberations. The basic requirement of the Brown Act is that all meetings of the legislative body of a local agency must be open and public, and all persons must be allowed to attend any meeting of the legislative body of a local agency, except as otherwise provided. (Gov. Code § 54953, subd. (a).)

Open and public meetings of legislative bodies of local agencies must comply with the Americans with Disabilities Act of 1990. No limit exists, however, on the amount of "openness" allowed by a local agency. Legislative bodies of local agencies may impose requirements that allow greater access to their meetings than that prescribed by the minimum standards set forth in the Brown Act. (Gov. Code § 54953.7). In addition, an elected legislative body of a local agency may impose these broader requirements on an appointed legislative body (of that agency), of which all or a majority of the members are appointed by or under the authority of the elected legislative body. (Gov. Code § 54953.7.)

Closed meetings, generally referred to in the Brown Act as "closed sessions" or "executive sessions," are allowed for a number of reasons, including discussion of specific employment related matters, pending litigation, and public security, facilities, employees, and examination of witness. (Gov. Code, §§ 54957, 54956.9, 54957.6.) A closed session is a portion of a meeting from which the public and news media are excluded. Closed sessions are allowed during regular meetings, adjourned regular meetings, special meetings, and adjourned special meetings, but not during emergency meetings. (See Gov. Code § 54956.5.) This bill specifies that any oversight commission may meet in closed session for purposes of hearing about peace officer personnel records pursuant to the public security, facilities, employees, and examination of witness' exception.

> ...this chapter does not prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. (Gov. Code, § 54957, subd. (b)(1).)

The closed session exception in Government Code section 54957 also requires that when the body hears about complaints against an employee, the employee be provided 24 hours' notice. If notice is not provided, any disciplinary action taken based on the complaint will be null and void. (Gov. Code, § 54957, subd. (b)(2).)

7) **Argument in Support**: According to the *County of Los Angeles Sheriff Civilian Oversight Commission*: "By way of background, I have served for over eight years as a Commissioner on the Civilian Oversight Commission that oversees the Los Angeles County Sheriff's Department, the largest Sheriff's Department in the nation, both in terms of personnel and budget, and a department that runs the largest jail in the nation. I am currently the Chair of the Civilian Oversight Commission.

   "There is a substantial need for effective and meaningful civilian oversight of the Sheriff's Department that will be greatly helped by the passage of AB 847. Indeed, I am concerned that without AB 847, we will not be able to provide the kind of effective civilian oversight that the public in Los Angeles County expects and deserves."

8) **Argument in Opposition**: According to the *Sheriff Employees Benefits Association*: "California peace officers have undergone some of the most extensive reforms in the country. Yet, despite these efforts, law enforcement agencies face unprecedented challenges, including record-low recruitment and retention. AB 847 would only worsen this crisis by deterring qualified candidates from joining the force and pushing experienced officers out of the profession. This is not just a challenge for law enforcement—it is a direct threat to public safety.

   "Mandating the disclosure of personnel records puts officers at risk of harassment, retaliation, and doxxing, endangering their safety both on and off duty. Additionally, many complaints against officers are unsubstantiated, and prematurely releasing such records could unfairly damage reputations. Civilian review boards, while well-intended, often lack the law enforcement expertise necessary to fairly interpret complex disciplinary matters, leading to biased oversight and politically motivated decisions.

   "Californians have made it clear that public safety is a top priority. Unfortunately, AB 847 moves in the opposite direction. Instead of fostering trust between communities and law enforcement, this bill would erode morale, hinder officer effectiveness, and make our communities less safe."

9) **Related Legislation**: AB 1178 (Pacheco), would require a law enforcement agency to redact records to remove the rank, name, photo, or likeness of all duly sworn officers working an undercover assignment or who worked in an undercover assignment in the past 24 months, all sworn personnel attached to a federal or state task force, and members of a law enforcement agency who received verified death threats to themselves or their families within the last ten years because of their law enforcement employment. AB 1178 is pending in the Assembly Appropriations Committee.

10) **Prior Legislation**: AB 1185 (McCarty), Chapter 342, Statutes of 2020 authorizes a county to create a sheriff oversight board and an inspector general's office and further authorizes those entities to issue a subpoena whenever they deem it necessary or important to examine any person or witness upon any subject matter within the jurisdiction of the board, any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department, or any books, papers, or documents in the possession of or under the control of a

person or officer relating to the affairs of the sheriff's department.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Bend the Arc: Jewish Action California
California Coalition for Sheriff Oversight (CCSO)
California for Safety and Justice
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Cancel the Contract
Care First Kern
Center for Policing Equity
Check the Sheriff
Chispa, a Project of Tides Advocacy
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Dignity and Power Now
Ella Baker Center for Human Rights
Fixin San Mateo County
Hadsell Stormer Renick & Dai Llp
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
Los Angeles Chapter of the National Lawyers Guild
Los Angeles County Office of Inspector General
Qureshi Law
Rubicon Programs
San Francisco Peninsula People Power
Saving Lives in Custody California
Sheriff Civilian Oversight Commission
Starting Over Strong
The W. Haywood Burns Institute
Unitarian Universalist Fellowship of Redwood City, Social Action Committee

Support If Amended

National Association for Civilian Oversight of Law Enforcement

Oppose

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs (ALADS)
Association of Orange County Deputy Sheriffs

Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California Fraternal Order of Police
California Narcotic Officers' Association
California Reserve Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Long Beach Police Officers Association
Los Angeles County Professional Peace 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' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs Association
Santa Ana Police Officers Association
Sheriff's Employee Benefits Association (SEBA)

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

AMENDMENTS TO ASSEMBLY BILL NO. 847
AS AMENDED IN ASSEMBLY APRIL 21, 2025

Amendment 1

On page 2, in lines 12 and 13, strike out "Notwithstanding Sections 1043 and 1046 of the Evidence Code, the" and insert:

The

Amendment 2

On page 2, in line 15, strike out "the report, investigation, or findings of citizen complaints", strike out line 16, in line 17, strike out "Code." and insert:

the commission's oversight duties.

Amendment 3

On page 3, in lines 28 and 29, strike out "Notwithstanding Sections 1043 and 1046 of the Evidence Code, the" and insert:

The

Amendment 4

On page 3, in line 30, strike out "the", strike out line 31, in line 32, strike out "by the sheriff pursuant to Section 832.5 of the Penal Code." and insert:

the inspector general's oversight duties.

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 847

AMENDED IN ASSEMBLY APRIL 21, 2025

AMENDED IN ASSEMBLY MARCH 28, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL No. 847

Introduced by Assembly Member Sharp-Collins

February 19, 2025

An act to amend Section 25303.7 of the Government Code, and to amend Section 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 847, as amended, Sharp-Collins. Peace officers: confidentiality of records.

Existing law, the California Public Records Act, authorizes the inspection and copying of any public record except where specifically prohibited by law. Existing law, with specified exemptions, makes confidential the personnel records of peace officers and custodial records and certain other records maintained by their employing agencies. Existing law provides that this exemption from disclosure does not apply to investigations of these officers or their employing agencies and relating proceedings conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would additionally grant access to the confidential personnel records of peace officers and custodial officers and records maintained by their employing agencies, as specified, to civilian law enforcement oversight boards or commissions during investigations or proceedings concerning the conduct of those officers. The bill would require those oversight boards to maintain the confidentiality of those records, and

would authorize them to conduct closed sessions, as specified, to review confidential records. The bill would additionally authorize a county inspector general to access those personnel records, as specified.

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

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

Page 2

SECTION 1. Section 25303.7 of the Government Code is amended to read:

25303.7. (a) (1) A county may create a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents, comprised of civilians to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff.

(2) The members of the sheriff oversight board shall be appointed by the board of supervisors. The board of supervisors shall designate one member to serve as the chairperson of the board.

(3) ~~Notwithstanding Sections 1043 and 1046 of the Evidence Code, the~~ *The* members of the oversight board shall have access to the personnel records of peace officers and custodial officers relating to ~~the report, investigation, or findings of citizen complaints maintained by the sheriff pursuant to Section 832.5 of the Penal Code.~~ *the commission's oversight duties.* The oversight board shall maintain the confidentiality of these records consistent with Section 832.7 of the Penal Code.

Amendment 1

Amendment 2

(b) (1) The chair of the sheriff oversight board shall issue a subpoena or subpoena duces tecum in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure whenever the board deems it necessary or important to examine the following:

(A) Any person as a witness upon any subject matter within the jurisdiction of the board.

(B) Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.

(C) Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.

(2) A subpoena shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure.

(3) (A) If a witness fails to attend, or in the case of a subpoena duces tecum, if an item is not produced as set forth therein, the chair or the chair authorized deputy issuing the subpoena upon proof of service thereof may certify the facts to the superior court in the county of the board.

(B) The court shall thereupon issue an order directing the person to appear before the court and show cause why they should not be ordered to comply with the subpoena. The order and a copy of the certified statement shall be served on the person and the court shall have jurisdiction of the matter.

(C) The same proceedings shall be had, the same penalties imposed, and the person charged may purge themself of the contempt in the same way as in a case of a person who has committed a contempt in the trial of a civil action before a superior court.

(4) A sheriff oversight board may conduct closed sessions, consistent with Section 54957 of the Government Code, to review confidential records obtained under this section or otherwise related to its oversight duties, if those sessions comply with applicable confidentiality laws, including, but not limited to, Section 832.7 of the Penal Code.

(c) (1) A county, through action of the board of supervisors or vote by county residents, may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff.

(2) The inspector general shall have the independent authority to issue a subpoena or subpoena duces tecum subject to the procedure provided in subdivision (b).

(3) ~~Notwithstanding Sections 1043 and 1046 of the Evidence Code, the~~ *The* inspector general shall have access to the personnel records of peace officers and custodial officers relating to ~~the report, investigation, or findings of citizen complaints maintained by the sheriff pursuant to Section 832.5 of the Penal Code.~~ *the inspector general's oversight duties.* The inspector general shall maintain the confidentiality of these records consistent with Section 832.7 of the Penal Code.

Amendment 3

Amendment 4

(d) The exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight

Page 3 responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.

Page 4 SEC. 2. 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, or a civilian oversight board or commission for a law enforcement agency established pursuant to subdivision (a) of Section 25303.7 of the Government Code or other duly enacted municipal or county ordinance.

(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.

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(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

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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.

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(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) 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.

(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

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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.

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(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

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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.

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(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.

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Date of Hearing: April 29, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 922 (Hoover) – As Introduced February 19, 2025

As Proposed to be Amended in Committee

SUMMARY: Requires the University of California (UC) to require background checks, to be completed by the Department of Justice (DOJ) as specified, during the final stages of the application process for prospective employees and volunteers who have or would have specified duties. Specifically, **this bill**:

1) States that the UC shall require background checks, to be completed by DOJ during the final stages of the application process for a prospective employee or volunteer whose duties include or would include any of the following:

    a) Possession of building master keys for access to residences, offices, or other facilities;

    b) Direct responsibility for the care, safety, or security of people, including minors, or property, including personal property or property of the UC;

    c) Direct access to or responsibility for controlled substances;

    d) Direct access to or responsibility for protected personal information or other restricted or sensitive institutional information, including information affecting national security;

    e) Responsibility for operating commercial vehicles, machinery, or toxic systems that could result in accidental death, injury, or health problems;

    f) The requirement to possess a professional license, certificate, or degree;

    g) Direct access to or responsibility for cash, cash equivalents, checks, credit or debit cards, disbursements, or receipts;

    h) Authority for committing the financial resources of the UC through contracts or agreements;

    i) Direct access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process, or trade secret;

    j) Responsibilities at any UC medical center, student health center, or other medical facility; or,

    k) Management of personnel with any of the duties described in the above paragraphs.

2) Requires any services contract that is entered into, renewed, or amended on or after January 1, 2026, by the UC to include a provision requiring the contractor to permit the UC to require background checks, to be completed by DOJ, for the contractor's employees and subcontractors, whose duties include or would include access to the records, documents, information, or items described in the paragraphs above pursuant to the contract.

3) Provides that the UC shall submit to DOJ fingerprint images of a prospective employee or volunteer, that the UC obtains for this purpose, and related information required by DOJ, for purposes of a state and federal level criminal history background in accordance with existing DOJ procedures.

4) Requires DOJ to provide a state or federal response, or both if applicable, to the UC with specified convictions, arrests for which the applicant is awaiting trial, sex offender registration status, and sentencing information.

5) States that the UC may investigate the criminal history of any prospective employee or volunteer to make a final determination as to their fitness to perform duties that would include access to any records, documents, information, or items specified in the above paragraphs regarding job duties.

6) Requires the provisions of this bill to comply with hiring practices in Government Code section 12952.

EXISTING LAW:

1) Federal law authorizes the Federal Bureau of Investigation (FBI) to collect national criminal history information for centralization in the Criminal Justice Information System (CJIS), and to disseminate this information to state agencies for employment purposes. (Pub. L. No. 92-544.)

2) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services. (Cal. Const., art. I, § 9, subd. (a).).

3) Requires DOJ to maintain state summary criminal history information, as defined, and to furnish this information to various state and local government officers, officials, and other prescribed entities, if needed in the course of their duties. (Pen. Code, §11105, subds. (a)-(b).)

4) Defines "state summary criminal history information" to mean the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person. (Pen. Code, §11105, subds. (a)(2)(A).)

5) Specifies that a fingerprint-based criminal history information check that is required pursuant to any statute to be requested from the DOJ. When a government agency or other entity requests such a criminal history check for purposes of employment, licensing, or certification, existing law requires the DOJ to disseminate specified information in response to the request, including information regarding convictions and arrests for which the applicant is presently awaiting trial. (Pen. Code, § 11105, subd. (u).)

6) Prohibits employers with five or more employees from asking a job candidate about conviction history before making a job offer and requires an employer who intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment, as described. (Gov. Code, § 12952.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "With the FBI notifying state entities that current statutory authority to perform fingerprint-base background checks for California employees is insufficient for access to the Criminal Justice Information System (CJIS), AB 922 will give the necessary authority to access the database. Without this statutory authority, University of California (UC) campuses, medical centers and other locations must access this information through third-party vendors, which can be costly and delay the hiring process. Access to the CJIS will allow the UC system to use valuable resources on other areas of need, instead of getting caught up in prolonged hiring processes. This access ensures the UC system has the necessary tools to thoroughly vet and hire the best candidates possible while maintaining the safety and well-being of the community."

2) **Background**: The FBI collects and securely stores criminal history data, including fingerprints, from nearly 18,000 law enforcement agencies across the nation in the CJIS. When a federal criminal background check is requested by an authorized user, fingerprint images are forwarded to the FBI and a fingerprint-based search of records in the national criminal history database is performed. If the applicant's fingerprints match data in the national criminal history database, the FBI sends the DOJ criminal history information from any state or federal agencies that have reported the information to the FBI.

   In December 2022, the FBI notified the California Department of Justice that the current state statutory authority for the FBI process fingerprint-based background checks for state employees no longer qualified for CJIS access. Instead, applicant agencies wishing to restore access to the CJIS for the purpose of servicing state employee fingerprint-based background checks must enact new statutory authority that:

   a) Explicitly references a national criminal history check.

   b) Includes an express or implied reference such as "submit to the FBI."

   c) Authorizes the use of FBI records for screening of applicants.

d) Identifies the specific categories of licensees and employees that fall within its purview to avoid being overly broad.

This bill will allow the UC to maintain access CJIS for the purpose of conducting background checks on its prospective employees and contractors.

The UC's current policy on hiring, "PPSM-21 Selection and Appointment," published in October of 2023, stipulates that it is the policy of the UC to select and hire, in its judgment, the candidate who possesses the skills, knowledge, and abilities to best perform the duties and responsibilities of the position. It also affirms that UC is generally prohibited, consistent with existing law, from asking an applicant to disclose prior conviction information on the initial job application. The information will be requested once the applicant has been identified as the recommended candidate and has received a conditional offer of employment in a critical position.

The policy also stipulates that a background check is required after the candidate has received a conditional offer of employment in a critical position. According to the policy, candidates hired into critical positions have sensitive administrative/programmatic/managerial duties and responsibilities that could potentially cause human, financial or property loss or other significant risk to the UC. The Chancellor will designate certain positions as "critical" in accordance with the policy, however all UC Health Medical Center and Student Health Center positions are considered critical. Generally, Senior Management Group (SMG) positions are designated as critical.

An offer of employment, oral or written, must be contingent upon completion of a satisfactory pre-employment background check. The policy specifies that the background check process should be initiated only after a conditional offer of employment has been extended to the candidate. The background check must only be used for evaluating the candidate for employment and cannot be used for discriminatory or retaliatory reasons as prohibited by state and federal law and UC policies. This policy is applicable to external and internal candidates, including UC employees under consideration for a promotion or when a UC employee is subject to a background check due to a change in University policies or practices related to specific positions.

This bill specifies that the UC may investigate the criminal history of any prospective employee or volunteer to make a final determination as to their fitness to perform duties that would include access to any records, documents, information, or items specified.

3) **Summary Criminal History Information**: State summary criminal history information is the master record of information compiled by DOJ pertaining to the identification and criminal history of any person. This information includes name, date of birth, physical description, fingerprints, photographs, arrests, dispositions and similar data. (Pen. Code, § 11105, subd. (a).) Access to person's summary criminal history information is generally prohibited and only allowed to be disseminated if specifically authorized in statute. "The state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records. [Citation.] These records are compiled without the consent of the subjects and disseminated without their knowledge. Therefore, custodians of the records, have a duty to 'resist attempts at unauthorized disclosure and the person who is

the subject of the record is entitled to expect that his right will be thus asserted.'" (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-66.)

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

Existing law provides that any fingerprint-based criminal history check required pursuant to any statute shall be requested by DOJ. The agency or entity authorized to received criminal history information shall submit to DOJ fingerprint images and any related information required by DOJ for the purpose of obtaining information as to the existence and content of a record or state or federal arrests, as specified. (Pen. Code, § 11105, subd. (u)(1).) If requested, DOJ shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation (FBI) for the purpose of obtaining a federal criminal history information check. DOJ shall review the information returned from the FBI, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified that requested the information. (Pen. Code, § 11105, subd. (u)(2).)

This bill requires the UC to submit to DOJ fingerprint images of a prospective employee or volunteer in the final stages of the application process for individuals with specified duties or access to records or property, and related information required by DOJ, for purposes of a state and federal level criminal history background check in accordance with existing procedures. This bill states that DOJ is required to provide a state or federal response, or both if applicable, to the UC with specified convictions, arrests for which the applicant is awaiting trial, sex offender registration status, and sentencing information.

This bill also requires that any services contract that is entered into, renewed, or amended on or after January 1, 2026, by the UC shall include a provision requiring the contractor to permit the UC to require background checks, to be completed by DOJ, for the contractor's employees and subcontractors, whose duties include or would include access to the records, documents, information, or items described pursuant to the contract, in order for the UC to request criminal background checks on those individuals.

4) **Protections for Job Applicants with Criminal Histories**: About one in five Californians has a criminal record of some kind. Having such a record can be a significant barrier to getting a job, making it harder for these Californians to move forward with their lives. In 2017, California mandated new hiring procedures intended to ensure that job applicants with criminal records get a fair chance by: (1) requiring most employers to make conditional job offers before initiating background checks; (2) limiting the types of criminal history employers can consider; (3) obligating employers to identify a nexus between the criminal history and the job duties before rescinding an offer; and (4) giving applicants an opportunity to present mitigating information. (See Gov. Code, § 12952.)

According to opponents of this bill, there are no requirements in this bill to follow the requirements of Government Code section 12952 which provides for specified protections for job applicant with a criminal history. The law provides for specified notice and an opportunity to respond when an employer is considering rejection of a job applicant based on criminal history information.

The proposed amendments to this bill would cross-reference that existing section to ensure that job applicants are protected under the processes in existing law.

5) **Argument in Support**: According to the *University of California*, the sponsor of this bill, "UC policy requires a background check for critical positions. The UC obtains fingerprint images and related information from a prospective employee who has accepted a conditional offer of employment in a critical position to conduct a background check. Candidates considered for critical positions have sensitive administrative, programmatic, and/or managerial duties and responsibilities that could potentially cause human, financial or property loss, or other significant risk. Not having access to DOJ and FBI criminal conviction history has resulted in locations spending excessive time and resources to access federal criminal conviction history through third-party vendors, which has created additional financial costs, significant hiring delays, and increased exposure for potential liabilities.

"This bill is necessary to ensure the UC has access to DOJ and FBI federal criminal conviction history so that it can conduct timely background checks for critical positions. This will allow the UC to continue to provide a safe and secure environment for its employees, students, and others in the University community, protect its property and assets, and uphold the reputation and integrity of the University."

6) **Argument in Opposition**: According to the *National Employment Law Project*, "Nearly one in three adults has an arrest or conviction record that can appear on an employment background check report. Workers with records need and deserve reliable access to income through employment. They deserve safe, good-paying, stable jobs. But a huge proportion of the millions of people with records are denied work because of employer bias. Even well-intentioned employers often respond unfairly to the stigma of a record.

"For a variety of reasons, ranging from over-policing and racial profiling to racist charging and sentencing decisions, the people impacted by mass criminalization are disproportionately Black, Latinx, and Indigenous. In California state prisons, Black people are incarcerated at over nine times the rate of white people. Nationwide, nearly one-third of adult Black men have a felony record, as compared with 8 percent of the overall adult population. These race disparities cannot be attributed to significantly different rates of law violations.

. . . .

"AB 922 must be amended to expressly require compliance with the requirements of the California Fair Chance Act.

"The current draft of AB 922 states that DOJ background checks would be completed "during the final stages of the application process." However, that terminology is vague and undefined, limited only by the UC's internal human resources policy. The text of AB 922

should be amended to require that the UC not conduct background checks until after a conditional offer of employment, consistent with the Fair Chance Act.

"The bill should further require the UC to follow other important process requirements of the Fair Chance Act. The requirement for notice and an opportunity to respond, for example, would ensure that job applicants are able to challenge rejections based on inaccurate background check reports. FBI background check reports are frequently inaccurate; dismissed charges, for example, are often reported as currently pending.

"Cross-referencing the requirements of the Fair Chance Act in AB 922 would also allow applicants to challenge unfair disqualifications based on conviction records that are unrelated to the position they seek. Even when a job involves sensitive duties, most convictions do not bear on an individual's suitability for the position. The Fair Chance Act requires employers to conduct an individualized assessment of whether an individual's conviction history has a direct and adverse relationship with the duties of the position."

7) **Related Legislation**: AB 354 (Rodriguez) would require Commission on Peace Officers Standards and Training (POST) employees whose job duties require access to criminal offender record information, state summary criminal history information, or information obtained from CLETS to undergo a fingerprint-based state and national criminal history background check, as specified. AB 354 is pending a hearing in Assembly Appropriations Committee.

8) **Prior Legislation**: AB 94 (Alvarez), Chapter 94, Statutes of 2023, required the California State Auditor (CSA) to collect fingerprints from prospective employees and contractors, as specified, and complete a background check with the DOJ.

REGISTERED SUPPORT / OPPOSITION:

Support

University of California (sponsor)

Opposition

ACLU California Action
Californians for Safety and Justice
Legal Aid at Work
Legal Services for Prisoners with Children
National Employment Law Project
San Francisco Public Defender

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

Amended Mock-up for 2025-2026 AB-922 (Hoover (A))

Mock-up based on Version Number 99 - Introduced 2/19/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 92612.3 is added to the Education Code, immediately following Section 92612.2, to read:

92612.3. (a) (1) The University of California shall require background checks, to be completed by the Department of Justice pursuant to subdivision (b), during the final stages of the application process for a prospective employee or volunteer whose duties include or would include any of the following:

(A) Possession of building master keys for access to residences, offices, or other facilities.

(B) Direct responsibility for the care, safety, or security of people, including minors, or property, including personal property or property of the University of California.

(C) Direct access to or responsibility for controlled substances.

(D) Direct access to or responsibility for protected personal information or other restricted or sensitive institutional information, including information affecting national security.

(E) Responsibility for operating commercial vehicles, machinery, or toxic systems that could result in accidental death, injury, or health problems.

(F) The requirement to possess a professional license, certificate, or degree.

(G) Direct access to or responsibility for cash, cash equivalents, checks, credit or debit cards, disbursements, or receipts.

(H) Authority for committing the financial resources of the University of California through contracts or agreements.

(I) Direct access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process, or trade secret.

(J) Responsibilities at any University of California medical center, student health center, or other medical facility.

(K) Management of personnel with any of the duties described in subparagraphs (A) to (J), inclusive.

(2) Any services contract that is entered into, renewed, or amended on or after January 1, 2026, by the University of California shall include a provision requiring the contractor to permit the University of California to require background checks, to be completed by the Department of Justice pursuant to subdivision (b), for the contractor's employees and subcontractors, whose duties include or would include access to the records, documents, information, or items described in paragraph (1) pursuant to the contract, in order for the University of California to request criminal background checks on those individuals pursuant to subdivision (b).

(b) (1) The University of California shall submit to the Department of Justice fingerprint images of a prospective employee or volunteer, that the University of California obtains pursuant to subdivision (a), and related information required by the Department of Justice, for purposes of a state and federal level criminal history background check in accordance with subdivision (u) of Section 11105 of the Penal Code.

(2) The Department of Justice shall provide a state or federal response, or both if applicable, to the University of California pursuant to subdivision (p) of Section 11105 of the Penal Code.

(c) The University of California may investigate the criminal history of any prospective employee or volunteer to make a final determination as to their fitness to perform duties that would include access to any records, documents, information, or items specified in paragraph (1) of subdivision (a).

(d) Nothing in this section is intended to authorize hiring practices that are inconsistent with the requirements of Government Code section 12952.

Date of Hearing: April 29, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 970 (McKinnor) – As Amended April 22, 2025

PULLED BY THE AUTHOR.

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