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 III
AB 1097 (Avila Farias) – ACR 60 (Pacheco)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

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

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

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

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

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

   a) Clarifies this applies to entering upon Indian Lands.

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

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

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

4) Defines the below terms as follows:

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

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

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

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

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

6) Clarifies that the trespass crime of entering lands, whether unenclosed or enclosed by fence, for the purpose of injuring property or property rights or with the intention of interfering with, obstructing, or injuring a lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession, also applies to entering Indian lands, as defined.

EXISTING FEDERAL LAW:

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

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

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

EXISTING STATE LAW:

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

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

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

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

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

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

6) Makes it a misdemeanor to willfully commit trespass by entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public after: 1) having been informed by a peace officer at the request of the owner, their agent, or person in lawful possession, and upon being informed by the peace officer that the officer is acting at the request of the owner, their agent, or person in lawful possession, that the property is not open to the particular person; or 2) refusing or failing to leave the property upon being asked to leave the property, subject to the following:

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

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

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

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

7) Provides that any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by

obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars ($400), or by both that imprisonment and fine, although this shall not apply to the following persons:

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

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

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

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

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

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

a) Clarifies this applies to entering upon Indian Lands.

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

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

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

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

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

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

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

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

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

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

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

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

"Affirming Tribal Sovereignty

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

"Protecting Due Process and Civil Liberties

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

"Advancing Civil Liberties Through Sovereignty

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

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

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

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

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

8) **Prior Legislation**:

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

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

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
Rincon San Luiseno Band of Indians; the

Oppose Unless Amended

Unite Here International Union, Afl-cio

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1107 (Flora) – As Introduced February 20, 2025

SUMMARY: Mandates a court suspend a business license for up to one year of any business or person that knowingly fails to record any nitrous oxide sale, as specified. Specifically, **this bill**:

1) Authorizes the California Department of Tax and Fee Administration (CDTFA) to deny a license for a retailer to sell cigarettes or tobacco products if:

   a) The retailer has been convicted of selling or furnishing a device, canister, tank, or receptacle either exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years.

   b) The retailer engaged in the illegal sale of nitrous oxide to a person who suffers death or great bodily injury.

   c) The retailer fails to properly document a sale of nitrous oxide, as specified.

2) Mandates a court suspend or revoke a business license to sell cigarettes or tobacco products if a licensee violates provisions of the Business & Professions Code related to administering nitrous oxide in a dental practice.

3) Requires a court to order any business license be suspended for up to one year if a person knowingly dispenses or distributes nitrous oxide for illegal use, as specified, and that person suffers death or great bodily injury as a result as a second violation unless the owner or employee of the business license can demonstrate good faith attempt to prevent the dispensing of nitrous oxide for an illegal purpose.

4) Requires a court to order any business license be suspended for up to one year if a person knowingly fails to report each transaction of sale of nitrous oxide, as specified.

EXISTING LAW:

1) Provides that any person that possesses nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, ingest for the purposes of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly with the intent to do so, is under the influence of nitrous oxide is a guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed $1,000, or by both imprisonment and a fine. (Pen. Code, § 381b.)

2) States that every person who sells, furnishes, administers, distributes, or gives away, or offers to sell, furnish, distribute, or give away a device, canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound containing nitrous oxide to a person under 18 years of age is guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed $1,000, or by both imprisonment and a fine. The court shall consider ordering community service as a condition of probation. (Pen. Code, § 381c, subd. (b).)

3) Provides that it is a defense to the crime of selling nitrous to a minor if the defendant honestly and reasonably believed that the minor involved in the offense was at least 18 years of age. The defendant bears the burden of establishing this defense by a preponderance of the evidence. (Pen. Code, § 381c, subd. (c)(1) & (2).)

4) Makes it a misdemeanor punishable by a term of imprisonment not to exceed six months, by a fine not to exceed $1,000, or both, for any person to dispense or distribute nitrous oxide to a person knowing or having reason to believe that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, euphoria, dizziness, or stupefaction and that person proximately cause great bodily injury or death to himself, herself, or any other person. (Pen. Code, § 381d.)

5) Requires a person that distributes or dispenses nitrous to record each transaction involving nitrous oxide in a physical written document. The person dispensing or distribution the nitrous oxide shall require the purchaser to sign the document and provide a residential address and present a valid government issued photo identification card. The person dispensing or distributing the nitrous oxide shall sign and date the document and retain the document at the business address for one year from the date of the transaction, and shall make transaction records available during normal business hours for inspection and copying by officers and employees of the California State Board of Pharmacy, or of other law enforcement agencies of this state or of the United States upon presentation of a duly authorized search warrant. (Pen. Code, § 381e, subd. (a).)

6) Requires that the document used to record each nitrous oxide transaction shall inform the purchaser of all of the following:

   a) The inhalation of nitrous oxide may be hazardous to your health;

   b) That it is a violation of state law to possess nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication;

   c) That it is a violation of state law to knowingly distribute or dispense nitrous oxide or any substance containing nitrous oxide, to a person who intends to breathe, ingest, or inhale it for the purpose of intoxication.

   d) States that these requirements shall not apply to any person that administers nitrous oxide for the purpose of providing medical or dental care if administered by a medical or dental provider licensed by this state or at the direction or under the supervision of a practitioner licensed in this state; and,

e) Provides that these requirements shall not apply to the sale of nitrous oxide contained in food products for use as a propellant. (Pen. Code, § 381e, subd. (b).)

7) Requires, commencing June 30, 2004, a retailer have in place and maintain a license to engage in the sale of cigarettes or tobacco products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses. (Bus. & Prof. § 22972, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The misuse of flavored nitrous oxide is a growing public safety concern, particularly among young people, who are most vulnerable to its dangerous effects. Studies have shown a rise in inhalant use, especially among minority adolescents and youth from lower-income backgrounds, exacerbating existing health disparities. Illicit distribution of nitrous oxide not only endangers individual health but also contributes to impaired judgment, leading to accidents and broader community harm.

"AB 1107 addresses this issue by strengthening enforcement against businesses that violate nitrous oxide distribution laws. By imposing meaningful consequences—such as license suspension and ineligibility for new licenses—on repeat offenders, this legislation deters illegal sales and limits access to this hazardous substance. These measures are essential in reducing health inequities and protecting at-risk youth from preventable harm.

"The FDA has already issued an advisory warning about the dangers of inhaling nitrous oxide, underscoring the urgent need for action. AB 1107 enhances public safety by holding violators accountable, suspending licenses for repeat offenders, and ensuring that businesses operate responsibly. By restricting access to these dangerous products, this legislation directly addresses a growing public health crisis and safeguards California's youth and communities."

2) **Prohibition on Sale of Nitrous Oxide:** Existing law prohibits possessing nitrous oxide with the intent inhaling the gas for the purpose of causing a condition of intoxication, or who knowingly and with the intent to use nitrous oxide illegally and is under the influence of nitrous oxide or any material containing nitrous oxide is guilty of a misdemeanor. (Pen. Code, § 381b.) Penal Code section 381c prohibits any person from selling or furnishing any device, canister, tank, or receptacle either exclusively containing nitrous oxide or exclusively containing a chemical compound mixed with nitrous oxide, to a person under 18 years of age is guilty of a misdemeanor. (Pen. Code, § 381c, subd. (a).) This section is expressly aimed at businesses that sell nitrous to young people knowing they would use it for an illegal purpose. Penal Code section 381d criminalizes sale of nitrous to a person that suffers death or bodily injury. Both 381c and 381d are misdemeanors punishable by up to six months in the county jail, by fine, or both.

When a person sells or furnishes nitrous oxide where the seller knows or reasonably should know, a person under the age of 18 would use it for an illegal purpose, the court is required to order the suspension of the business license, for a period of up to one year, if the person

who knowingly sold or furnished nitrous to a person under the age of 18 after having been previously convicted of this offense, unless the owner of the business license can demonstrate a good faith attempt to prevent illegal sales or deliveries by the owner's employees. (Pen. Code, 381c, subd. (e).)

3) **Cigarette and Tobacco Products Licensing Act of 2003:** In 2003, AB 71 (J. Horton) Chapter 890, Statutes of 2003 enacted the Cigarette and Tobacco Products Licensing Act (CTPLA), which established a statewide licensure program administered by Board of Equalization (BOE) to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Prior to the bill, BOE's Investigations Division had been encountering a large number of cigarettes and tobacco product distributors who were unlicensed. The purpose for being unlicensed is to conceal the nature of their business and to evade the tax. These unlicensed distributors normally maintain minimal assets and are typically transient, which hinders BOE's ability to collect the taxes due and payable.

   The Act requires every retailer, distributor, wholesaler, manufacturer and importer to obtain and maintain a license to engage in the sale of cigarettes or tobacco products. Currently, BOE has approximately 38,000 retailers and 1,000 distributors and wholesalers licensed to engage in the sale of cigarettes and tobacco products in California. A distributor and wholesaler license is valid for a calendar year upon payment of a fee of $1,000 per location, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

   Violations of the CTPLA include, in part, the following: (a) Possession, storing, owning, or has made sales of an unstamped package of cigarettes bearing a counterfeit California tax stamp or tobacco products on which tax is due but has not been paid; (b) sales of cigarettes or tobacco products to any distributor, wholesaler, importer, retailer, or any other person who is not licensed or whose license has been suspended or revoked; (c) retailer and wholesaler purchases of cigarette or tobacco products from any person who is not licensed or whose license has been suspended or revoked; (d) distributor purchases of cigarettes or tobacco products from any person who is required to be licensed pursuant to the CTPLA but who is not licensed or whose license has been suspended or revoked; (e) failure to maintain records or make such records available to BOE and law enforcement agency, as specified; (f) a person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked; and (g) failure to allow an inspection.

4) **Practical Considerations:** This bill purports to strengthen enforcement against businesses that sell nitrous oxide for illegal purposes by punishing those business owners that do so. First, the only criminal conviction that CDTFA is able to take action on pursuant to the CTPLA are violations of the Revenue and Taxation Code and portions of the Business & Professions Code related to issuances of licenses to tell cigarettes and tobacco products. According to CDTFA, it does not receive information from the court about any other convictions. In fact, it does not receive information about the existing provision in Penal Code section 381c related to suspending a business license when a business is convicted of the illegal sale of nitrous. In order for this bill to have any effect on a CTPLA license, CDTFA would have to receive detailed court notifications that do not currently exist. In most cases, currently, CDTFA knows about violations of the Revenue & Taxation Code and the

Business & Professions Code because it conducts the investigation. It appears that, as drafted, this bill would have no actual effect.

Furthermore, this bill generally refers to "business licenses, but does not specifically specify CTPLA licenses. This makes it more difficult for a court to notify the correct licensing agency even when required because there are numerous state agencies that license businesses. In addition to CDTFA, the Department of Consumer Affairs, and the Department of Alcohol Beverage Control, both provide business licenses. If the author decides the best course to punish businesses specifically selling tobacco products, it would have to specify that type of license.

Second, any business facing licensing suspension is entitled to due process. Business & Professions Code section 22973.1 outlines the notice and appeal process. Any action on either a business' request for a license to sell tobacco products or a decision to suspend or revoke a license to sell tobacco must follow specific due process requirements. Given that CDTFA does not receive any notification of conviction for unlawful sale of nitrous, it would not have any ability to provide notice and a hearing before taking on a license or application for license.

Third, Penal Code section 381d uses the criminal knowledge element that the defendant knew or had reason to believe that a person obtaining the nitrous oxide would use it for intoxication and proximately causes death or serious bodily injury. This bill mandates license suspension for one year if the seller has a prior conviction for unlawful sale of nitrous and is not bale to demonstrate good faith. However, in order to prove the criminal knowledge requirement necessary to get a conviction for this offense, there cannot be any good faith. Also, if a person has been twice convicted of the same offense, it seems unlikely good faith would be an issue.

Finally, this bill states any business that does not properly record any sale of nitrous suffer a suspended business license. Penal Code section 381e requires each person dispensing or distributing nitrous record the transaction. It also states:

The person dispensing or distributing the nitrous oxide shall require the purchaser to sign the document and provide a complete residential address and present a valid government-issued photo identification. The person dispensing or distributing the nitrous oxide shall sign and date the document and shall retain the document at the person's business address for one year from the date of the transaction. The person shall make the documents available during normal business hours for inspection and copying, upon presentation of a duly authorized search warrant, by officers or employees of the California State Board of Pharmacy or of other law enforcement agencies of this state or the United States.

It is not clear if the Board of Pharmacy routinely reviews these records and there do not appear to be any regulations directly on point as to when and under what circumstances the Board of Pharmacy would notify CDTFA that a business did not keep proper records of nitrous sales, thus requiring suspension of their business license. Also, as noted above, the proposed amendment to Penal Code section 381e is modeled after the language in penal Code section 381c which only generally refers to a "business license." Since "business license is not defined, it is not clear which government regulatory agency would be

responsible for suspending the "business license." Therefore, it is not clear this penalty will be of any value.

5) **Argument in Support**: According to the *County of Humboldt*: "Humboldt County, like communities across the state, has experienced great harm from the sale of nitrous oxide for illegal use by licensed retailers. Among Humboldt County Medi-Cal beneficiaries who sought treatment between 2020 and 2023, roughly 10% identified nitrous or related nitrous inhalants as their drug of choice. The lack of enforcement mechanisms against the retailers who knowingly sell nitrous oxide for illicit use in current statute has resulted in a "toothless" state ban. AB 1107 is a practical and necessary step that reaffirms California's commitment to safe and healthy communities."

6) **Argument in Opposition**: None on file.

7) **Prior Legislation**:

   a) AB 1735 (Hall), Chapter 458, Statutes of 2014, makes it a misdemeanor for any person to dispense or distribute nitrous oxide to a person, if it is known or should have been known that the nitrous will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately cause great bodily injury or death to himself/herself, or any other person.

   b) AB 1015 (Torklason), Chapter 266, Statutes of 2009, makes it a misdemeanor for a person to sell or furnish to a person under the age of 18 years a canister or device containing nitrous oxide or a chemical compound mixed with nitrous oxide.

REGISTERED SUPPORT / OPPOSITION:

Support

County Health Executives Association of California (CHEAC)
County of Humboldt

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1192 (Carrillo) – As Introduced February 21, 2025

SUMMARY: Requires reports of abuse or neglect of a foster youth alleged to have occurred in facilities or placements licensed by the California Department of Social Services (CDSS) to be sent to the attorney who represents a parent of the dependent child, as well as the attorneys who represent all children in that placement. Specifically, **this bill**:

1) Expands the 36-hour notification requirement for reports of neglect or abuse alleged to have occurred in CDSS-licensed facilities, to also include the attorney who represents the parent of a foster youth.

2) Requires, if the neglect or abuse was alleged to have occurred in any foster care placement, which includes congregate care, relative placement, or a short-term residential therapeutic program (STRTP) facility, all the attorneys who represent foster youth in that placement to receive the report.

3) Specifies the notification requirement does not apply to a parent whose parental rights have been terminated or a parent who is not entitled to reunification services, as specified.

4) Requires the redaction of all personal identifying information, as defined, regarding all persons, other than the child, who are identified in the report.

EXISTING LAW:

1) Requires a mandated reporter to make a report to any police department or sheriff's department, or the county welfare department (collectively referred to as an agency), whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Requires the initial report to be made by telephone to the agency immediately or as soon as is practicably possible, and to prepare and send, fax, or electronically transmit a written follow-up report within 36 hours of receiving the information concerning the incident. (Pen. Code, § 11166, subd. (a).)

2) Requires an agency that receives a report from a mandated reporter that contains either of the following to, within 24 hours, notify the licensing office with jurisdiction over the facility and to send the licensing agency a copy of its investigation:

   a) A report of abuse alleged to have occurred in facilities licensed to care for children by CDSS; or,

b) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by CDSS, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility. (Pen. Code, § 11166.1, subd. (a).)

3) Requires any employee of an agency who has knowledge of, or observes in their professional capacity or within the scope of their employment, a child in protective custody whom the employee knows or reasonably suspects has been the victim of child abuse or neglect to, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the report prepared in accordance with the Child Abuse and Neglect Reporting Act (CANRA). (Pen. Code, § 11166.1, subd. (b).)

4) Establishes CANRA to protect children under 18 years of age from abuse and neglect by requiring certain individuals, known as mandated reporters, to report known cases of child abuse or neglect to designated agencies. (Pen. Code, § 1164.)

5) Enumerates the types of conduct that must be reported, establishes confidentiality for reporters, and authorizes the agency receiving the report to evaluate and determine if an investigation and removal of the child from their home shall take place. (Pen. Code, § 1174.3.)

6) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Wel. & Inst. Code, § 202.)

7) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (Wel. & Inst. Code, § 300.2)

8) Provides that counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that they deem in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. (Wel. & Inst. Code, § 317, subd. (e).)

9) Defines "personal identifying information" to mean any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, Social Security number, place of employment, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, personal identification number (PIN) or password, United States Citizenship and Immigration Services-assigned number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification. (Pen. Code, § 530.55, subd. (b).)

FISCAL EFFECT:Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Each year, 60,000 children move in and out of the foster care system in California, with more than half residing in Southern California. These youth have often experienced abuse, neglect, and trauma, which can have lasting effects on their well-being. However, gaps in reporting requirements leave them vulnerable to further harm. AB 1192 reinforces California's commitment to protecting foster youth by strengthening notice requirements to ensure that all relevant parties are informed. Greater transparency in reporting cases of abuse or neglect is essential to safeguarding foster youth, and this bill reflects our shared responsibility to protect the most vulnerable children in our state."

2) **Effect of the Bill:** California's child welfare services system exists to protect children from abuse and neglect, and in doing so, to provide for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, Child Protective Services (CPS) is tasked with investigating the allegations reported to them by mandated reporters and others.

   Current law requires an agency to notify the California Department of Social Services' (CDSS) licensing office within 24 hours of receiving a report of abuse that is alleged to have occurred in a facility licensed by CDSS, or when there is a report of the death of a child who was, at the time of death, living in a facility licensed by CDSS. (Pen. Code, § 11166.1, subd. (a).) Additionally, all employees of agency who have knowledge of, or observe in their professional capacity or within the scope of their employment, a child in protective custody whom the employee knows or reasonably suspects has been the victim of child abuse or neglect is required, within 36 hours, to send or have sent to the attorney who represents the child in dependency court, a copy of the report alleging the abuse. (Pen. Code, § 11166.1, subd. (b).)

   Currently, there is no requirement to provide notice to a child's parents or the attorneys of other children placed in the same home to receive notice of reasonable suspicion of allegations of abuse or neglect. This gap in reporting requirements could harm foster youth who could be vulnerable to abuse or neglect in a foster care placement that is meant to protect children from such maltreatment.

   Existing law does not require, if the alleged abuse occurred in a foster home, the attorneys for other foster children in the home to be notified. Without this notice, the attorneys for those other foster youth, who may not yet be subjected to abuse and neglect, cannot take action to ensure the child's safety and protection, simply because they were not made aware of the conditions in that placement. Under existing law, counsel appointed for foster youth are tasked with doing their own investigation to represent their client's general interests and to make recommendations to the court concerning the child's welfare. Without basic information about child abuse occurring in the home, however, attorneys cannot render informed recommendations to the court and fully protect their clients.

   This bill would expand that notification requirement to include the attorney representing the foster youth as well as the attorneys for any other child in the same placement where the abuse or neglect allegedly took place. This notification requirement would not apply to parents whose parental rights have been terminated.

3) **Argument in Support**: According to *Public Counsel*, "Public Counsel is proud to support AB 1192, authored by Assemblymember Carrillo, which seeks to close critical gaps in California's child welfare system by ensuring timely notification to attorneys representing both minors and parents in cases of suspected abuse within foster care placements.

"Public Counsel is the nation's largest *pro bono* law firm. In our Child, Youth & Family Advocacy Project, we advocate for children, youth, and their families on a variety of legal issues, including adoption, family law and domestic violence, probate legal guardianship, public benefits, special education and school push-out issues, and issues impacting transition age youth. We use a multi-disciplinary approach to legal advocacy with the trauma-informed and resiliency-focused tools of our social workers supporting the work of our legal advocates to remove legal barriers for children, youth, families, and communities of color most impacted by systemic racism and economic injustice. We fight for the dignity of our clients through direct legal services, community-led local policy work, impact litigation, and statewide legislative transformation. We also hear from the young people we serve about abuse and neglect that they experienced while in the foster care system.

"Currently, California law under Penal Code Section 11166.1 requires social service agencies to notify a minor's attorney when there is a reasonable suspicion that the minor has been abused or neglected. However, this requirement does not extend to the attorneys of other foster children residing in the same placement or to the attorneys of the abused child's parents. As a result, children may continue to be placed at risk, and parents are left unaware of crucial information affecting their children's well-being."

4) **Related Legislation**:

a) AB 601 (Jackson) would require the State Department of Social Services, through the State Office of Child Abuse Prevention, to, by no later than July 1, 2027, develop a standardized curriculum for mandated reporters, and to make that training available on its internet website. AB 601 is set to be heard today in the Assembly Public Safety Committee.

b) AB 741 (Ransom) would require the department to monitor the Child Abuse Central Index and notify the CASA program if a record of a child abuse investigation involving a CASA employee or volunteer is added to that index. AB 741 passed out of the Assembly Appropriations Committee on consent.

c) AB 970 (McKinnor) would authorize the County of Los Angeles to establish a pilot program beginning January 1, 2026, through October 31, 2028, to test a new model for the mandatory reporting of child abuse or neglect. AB 970 is set to be heard today in the Assembly Public Safety Committee.

5) **Prior Legislation**:

a) SB 47 (Roth), of the 2023-24 Legislative Session, would have required a county child welfare services department that receives a report of a child being endangered by abuse, neglect, or exploitation in which the alleged perpetrator is a person responsible for the child, as specified, to evaluate the report immediately and if the report contains sufficient

information to warrant an investigation. SB 47 was held in the Senate Public Safety Committee.

b) AB 1544 (Lackey), of the 2023-24 Legislative Session, would have authorized a police or sheriff's department to which a report of suspected child abuse or severe neglect is made on or after January 1, 2024 to forward to the Department of Justice a report in writing of its investigation of known or suspected child abuse or severe neglect that is determined to be substantiated. AB 1544 was held in the Senate Public Safety Committee.

c) AB 670 (Calderon), Chapter 585, Statutes of 2021, requires when a report alleging abuse or neglect of the child of a dependent of the juvenile court is made, the agency that received the report to notify the attorney representing the dependent within 36 hours.

REGISTERED SUPPORT / OPPOSITION:

Support

All of US or None Orange County
Children's Law Center of California
Dependency Legal Services
Families Inspiring Reentry & Reunification 4 Everyone (FIR4E)
Los Angeles Dependency Lawyers, INC.
Public Counsel
Starting Over Strong

Opposition

None submitted

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1218 (Soria) – As Amended March 24, 2025

SUMMARY: Makes it an alternate misdemeanor-felony for a person to possess certain copper materials without written proof of lawful ownership. Specifically, **this bill**:

1) Makes it an alternate misdemeanor-felony to unlawfully possess 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, without proof of lawful possession.

2) Makes it an alternate misdemeanor-felony to possess copper materials, including, but not limited to, copper wire, copper cable, copper tubing, and copper piping which they know or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, internet, gas, water, or electric light company, or a city, county, city and county, or other political subdivision of this state engaged in furnishing public utility service without proof of lawful possession.

3) Specifies that lawful possession may be proven by a record that contains all of the following:

   a) The name, address, and telephone number of the seller or the seller's authorized representative;

   b) The name, address, and telephone number of the buyer or consignee if not sold;

   c) The common or generic name and quantity of the material involved;

   d) The date of the transaction; and,

   e) The location from which the material was obtained.

4) Makes it an alternate misdemeanor-felony to knowingly falsify or cause to be falsified any information in a record intended to show proof of lawful possession.

5) Punishes these crimes by imprisonment in county jail not exceeding one year or a $2,500 fine, or by imprisonment in county jail for 16 months, two years, or three years and a $10,000 fine.

6) Makes it a crime for a person who is engaged in the salvage, recycling, purchase, or sale of scrap metal and who possesses specified items such as parts of a fire hydrant, fire department connection, manhole cover, or backflow devices, 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, that is possessed without proof of lawful possession, as defined above, and knowing the property to have been possessed without proof of lawful possession, is punishable by a criminal fine of up to $3,000 in addition to any other penalty provided by law.

7) Specifies that the information that a dealer or collector of junk, metals, or secondhand materials who buys or receives specified metals must obtain from the seller of such metals, must include the location from which the material was obtained.

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 a "wobbler" – subject to imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489, 496.)

5) Creates additional penalties for theft or possession of, or damage to, certain stolen metals and public utility-related items.

   a) Makes it a wobbler, 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 a wobbler, 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 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 for at least two years after making the final entry of any purchase or sale of junk or scrap metals and alloys. (Pen. Code, § 496a.)

c) Makes it a crime to steal, damage, or possess certain public utility related items, 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.

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

d) Makes it an alternate misdemeanor-felony for a person who unlawfully and maliciously takes down, removes, injures, disconnects, cuts, or obstructs a line of telegraph, telephone, or cable television, or any line used to conduct electricity, or any part thereof, punishable as a misdemeanor by up to one year in county jail or a fine of up to $1,000, or as a felony by 16 months, or two, or three years in county jail, or by a fine not more than $10,000. (Pen. Code, § 591.)

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 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 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.)

10) 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.)

11) 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).)

12) Prohibits a junk dealer or recycler form 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).)

13) 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 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. (Bus. & Prof. Code, § 21609.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Copper theft and related activity are on the rise once again. These acts threaten public safety, utility and telecommunications services and connectivity, and California businesses. While the actual theft of such materials is addressed by current law, proving the elements of the theft crime itself can be difficult. Additionally, there is a lack of statutory tools to address those who unlawfully possess significant amounts of copper materials or materials that come from a utility or local government. AB 1218 addresses the issue of unlawful possession of copper materials to help eliminate this deficiency."

2) **Need for this Bill:** Recent reports suggest that theft of copper wiring from public utility infrastructure has led to significant interruptions in the provision of telecommunications services and other public utility services such as street lighting. According to the Internet & Television Association, and other broadband associations:

> The rising market value of copper, which is used in many communications facilities, has provided bad actors with an economic incentive to target multiple industries' infrastructure (e.g., public utilities, transportation, etc.) nationwide through criminal acts of theft and vandalism. The bad actors then sell this metal and other stolen communications equipment. Critical communications infrastructure alone has experienced nearly 4,000 intentional incidents of theft and vandalism during just one three-month period in 2024. In the indiscriminate search for copper, even modern communications facilities, such as fiber-optic transmission lines and wireless communications towers that have no copper, have been sabotaged.
>
> These incidents of theft and vandalism have become increasingly common and create unnecessary service disruptions that threaten and harm American citizens, consumers and businesses. The resulting damage and resources necessary to repair the affected

networks harmed by criminal conduct imposes millions of dollars of direct and indirect costs on communications network providers, consumers and the economy.[1]

3) **Effect of this Bill:** There are several crimes associated with receiving, possessing, or purchasing stolen metals, such as copper, each which requires some degree of knowledge that the property has been, or may be stolen.

Existing law makes it a crime to buy or receive stolen property with knowledge that the property is stolen. (Pen. Code, 496, subd. (a).). In order to convict a person for buying or receiving stolen property the prosecution must prove: 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 a "wobbler" – subject to imprisonment in a county jail not exceeding one year (or up to a $1,000 fine), 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.).

A person engaged in the salvage, recycling, purchase, or sale of scrap metal is prohibited from possessing specified items such as parts of fire hydrants, fire department connections, manhole covers, and backflow devices, 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 offense is punishable by a $3,000 criminal fine, in addition to any other penalty provided by law. (Pen. Code, § 496e.)

Additionally, existing law also prohibits dealers or collectors of junk and metals from purchasing or receiving certain metal materials that they know ordinarily belong to certain public agencies. Specifically, a dealer or collector of junk, metals, or secondhand materials, is prohibited 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.*)

Notably, each of the above crimes contains some requirement that the person possessing, receiving, or purchasing property has knowledge that the property is stolen or otherwise does not belong to seller. In contrast, AB 1218 will make possession of copper a crime, punishable as an alternate-misdemeanor felony, unless the person possessing the copper can produce a written record that they obtained the copper lawfully. Specifically, it creates three new

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[1] The Internet & Television Association, *Protecting The Nation's Critical Communications Infrastructure from Theft & Vandalism* (2024), available at: https://www.ntca.org/sites/default/files/documents/2024-11/infrastructure-theft-paper.pdf#:~:text=A%20survey%20of%20large%20and%20small%20communications,averaging%201%2C310%20per%20month%20or%2044%20incidents

alternate misdemeanor-felonies pertaining to possession of copper wire without proof of ownership.

First, this bill would make it a crime to possess 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, without proof of lawful possession. Second, it would make it a crime for a person to possess any amounts of copper materials, which they know or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, internet, gas, water, or electric light company, or a city, county, city and county, or other political subdivision of this state engaged in furnishing public utility service without proof of lawful possession. Third, it would make it a crime to knowingly falsify or cause to be falsified any information in a record intended to show proof of lawful possession. Each of these crimes would be punished as alternative misdemeanor-felony – subject to imprisonment in county jail not exceeding one year or a $2,500 fine, or by imprisonment in county jail for 16 months, two years, or three years and a $10,000 fine.

Additionally, this bill would prohibit a person engaged in the salvage, recycling, purchase, or sale of scrap metal and who possesses specified items such as parts of a fire hydrant, fire department connection, manhole cover, or backflow devices, 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, from possessing such materials without proof of lawful possession, and knowing the property to have been possessed without proof of lawful possession, punishable by a criminal fine of up to $3,000 in addition to any other penalty provided by law.

In order for a person possessing copper to establish their innocence, they would have to produce a written record that contains all of the following: 1) the name, address, and telephone number of the seller; 2) the name, address, and telephone number of the buyer or consignee if not sold; 3) the common or generic name and quantity of the material involved; 4) the date of the transaction; and 5) the location from which the material was obtained.

4) **Existing Penalties for Conduct Prohibited by this Bill**: There are numerous criminal penalties that can be leveraged against the type of copper wire theft from public agency infrastructure at issue here. Available tools include the following:

a) *Theft*

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

Notably, after the passage of Prop 36 in November of 2024, it is now easier for prosecutors to charge persons with grand, rather than petty theft. First, Prop 36 targeted repeat theft

offenders, by making a conviction for theft, where that person has two prior theft convictions, punishable by imprisonment in county jail for up to one year or by 16 months, or two or three years; and it made a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison. (Pen. Code, § 666.1, subd. (a).) Here, a person with two prior theft convictions who is caught stealing copper wire from public utility infrastructure such as a telecommunications line, can face up to three years in county jail. (Pen. Code, § 666.1, subd. (a).)

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

b) *Theft of Copper Materials*

The Penal Code contains a separate copper wire theft statute that imposes higher criminal fines for misdemeanor theft of copper wire, than for misdemeanor theft more generally. Specifically, existing law makes it wobbler, 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, or 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.) As such, a prosecutor may charge a person who steals copper wire from a telecommunications line as regular theft, or theft of copper wire. Notably, a person prosecuted for misdemeanor theft of copper wire may be subject to a higher fine ($2,500) than if charged for regular petty theft ($1,000). (Pen. Code, §§ 487j. 490.)

c) *Receipt of Stolen Property*

As previously noted, any persons who receives stolen copper wire, with knowledge that it is stolen, may be prosecuted for receipt of stolen property, which is a wobbler. Under existing law, it is a crime to buy or receive stolen property, with knowledge that the property was stolen, and with knowledge of the presence of the property. (Pen. Code, §§ 487, 489, 496; 1 CALCRIM 1750 (2025).) As such, persons, such as dealers or collectors of junk and metals, or persons otherwise engaged in selling metals, who are not directly involved in the theft of copper wire, but receive such copper wire with knowledge that it was stolen, can be prosecuted for receipt of stolen property.

d) Receipt of Copper or Specified Materials Belonging to a Public Agency

Additionally, a person engaged in the salvage, recycling, purchase, or sale of scrap metal is already prohibited from possessing specified public utility-related materials such as fire

hydrant parts that have been stolen, with knowledge the property was stolen. (Pen. Code, § 496e, subd. (a).) Similarly, dealers or collectors of junk and metals are also prohibited from purchasing or receiving certain metal materials they know ordinarily belong to certain public agencies, without using due diligence to determine that the seller lawfully owns the property. (Pen. Code, § 496e, subd. (a).)

e) *Cutting or Disconnecting A Utility Line*

Proponents of the bill emphasize concerns that individuals have damaged telecommunications lines during efforts to steal the copper wire contained within such infrastructure. Notably, it is already a crime for a person to take down, remove, injure, disconnect, cut, or obstruct a line of a telephone, cable television, or any line used to conduct electricity. (Pen. Code, § 591.) This crime is punishable as a misdemeanor by up to one year in county jail or a fine of up to $1,000, or as a felony by 16 months, or two, or three years in county jail, or by a fine not more than $10,000. (*Ibid.*) As such, an individual who damages or cuts a fiber optic line in the process of stealing copper wire from that line can face up to three years in county jail.

f) *Vandalism*

A person who steals copper wire from public utility infrastructure, damaging that infrastructure in the process, may also be charged with vandalism. Vandalism requires that the defendant maliciously defaced with graffiti or damaged, or destroyed real or personal property, and the defendant did not own the property. (Pen. Code, § 594, subd. (a); 2 CALCRIM 2900 (2025).) When a person commits vandalism with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to a public entity, it creates an inference that the person did not own the property or have permission to damage the property. (*Ibid.*) The value threshold to charge a person with felony vandalism is lower than the threshold to charge a person with grand theft. If the amount damaged is less than $400, vandalism is punishable by imprisonment in county jail for up to one year, or by a fine of $1,000. (Pen. Code, § 594, subd. (b)(2).) However, if the amount of damage is over $400 it is punishable as a "wobbler" – subject to imprisonment in a county jail not exceeding one year, by imprisonment in county jail for 16 months, two years, or three years, or a fine up to $10,000. (Pen. Code, § 594, subd. (b)(1).) If the amount of damage is $10,000 or more, a person can receive a fine of up to $50,000. (*Ibid.*) In sum, if a person steals $100 of copper wire from a street light or telecommunications line, an amount that would only constitute petty theft, but creates at least $500 in damage in the process, that person can be charged with felony vandalism.

g) *Sentence Enhancements for Theft and Damage to Property*

Further, a person who steals copper wire, or receives stolen wire, where the ultimate value of the amount stolen exceeds $50,000, can be subject to additional sentence enhancements created by Prop. 36. Specifically, Prop. 36 provided that, if a person takes or damages property in the attempted commission of a felony, or commits a felony violation of buying or receiving stolen property, the court shall impose additional sentence enhancements of between one year and four years, depending on the value of the property taken. (Pen. Code, § 12022.6.) As such, a person, or group of persons, that steal copper wire from a telecommunications line in excess of $50,000 in value, or causes over $50,000 in damages to

the line, could not only be prosecuted with felony grand theft but also could be subject to multi-year enhancements depending on the amount stolen or damaged.

h) Criminal Fines and Fees

Several of the above criminal penalties are alternate misdemeanor-felonies, which are punishable by up to $10,000 fines. 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, as proposed by this bill, 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:	30 ($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**

As such, a person convicted of felony receipt of stolen property, felony vandalism, or grand theft of copper wire, among others, could face a fine of over $30,000 in addition to serving a jail term.

i) Failure to Maintain Records

Finally, existing law establishes additional criminal penalties for junk dealers and recyclers who fail to properly preserve written records of all sales and purchases made in the course of their business. For background, every junk dealer and recycler is required 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.) Similarly, a dealer or collector of junk, metals, or secondhand materials is also required to maintain records of transactions for two years. (Pen. Code, § 496a.) A junk dealer or recycler who fails in any respect to keep written records, or to include specified information in such records, or who refuses to share those written records with law enforcement, as specified, or who destroys that record within two years can be charged with a misdemeanor. (Bus. & Prof. Code, § 21608.) Notably, for such persons to be prosecuted for this misdemeanor, the violation must be knowing and willful, and subject to the following penalties:

i) 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.

ii) 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.

iii) 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.)

This can be contrasted with this bill, which would punish a person who fails to keep a record of their purchase of copper wire with a potential felony, even if they accidently discarded their receipt of purchase, or otherwise was unaware that proof of ownership was required to be maintained.

Additionally, it is also a misdemeanor for a junk dealer or recycler to make any false or fictitious statement regarding any information in the above written record. (Bus. & Prof. Code, § 21606, subd. (b).

Given the numerous types of criminal charges that can be brought against persons that steal copper wire telecommunications lines and persons that subsequently purchase or possess such property, as well as the significant criminal fines that fees that can be leveraged against such persons, the need to create new alternate-misdemeanor felonies for possession of copper wire, even if obtained lawfully, is unclear.

5) **Constitutional Concerns**: This bill will allow the State to bring felony charges against individuals who obtained property lawfully prior to this bill's effective date, but are unable to produce a written record of such lawful ownership. This may make this bill vulnerable to a legal challenge for multiple reasons.

First, a core principal of criminal law, is that every crime generally "has two components: (1) an act or omission, sometimes called the actus reus; and (2) a necessary mental state, sometimes called the mens rea." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) This is stated in California Penal Code section 20 ("In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.") In order prove that a person is guilty of a crime, the prosecution must show that the person performed a particular act alongside a particular intent or mental state. (Pen. Code, § 20; *People v. Aeschlimann* (1972) 28 Cal. App. 3d 460, 473.) To find a person guilty of a particular crime, that person must not only commit the prohibited act.... but must do so with wrongful intent. (1 CALCRIM 250 (2025).) A person acts with wrongful intent when they intentionally do a prohibited act, or fails to do a required act. (*Ibid.*)

This bill would make it a crime to possess copper without proof of lawful ownership– an item that is otherwise legal to possess. This would not require an individual possessing copper materials to have any knowledge that the copper they possess may have been stolen, or otherwise have any criminal intent at all. This can be contrasted with the comparable crime of receipt of stolen property, which requires that the property is received "knowing the property to be so stolen or obtained." (Pen. Code, § 496.)

This bill contains no such intent requirement. Rather, it establishes criminal culpability by virtue of mere possession of copper materials, absent written proof of ownership. Admittedly, criminal intent may properly be inferred for entities already required to keep such records and as such, have "fail[ed] to do a required act" (Pen. Code, § 496.) For example, junk dealers and recyclers are required to keep a written record of all sales and

purchases made in the course of their business for at least two years after the purchase or sale, and failure to maintain such records is punishable as a misdemeanor. (Bus. & Prof. Code, §§ 21605, 21607, 21605.) In contrast, this bill will impose far greater criminal punishment, in the form of felony prosecution, on individuals who lawfully possess copper and have not failed to do any required act. For example, this bill would authorize felony charges to be brought against an individual who lost a receipt for a copper landscaping purchase they made many years ago, or an individual who inherited copper materials from their family and no records exist of their lawful possession.

Second, this bill appears to retroactively apply to persons who have previously lawfully purchased, or otherwise lawfully possess copper wire, but no longer have access to written records proving lawful ownership, and as such, may run afoul of state and federal prohibitions on ex post facto laws. The California Constitution provides that "a bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed." (Cal Const, Art. I § 9.) Similarly, the United States Constitution provides that no "State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.") (United States Const. art. I, § 10, cl 1.) An ex post facto law is a law that imposes criminal liability or increases criminal punishment retroactively. Legislative enactments prohibited by the ex post facto clause include those which: (1) criminalize conduct which was innocent when done, (2) increase the punishment for past conduct or, (3) eliminate a defense available at the time the crime was committed. (*Collins v. Youngblood* (1990) 497 U.S. 37, 42.) Ex post facto laws are not only outright prohibited by the United States Constitution, but they also violate all notions of fundamental fairness and result in a substantial deprivation of defendant's due process rights. This Clause protects liberty by preventing governments from enacting statutes with "manifestly unjust and oppressive" retroactive effects. (*Calder v. Bull* (1978) 3 U.S. 386.)

Here this bill would impose criminal culpability based on prior conduct of purchasing or possessing copper materials that occurred prior to this bill's effective date, effectively punishing "as a crime an act previously committed, which was innocent when done" (*Collins v. Youngblood* (1990) 497 U.S. 37, 42.) For example, take a person who was gifted $1,000 in copper wire 10 years ago and no longer has, or never had, proof that they are the lawful owner. If this bill were enacted it would punish that prior act of receiving copper wire 10 years ago, subjecting that person to a potential felony charge.

6) **Argument in Support**: According to the *California State Sheriff's Association*, "Assembly Bill 1218… would address a gap in statute by specifying that the unlawful possession of copper materials is a crime if a person cannot prove they possess those materials lawfully.

"Copper theft and related activity are on the rise once again. These acts threaten public safety, utility and telecommunications services and connectivity, agricultural operations, and other California businesses. While the actual theft of such materials can be addressed by current law, proving the elements of the theft crime itself can be difficult. Additionally, there is a lack of statutory tools to address those who unlawfully possess significant amounts of copper materials or materials that come from a utility or local government.

"Recent press accounts demonstrate the frequency with which copper-related theft and tampering has been occurring in recent months. Telephone land lines, electrical infrastructure, and internet lines being stolen or destroyed have resulted in schools shutting down, public transit services being affected, internet services being disrupted, and even electric vehicle charging stations being rendered inoperable. More must be done to hold those who affect these vital services of daily living accountable.

"This bill addresses a deficiency in current law and will help law enforcement and prosecutors take action against those who would threaten public safety, California's economy, and our vital agricultural and technology industries."

7) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "This proposed legislation would create presumptions affecting criminal prosecution for possession of copper.

"We are not necessarily opposed to legislation designed to deter the theft of copper and the resale of stolen copper. However, first, this adds to the almost interminable list of crimes for which people can be prosecuted in California. Theft, receiving and sale of stolen property are already crimes all of which would include crimes involving stolen copper.

"Second, this bill would reverse the presumption of innocence and allow the prosecution to shift the burden to the individual possessing copper to furnish proof of lawful possession. In essence, anyone possessing copper has to have and furnish "possession" papers. This would jeopardize many people who are in lawful possession of copper, for instance, farming, ranching, manufacturing, or other situations where their lawful possession can no longer be documented. Few people carry with them paperwork related to copper that could simply be from their home.

"In other words, this eliminates the requirement of the prosecution to prove that the person knowingly possessed stolen property. This is contrary to the long-established jurisprudence requiring proof of *mens rea* as well as the prohibited act to obtain a criminal conviction."

8) **Related Legislation**:

   a) AB 476 (González), increases the criminal fine for the unlawful purchase of specified metal, and increases the fine for, and expands the type of materials prohibited by, unlawful possession of stolen public utility materials. AB 476 will be heard in this Committee today.

9) **Prior Legislation**:

   a) AB 641 (Fong), Chapter 537, Statutes of 2023, it a misdemeanor for a person to possess nine or more used catalytic converters that have been cut from a vehicle unless they are a licensed automobile dismantler or are expressly excluded from having to be a licensed automobile dismantler.

   b) 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.

c) AB 1971 (Buchanan), 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.

d) 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.

e) 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.

f) 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.

g) 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.

h) 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.

i) 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 District Attorneys Association

California Farm Bureau Federation
California Legislative Conference of Plumbing, Heating & Piping Industry
California Police Chiefs Association
California State Sheriffs' Association
Cloverdale Farms
CTIA
Eg Farming
Gilkey Five
Hoggard Ranch
J.g. Boswell Company
National Electrical Contractors Association (NECA)
Peace Officers Research Association of California (PORAC)
Stoneland Company
United Contractors (UCON)
United States Telecom Association Dba Ustelecom - the Broadband Association
Valley Ag Water Coalition
Western Line Constructors Chapter, Inc., Neca, INC.
Westhaven Agribusiness
Wireless Infrastructure Association

Oppose

ACLU California Action
California Attorneys for Criminal Justice
San Francisco Public Defender

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1239 (Dixon) – As Amended March 18, 2025

SUMMARY: Requires the Department of Justice (DOJ) to include in the information made available on the OpenJustice Web portal information concerning arrests for human trafficking and the number of individuals who have been a victim of human trafficking.

EXISTING LAW:

1) States any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more $500,000. (Pen. Code, § 236.1, subd. (a).)

2) Provides any person who deprives or violates the personal liberty of another with the intent to effect or maintain procurement for sex work, pimping, pandering, procurement of a child for prostitution, abduction of a minor for sex work, sale or production of child sexual assault material (CSAM), sexual exploitation of a child, employment of a minor for CSAM, promotion of CSAM, obscene live conduct, or extortion is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (b).)

3) States any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section procurement for sex work, pimping, pandering, procurement of a child for prostitution, abduction of a minor for sex work, sale or production ofCSAM, sexual exploitation of a child, employment of a minor for CSAM, promotion of CSAM, obscene live conduct, or extortion is guilty of human trafficking, as follows:

   a) Five, 8, or 12 years and a fine of not more than $500,000.

   b) Fifteen years to life and a fine of not more than 500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c)(1-2).)

4) Requires the information published on the OpenJustice Web portal contain statistics showing all of the following:

a) The amount and the types of offenses known to the public authorities.

b) The personal and social characteristics of criminals and delinquents.

c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

e) The total number of each of the following:

i. Civilian complaints received by law enforcement agencies.

ii. Civilian complaints alleging criminal conduct of either a felony or a misdemeanor.

iii. Civilian complaints alleging racial or identity profiling, These statistics shall be disaggregated by the specific type of racial or identity profiling alleged, including, but not limited to, based on a consideration of race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability. (Pen. Code, § 13012, subd. (a)(1-5)(A).)

5) Mandates the annual report published by the DOJ, as specified, commencing with the report that includes data from 2022, to the extent the data is available, include statistics on lewd or lascivious felonies consistent with those reported for rape, including the number of offenses reported and the rate per 100,000 population. (Pen. Code, 13012.7, subd. (a).)

6) Requires the annual report include information concerning arrests for violations of animal cruelty. (Pen. Code, § 13012.8.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking has no place here or anywhere in our State. The state must take very step to help victims and their families overcome the devastation of human trafficking and partnering with organizations to raise awareness and bring an end to the inhumanity. Even one victim of human trafficking is one too many.

"Despite the positive steps taken by the legislature to tackle human trafficking and provide services to victims of human trafficking, there is currently a significant lack of data on

human trafficking within California. The most recent DOJ report on human trafficking was released in 2012. Furthermore, the most recent DOJ Criminal Statistics Reporting Requirements report does not include any reporting requirements for human trafficking or the victims, and the annual Crime in California report by the DOJ has no information on human trafficking.

"To address these issues, and to align the reporting of human trafficking with other crimes, AB 1239 would require that data on arrests for human trafficking and the number of individuals who have been a victim of human trafficking be made available on the DOJ's OpenJustice Web portal."

2) **Current DOJ Information on Human Trafficking:** DOJ currently provides information about human trafficking, including national rates of trafficking. Human trafficking includes both labor trafficking and trafficking for commercial sexual exploitation. The existing DOJ website on human trafficking discusses the California law on trafficking and explains the different types of trafficking covered by both state and federal law.[1] According to the DOJ website on human trafficking:

> The United States is widely regarded as a destination country for human trafficking. Federal reports have estimated that 14,500 to 17,500 victims are trafficked into the United States annually. This does not include the number of victims who are trafficked within the United States each year. According to the National Human Trafficking Hotline, 10,949 cases of human trafficking were reported in the United States in 2018. According to the hotline, California is one of the largest sites of human trafficking in the United States. In 2018, 1,656 cases of human trafficking were reported in California. Of those cases, 1,226 were sex trafficking cases, 151 were labor trafficking cases, 110 involved both labor and sex trafficking, and in 169 cases the type of trafficking was not specified.[2]
>
> California is one of the largest sites of human trafficking in the United States. In 2018, 1,656 cases of human trafficking were reported in California. Of those cases, 1,226 were sex trafficking cases, 151 were labor trafficking cases, 110 involved both labor and sex trafficking, and in 169 cases the type of trafficking was not specified.

The California Department of Corrections and Rehabilitation (CDCR), in its 2024 report on Felony Counts for new admissions, there are approximately 350 inmates currently incarcerated on a principal term of human trafficking with approximately 2,000 incarcerated on a subordinate term.

3) **Practical Consideration:** This bill requires DOJ to post on its OpenJustice website the number of arrests for human trafficking and the number of victims of human trafficking. Tracking arrests for violations of Penal Code section 236.1 seems relatively straightforward.

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[1] https://oag.ca.gov/human-trafficking/what-is
[2] *Ibid.*

However, tracking victims will likely be much more challenging. In many instances, victims of trafficking, whether it is labor trafficking or trafficking for purposes of commercial sex exploitation, are too often unlikely to report. According to information provided by the US Department of Health and Human Services, Administration for Children and Families, in its one page summary entitled, "The Mindset of a Human Trafficking Victim":

> Victims are taught by their traffickers to distrust outsiders, especially law enforcement. They have a sense of fear and/or distrust toward the government and police because they are afraid they will be deported. Sometimes they feel that it is their fault that they are in this situation. As a coping or survival skill, they may develop loyalties and positive feelings toward their trafficker or may even try to protect them from authorities.
> Victims of human trafficking are hesitant to come forward because of their fear of being deported. While many of these victims are women and children who have been beaten and/or raped, their current situation may still be better than where they came from.
> Victims come from different social and ethnic backgrounds than the investigating officers. There may be significant cultural differences between the victim and U.S. law enforcement officials.
> Victims may be completely unaware of their rights or may have been intentionally misinformed about their rights in this country.
> Many victims do not self-identify as victims. They also do not see themselves as people who are homeless or as drug addicts who rely on shelters or assistance. Victims may not appear to need social services because they have a place to live, food to eat, medical care and what they think is a paying job.
> The victims may fear not only for their own safety but also for that of their families in their home countries. Some traffickers threaten that they will harm their victims' families if the victims report their situation to, or cooperate with, law enforcement.[3]

Information for the OpenJustice portal comes from local law enforcement reporting. Local law enforcement may have a difficult time reporting these statistics since human trafficking is often reported as arrests for sex work or other offenses that are not viewed as human trafficking. In fact, law enforcement often misses signs of human trafficking. According to the National Institute of Justice in 2020, instances of human trafficking far exceed identification by law enforcement.[4]

> In two of the three study sites - jurisdictions with populations of 2.3 million and 600,000, respectively - researchers concluded that human trafficking incidents identified in law enforcement and social service agency records likely represented only a

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[3] https://acf.gov/sites/default/files/documents/orr/understanding_the_mindset_of_a_trafficking_victim_1.pdf
[4] https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting

> fraction of the actual incidence. The study found that the official trafficking numbers in one jurisdiction represented as little as 14% and at most 18% of the potential total trafficking victims. Looking at law enforcement's human trafficking records alone, underreporting in those two jurisdictions was even more acute, with no more than 6% of potential human trafficking victims captured in police records in both jurisdictions, the research report noted.[5]

The NIJ report goes on to identify three reasons for underreporting: Lack of training of law enforcement personnel; the fact that identification of human trafficking victims is often pushed to later stages of criminal justice proceedings; and the fact that the nature of human trafficking crimes often complicates identification.

> A common problem for officers is difficulty separating human trafficking from other offenses, such as prostitution, the researchers reported. Where human trafficking offenses were identified, they were often recorded as other offenses on incident reports, in some instances because offense codes for human trafficking do not exist in records systems or incident reports. Specialized investigators were better equipped to identify trafficking offenses, according to the study, but those investigators often hesitated to record a trafficking offense as such. In some instances, specialized investigators said they only coded incidents as trafficking offenses if an individual was arrested and charged with a trafficking offense by a prosecutor. State law enforcement personnel interviewed in one jurisdiction said officers hesitate to report incidents as human trafficking when they involve juvenile victims, because of special victim information reporting requirements. In classifying offenses, officers often defer to the prosecutor. The researchers found that, across studied jurisdictions, officers lacked the ability to identify labor trafficking.[6]

Before reporting on the rates of trafficking victimization, it makes more sense to increase training, reduce discrimination against marginalized communities, including sex workers, and ensure a greater degree of immigration protection.

4) **Argument in Support**: According to *3Strands Global Foundation*: AB 1239 takes an urgently needed step in strengthening California's response to human trafficking by requiring the Department of Justice to publicly report data on arrests related to human trafficking and the number of identified victims through its OpenJustice Web portal. As a direct service provider, we see firsthand how survivors of trafficking are too often rendered invisible due to fragmented data systems and insufficient public reporting. This lack of transparency undermines our collective ability to allocate resources, evaluate impact, and design policies that meet the real needs of survivors across diverse regions and communities.

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[5] https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting#many-officers-unable-to-identify-human-trafficking-or-not-inclin
[6] *Ibid.*

"Accurate, publicly accessible data is not only critical to strengthening the state's response—it is also essential for empowering local organizations like ours to strategically expand reintegration support and develop targeted prevention programming. When we understand where trafficking is happening, who it is affecting, and how interventions are progressing, we are better equipped to break the cycles of exploitation.

"We commend [the author's] leadership in introducing AB 1239 and for recognizing that the absence of data is itself a barrier to justice. By aligning human trafficking reporting with standards already in place for crimes such as domestic violence, hate crimes, and homicides, this bill affirms the seriousness of trafficking as a statewide issue and supports survivor-centered policy development.

5) **Argument in Opposition**: None submitted.

6) **Prior Legislation**:

   a) AB 2524 (Irwin), Chapter 418, Statutes of 2016, requires the DOJ to make available to the public its mandatory criminal justice statistics reports through the OpenJustice Web Portal, to be updated at least yearly, and makes conforming changes to existing provisions related to criminal statistics.

   b) SB 259 (Nielsen), Chapter 245, Statutes of 2020, requires the DOJ to include disaggregated information on lewd or lascivious felonies in its annual statewide criminal statistics report, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

3strands Global Foundation
Crime Victims United of California

Opposition

None on file.

Analysis Prepared by: Kimberly Horiuchi / 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 1376 (Bonta) – As Introduced February 21, 2025

As Proposed to be Amended in Committee

SUMMARY: This bill states that a ward may not remain on probation for a period that exceeds 9 months, except that a court may extend the probation period upon proof by a preponderance of the evidence that it is in the ward's best interest to extend probation beyond 9 months. Specifically, **this bill**:

1) Provides that a minor adjudged to be a ward of the court who is subject to a probation order, with or without supervision of the probation officer, shall not remain on probation for a period that exceeds 9 months, except as provided.

2) Authorizes a court to extend the probation period beyond 9 months, for a period not to exceed 6 months, after a noticed hearing and upon proof by a preponderance of evidence that it is in the ward's best interest, consistent with the purposes of juvenile courts.

3) Requires the probation agency to submit a report to the court detailing the basis for any request to extend probation at the noticed hearing.

4) States that the court shall provide the ward and the prosecuting attorney with the opportunity to present relevant evidence. The court has discretion to receive evidence by testimony, declaration, and other documentary evidence.

5) Requires, in cases in which the court finds by a preponderance of the evidence a basis for extending probation beyond the 9 months, the court to state the reasons for the findings orally on the record.

6) Requires the court to also set forth the reasons in an order entered upon the minutes if requested by either party or when the proceedings are not being recorded electronically or reported by a court reporter.

7) States that if the court extends probation, the court shall schedule and hold a noticed hearing for the ward not less frequently than every six months for the remainder of the wardship period.

8) Requires the court to comply with exiting specified criteria for terminating jurisdiction over certain wards, however this requirement shall not be a basis for continuing an order imposing terms and conditions of probation.

9) Specifies that if the court retains jurisdiction over the ward, the ward shall not be subject to a petition removing a minor from the physical custody of a parent or guardian or a violation of probation.

10) States that the bill's provisions on period of probation terms does not preclude termination of a ward's probation before the end of a 9-month period.

11) States that this bill's provisions period of probation terms do not apply to any ward who is transferred from a secure youth treatment facility to a less restrictive program and who is subject to any remaining baseline or modified baseline term until the ward is discharged pursuant to a probation discharge hearing.

12) Amends existing law that requires the court to order specified conditions of probation for a minor adjudged a ward of the court and has not been removed from the custody of their parents or guardians, except of the court finds the condition to be inappropriate, to instead make the conditions permissive.

13) Deletes specified conditions of probation regarding the requirement that the ward go to work and earn money for the support of the ward's dependents or to effect reparation and to keep an account of the ward's earning to report to probation and apply those earnings as directed by the court and instead requires conditions of probation to meet all of the following:

    a) The conditions are individually tailored, developmentally appropriate and reasonable;

    b) The burden imposed by the conditions shall be proportional to the legitimate interests served by the conditions; and,

    c) The conditions are determined by the court to be fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

14) Removes the authority of the court to order the minor to pay a $250 fine or participate in an uncompensated work program in lieu of restitution.

15) Contains legislative findings and declarations.

EXISTING LAW:

1) Provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime, is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

2) Provides, effective July 1, 2021, that juvenile court jurisdiction may continue until age 21, except if the wardship is based on the commission of a specified serious offense, the juvenile court may retain jurisdiction until age 23, unless the ward would have faced an aggregate sentence of seven years or more in criminal court, in which case the juvenile court's jurisdiction would continue until age 25. (Welf. & Inst. Code, § 607, subds. (a) – (c).)

3) Authorizes the juvenile court to place a ward of the court on supervised probation. The probation officer may place the ward in a relative's home, a suitable licensed community care

facility, or with a foster family agency, as specified, a suitable certified family home, or with a resource family. (Welf. & Inst. Code, § 727.)

4) Provides that when a ward is placed under the supervision of the probation officer or committed to the care, custody, and control of the officer, the juvenile court may make any and all reasonable orders for the conduct of the ward, and impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced. (Welf. & Inst. Code, § 730, subd (b).)

5) Requires the court to order a minor, who is adjudged a ward of the court for committing battery on school property and as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, to make restitution to the victim of the battery. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform specified community service. (Welf. & Inst. Code, § 729.)

6) Requires the court, for a minor adjudged a ward of the court for commission of a crime which takes place on public transit, and if the court does not remove the minor from the custody of their parent or guardian, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, order the minor to wash, paint, repair or replace the damaged or destroyed property, or otherwise make restitution to the property owner. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform specified community service. (Welf. & Inst. Code, § 729.1.)

7) Requires a court, if a minor is adjudged a ward of the court and the court does not remove the minor from the custody of their parent or guardian, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall order:

   a) The minor to attend a school program approved by the probation officer without absence;

   b) The parents or guardian to participate with the minor in a counseling or education program, unless the minor has been declared a dependent of the court or a petition to declare the minor a dependent of the court has been filed; and,

   c) The minor to be at their legal residence between the hours of 10:00 p.m. and 6:00 a.m. unless the minor is accompanied by a parent, legal guardian or other adult person having legal care or custody of the minor. (Welf. & Inst. Code, § 729.2.)

8) States that if a minor is found to be a ward of the court for committing assault or battery on school or park property, the court shall, in addition to any other fine, sentence, or condition of probation, order the minor to attend counseling at the expense of the minor's parents. (Welf. & Inst. Code, § 729.6.)

9) States that if a minor is found to be a ward of the court for unlawful possession, use, sale, or other furnishing of a controlled substance, as defined, an imitation controlled substance, as defined, or toluene or a toxic, as described, upon the grounds of any school, or any church or synagogue, playground, public or private youth center, child day care facility, or public swimming pool, during hours in which these facilities are open for business or for use, or at any time when minors are using the facility, the court, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform not more than 100 hours of community service. (Welf. & Inst. Code, § 729.8.)

10) Requires a court, when recommended by the probation officer, unless it makes a finding that this condition would not serve the interest of justice, a minor who is adjudged a ward of the court for committing an offense involving unlawful possession, use, sale, or other furnishing of a controlled substance, to not use or be under the influence of any controlled substance and submit to drug and substance abuse testing as directed by the probation officer. (Welf. & Inst. Code, § 729.9.)

11) Provides that when a minor is adjudged a ward of the court and is placed under the supervision of the probation officer, or committed to the care, custody, and control of the probation officer, the court may make any and all reasonable orders for the conduct of the ward including the requirement that the ward go to work and earn money for the support of the ward's dependents or to effect reparation and in either case that the ward keep an account of the ward's earnings and report the same to the probation officer and apply these earnings as directed by the court. The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced. (Welf. & Inst. Code, § 730, subd. (b).)

12) Provides that when a minor is adjudged a ward of the court for committing offenses related to vandalism and defacement of property, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate, shall require the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. In any case in which the minor is not granted probation or in which the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages. (Welf. & Inst. Code, § 742.16, subd. (a).)

13) States that if the cost to repair or replace the property defaced by the minor has been incurred by a public entity, the court shall determine the total costs and order the minor or the minor's estate to pay those costs. (Welf. & Inst. Code, § 742.16, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Probation is the most common court-ordered outcome for youth in California's juvenile courts, yet there are no clear standards for how long supervision should last. As a result, many young people—particularly youth of color—are placed on probation for indefinite periods, facing unrealistic and overly burdensome conditions that often do more harm than good. Instead of supporting rehabilitation, this approach traps young people in the legal system during critical years of development, increasing the risk of unnecessary detention and contributing to the school-to-prison pipeline.

   "AB 1376 creates a fair and balanced framework by establishing a six-month probation timeline with a presumption for dismissal unless the court determines that an extension is in the youth's best interest. This change ensures that probation is focused on supporting growth and accountability, not prolonged punishment. This bill will also require that probation conditions are tailored, developmentally appropriate, and not excessive or punitive. By setting clear limits and expectations, AB 1376 keeps the focus where it belongs—on rehabilitation and helping young people learn from their mistakes so they can move forward with their lives."

2) **Juvenile Probation Generally**: There are a variety of case dispositions available for minors who come before the juvenile court based on commission of a crime. The court may order the minor to participate in a diversion with the Probation Department for six months. (Welf. & Inst. Code, § 654.2) If the minor is not made a ward of the court, the court also order informal probation for a period of six months. (Welf. & Inst. Code, § 725, subd. (a).) For those who are made a ward of the court, the court can order wardship probation either with or without supervision of the Probation Department. The most common disposition is probation with Probation Supervision.[1]

   Unlike adult probationers who have a statutory cap of one year probation for misdemeanors and two years' probation for felonies, except as specified for longer terms by statute, juvenile probation terms under wardship probation do not have a statutory cap on the probation term, with the only statutory limitation being when the court loses jurisdiction over the minor at age 21. (Welf & Inst. Code, § 602.) According to a report by Youth Law Center[2]:

   > While the court is not required to specify the probation length, the court does have the discretion to set a specific date for probation termination. Current research supports tailoring probation length to the individual youth, with a typical period being no more than six to nine months. The probation term should be shortened for youth who meet probation expectations and should not ever exceed one year. Such an approach is consistent with research showing that youth respond better to incentives rather than punishment, and that shorter probation terms both save costs and produce better outcomes. Whether or not the court sets a definite term, the court has the discretion to terminate probation at any time, and in making that decision must consider the youth's overall performance on probation. There is no requirement that a youth show perfect compliance in order to complete probation. Instead, the court can dismiss probation if it finds that the youth has "substantially complied" with the purpose of

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[1] *A Legal Map of Youth Probation in California*, Youth Law Center (Aug. 2020) < ylc-part5-youth-probation-final.pdf> at p. 2 (accessed Apr. 14, 2025).
[2] *Id.* at p. 8.

> his or her probation, even when the youth has not perfectly complied with all technical requirements. If a youth meets this standard of substantial compliance, he or she has attained "satisfactory completion" of probation, and in most cases the court will then order that the youth's case be dismissed and sealed. Once a case is sealed, the case is deemed not to have occurred, and the youth has a legal right not to disclose it to employers, educational institutions, or other persons or entities.

This bill sets a presumptive limit of 9 months for minors placed on wardship probation, except that a court may extend the probation period by increments of 6 months upon proof by a preponderance of the evidence that it is in the ward's best interest. According to information provided by the sponsors of this bill, average probation periods vary by county and it is difficult to get a clear picture of the overall practice of each county because the data is not readily available. Based on an information gathered from a Public Records Act request for the period covering January 2018 to July 2020, 18 counties provided information showing that some counties had a median probation period for juveniles being as low as 5 months in Solano County and 6 months in Amador, El Dorado, Lassen and Tulare Counties. Some counties provided average length of probation based on race and ethnicity which showed that on average youth of color spend longer periods of time on probation: white youth spent an average of 19.7 months, Latino youth spent an average of 25.1 months, Asian youth spent an average of 22.2 months, and Black youth spent an average of 20.9 months.

Opponents of this bill argue that a presumptive limit does not take into account the time and work involved in delivering services necessary for the youth on wardship probation. These services may include counseling, skill-building, or family therapy and may take weeks to initiate and months to complete. Opponents also state that in order to accommodate the length of certain treatment or programs, the courts may end up ordering more stringent alternative dispositions to potentially include adult court transfers or a secure setting.

3) **Juvenile Probation Conditions**: A juvenile court may impose on a minor on probation "any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) "A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile." (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5; *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

In *People v. Lent* (1975) 15 Cal.3d 481, the California Supreme Court articulated the following test to determine whether a probation condition constitutes an abuse of discretion: "A condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.'" (*Id.* at p. 486.) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) "As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality." (*Id.* at pp. 379-380.) The *Lent* test applies to juvenile probation conditions. (*In re P.O.* (2016) 246 Cal.App.4th 288, 294; *In re D.G.* (2010) 187 Cal.App.4th 47, 52.)

Conditions of probation may include, among many other options, electronic monitoring, drug screening, education programs, participation in probation-required programs or community service. Research shows that placing too many conditions on juveniles during probation makes it more difficult to complete all requirements and in turn decreases their likelihood of successfully completing probation.[3] Additionally, the placement of more probation requirements increased the risk of technical violations and shorter time to violation.[4]

Counties vary on the number of standard probation conditions listed on their forms. For example, Los Angeles County has 56 probation conditions on their standard form, compared to several other counties that have 30. Using standard forms with a long list of available conditions increases the chances of excessive and boilerplate conditions being applied making it more difficult for a juvenile to comply with all of the conditions ordered. Comparatively, the National Council of Juvenile and Family Court Judges suggests that probation orders or conditions should be limited to ideally four or fewer probation conditions with the most effective condition being an expectation that the youth will cooperate with the probation officer in developing the case plan and pursue case plan goals to the best of their ability.[5]

This bill requires conditions of probation for a juvenile to be individually tailored, developmentally appropriate, and reasonable. Furthermore, the bill states that the burdens imposed by the conditions shall be proportional to the legitimate interests served by the conditions and determined by the court to be fitting and proper. The bill also amends existing provisions of law that requires a court to order specified conditions of probation for certain crimes to make them permissive instead.

4) **Juvenile Justice Realignment**: In 2020, the Legislature passed Senate Bill 823 (Committee on Budget and Fiscal Review) which established a process for realigning California's juvenile system by phasing out the state's youth prison system, the Division of Juvenile Justice, and transferring the responsibility for managing all youthful offenders to local jurisdictions.[6]

Among other things, SB 823 stated the intent of the Legislature to establish a separate dispositional track for higher-need youth by March 1, 2021. In order to implement Senate Bill 823, in 2021, the Legislature passed Senate Bill 92 (Committee on Budget and Fiscal Review) which authorized counties to establish secure youth treatment facilities for the placement of wards who were adjudicated for specified serious offenses when the juvenile was age 14 or older, as specified. (Welf. & Inst. Code, § 875.) At the conclusion of a baseline confinement term, a ward could be discharged to a period of probation supervision in the community under conditions approved by the court, unless the court finds that the ward

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[3] Dir et al, Psychology & Public Policy Law, *The point of diminishing returns in juvenile probation: Probation requirements and risk of technical probation violations among first-time probation-involved youth* (May 2021) at p. 4.
[4] *Id.* at p. 1.
[5] *The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership*, National Council of Juvenile and Family Court Judges (2021) at p. 36.
[6] See Sen. Comm. on Budget and Fiscal Review. Floor Analysis of Sen. Bill No. 823 (2019-2020 Reg. Sess.) as amended August 28, 2020, p. 1.

constitutes a substantial risk of imminent harm to others in the community if released from custody. (Welf. & Inst. Code, § 875, subd. (e)(3).) The court could also discharge a ward to a program of probation supervision. The court would determine the reasonable conditions of probation that are suitable to meet the developmental needs and circumstances of the ward and to facilitate the ward's successful reentry into the community. If the ward was discharged to a program of probation supervision, the court would be required to periodically review the ward's progress and make any additional orders deemed necessary in order to facilitate the provision of services or to otherwise support the ward's successful reentry into the community. (Welf. & Inst. Code, § 875, subd. (e)(4).) If the ward failed to materially comply with the reasonable orders of probation imposed by the court, the court could order that the ward be returned to custody in the secure youth treatment facility for the remainder of the presumptive term initially ordered by the court, subject to review hearings. (*Ibid.*)

The court may, upon the motion of the probation department or ward, order that the ward be transferred from a secure youth treatment facility to a less restrictive program, such as such as a halfway house, a camp or ranch, or a community residential or nonresidential service program. The purpose of a less restrictive program is to facilitate the safe and successful reintegration of the ward into the community. (Welf. & Inst. Code, § 875, subd. (f)(1).) The court shall consider the recommendations of the probation department on the proposed change in placement. Approval of the request for a less restrictive program shall be made only upon the court's determination that the ward has made substantial progress toward the goals of the individual rehabilitation plan and that placement is consistent with the goals of youth rehabilitation and community safety. (*Ibid.*) In transferring a ward to a less restrictive program, the court may require the ward to observe reasonable conditions and shall set the length of time the ward is to remain in the less restrictive program, not to exceed the remainder of the baseline or modified baseline term. (Welf. & Inst. Code, § 875, subd. (f)(2).) If, after placement in a less restrictive program, the court determines that the ward has materially failed to comply with the court-ordered conditions of placement in the program, the court may modify the terms and conditions of placement in the program or may order the ward to be returned to a secure youth treatment facility for the remainder of the baseline term, or modified baseline term, and subject to further periodic reviews and to the maximum confinement set by the court. (*Ibid.*)

This bill specifies that the bill's presumptive maximum of 9 months' probation period does not apply to any ward who is transferred from a secure youth treatment facility to a less restrictive program, as specified, and who is subject to any remaining baseline or modified baseline term until the ward is discharged pursuant to a probation discharge hearing.

5) **Veto of Similar Legislation**: AB 503 (M. Stone) from 2022 was substantially similar to this bill. The bill was vetoed by the Governor. The Governor's veto message stated:

> "This bill would limit the period of time in which a court may place a ward of the court on probation to six months and extend probation in six month increments upon proof that it is in the best interest of the ward.
>
> "I support juvenile justice reform and rehabilitation, which is why, in 2020, I led the effort to realign juvenile justice in California. Realignment is an important reform that has impacted every step of the juvenile justice process, from placement decisions to

discharge. County probation has had to work swiftly to adapt to providing care and programming to a new population.

"Realignment will not be final until the Division of Juvenile Justice closes in June of next year. As counties prepare for the full implementation of realignment, I am concerned that changes to the juvenile justice system, like those outlined in this legislation, create additional workload for the courts and probation during realignment. I am also concerned about costs driven by the increased number of hearings, the courts estimate that this increased workload will cost millions of dollars."

According to the sponsors of the bill, now that juvenile realignment has been completed, moving towards shorter probation periods for those juveniles who don't need longer terms will ultimately reduce probation workloads. Additionally, while the court hearings will come with a cost, that cost may be offset by savings from not having juveniles on supervised probation for longer than needed.

6) **Argument in Support**: According to *National Center for Youth Law*, a co-sponsor of this bill, "In contrast to a growing number of states, California has no statutory limitation on the length of time young people spend under court ordered, non-custodial "wardship" probation supervision—something that was changed in the California adult courts five years ago with AB 1950 (2020). While data are not typically published by California Probation Departments about how long youth spend on probation, a Public Records Act request in 2020 revealed that on average, youth of color are on probation far longer than white youth. Specifically, White youth were on probation for an average of less than 20 months, while Black youth were on probation for an average of nearly 21 months, Asian youth for more than 22 months, and Latino youth for more than 25 months.

"Long probation terms significantly increase the likelihood that youth will be charged with probation violations, sometimes resulting in incarceration, and often for minor noncriminal transgressions. This practice is in conflict with the principles of youth development and is consistent with research demonstrating that keeping youth on supervision for longer than six months does not likely result in public safety gains. Guided by this research, juvenile justice experts in the Pew Charitable Trusts' Public Safety Performance Project have recommended shorter periods of probation for youth in several states.

"Further, probation conditions all too often set youth up for failure. Research shows that youth often do not understand what is expected of them even right after they leave the courtroom at the time of disposition. The imposition of long lists of requirements, many of which bear little or no relationship to the behavior that brought the youth before the court, make it difficult for youth to succeed. Juvenile court probation orders in California can include anywhere from five to 56 conditions of probation on their standard form. Several counties have more than 30. Standard terms and conditions of probation for youth, regardless of level of need, are not always individually tailored and developmentally appropriate to provide adequate support. Evidence supports limiting probation terms and using the incentive of shortening probation terms as a reward for positive behavior showing that this can improve outcomes and reduce costs without compromising public safety.

"AB 1376 will address the problems with California's probation supervision of youth by:

• Creating a presumption that non-custodial wardship probation will be terminated at six months, with the ability to grant extensions to probation supervision if the court determines by a preponderance of the evidence that it is in the youth's best interest to continue probation past the initial six month wardship probation period.

• Requiring probation conditions to be individually tailored, developmentally appropriate, and reasonable.

• Increasing judicial discretion by changing statutorily mandated probation conditions to permissive probation conditions, so that judges are able to make individualized determinations."

7) **Argument in Opposition**: According to *Chief Probation Officers of California*, "[T]here is a graduated continuum of juvenile responses and dispositions to reflect the needs of the youth and their safety as well as the community. These include, but are not limited to diversion, informal probation, deferred entry of judgement (DEJ), and non-wardship probation that can be used by the court. These are important alternatives to wardship that can be used in cases where deemed suitable.

"Youth who have been made wards have been determined by the court to need focused services, programming, and treatment that may extend beyond 6 months in order to simultaneously achieve improved well-being for the youth and safety for the community.

"Wardship probation is reserved for circumstances involving more serious offenses and when deemed necessary and appropriate for the safety of the youth and the community. We are concerned that by setting a definitive timeline of 6 months, even with the potential to extend, that 6 months wardship will not be deemed suitable for some cases or will not accommodate the length of certain treatment or programs, therefore more stringent alternative dispositions may be considered to potentially include adult court transfers or a secure setting.

"Therefore, we should be looking at how to best balance the shared goal of moving youth successfully off wardship without impeding key treatment or programming they need as identified by the court.

"Below are concerns that underly our opposition:

• **Applicability to Wards of the Court (Felony and Misdemeanor)**: This bill treats misdemeanors and felonies the same and applies to youth who are made wards of the court, including WIC 707(b) offenses such as murder, rape, arson, and robbery among other offenses. This bill is impacting youth that have been made wards of the court, and who have been identified as often having higher criminogenic needs that require focused and individualized responses and adequate time necessary to balance and meet the safety and treatment needs of the youth.

• **Impacts on Dispositions**: Six months for wardship cases will not be deemed suitable for some cases or will not accommodate the length of certain treatment or programs, such as sex offender programs, therefore more stringent alternative dispositions may be considered by

courts and prosecutors which could potentially include adult court filings or a detention facility setting.

• **Process of Discharge – Establishing a Presumption**: The process currently proposed in the bill sets a presumption for discharge at six months for all non-custodial wardship cases (misdemeanor and felony). This bill establishes a probation term for wardship, which is deemed at the higher end of the juvenile continuum, for shorter durations than diversion or DEJ.

8) **Related Legislation**:

a) AB 22 (DeMaio), among other things, would remove from the juvenile court's jurisdiction specified crimes committed by minors, requiring those crimes to be tried in a court of criminal jurisdiction. AB 22 was held in this committee.

b) AB 1279 (Sharp-Collins) prohibits juvenile adjudications from counting as a prior "strike" for purposes of the Three Strikes Law. AB 1279 is pending hearing in Assembly Appropriations Committee.

9) **Prior Legislation**: AB 503 (M. Stone), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 503 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

Haywood Burns Institute (co-sponsor)
National Center for Youth Law (co-sponsor)
Western Center on Law & Poverty (co-sponsor)
ACLU California Action
Alianza for Opportunity
All of US or None (HQ)
Alliance for Boys and Men of Color
Alum Rock Counseling Center
Anti Recidivism Coalition
Arts for Healing and Justice Network
Black Parallel School Board
Brown Issues
Building Healthy Communities Monterey County
California Alliance for Youth and Community Justice
California Alliance of Child and Family Services
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
California United for a Responsible Budget (CURB)
California Youth Defender Center
Californians for Safety and Justice (CSJ)
Californians United for a Responsible Budget
Cancel the Contract

Center on Juvenile and Criminal Justice
Ceres Policy Research
Children Now
Children's Defense Fund-California
Communities United for Restorative Youth Justice (CURYJ)
Community Interventions
Conxion to Community
Courage California
Debt Free Justice California
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
End Child Poverty California Powered by Grace
Freedom 4 Youth
Fresh Lifelines for Youth (FLY)
Grace Institute - End Child Poverty in CA
Hoops4justice
Human Rights Watch
Immigrant Legal Resource Center
Initiate Justice
Initiate Justice Action
Integral Community Solutions Institute
Justice Policy Institute
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Messaging for Success
Milpa Collective
Nasw California
National Compadres Network
Peace and Justice Law Center
Rubicon Programs
Ryse Youth Center
San Francisco Public Defender's Office
Santa Cruz Barrios Unidos
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Starting Over INC.
Starting Over Strong
The Collective for Liberatory Lawyering
Urban Peace Institute
Urban Peace Movement
Youth Alliance
Youth Forward
Youth Justice Coalition
Youth Law Center

Opposition

Bargaining Unit (BU) 702 - SEIU 721 Joint Council
California District Attorneys Association
Chief Probation Officers' of California (CPOC)
Los Angeles County Probation Officers Union, Afscme Local 685
Riverside County District Attorney
Riverside Sheriffs' Association
Sacramento County Probation Association
San Diego County Probation Officers Association
San Joaquin County Probation Officers Association
San Mateo County Probation Detention Association
State Coalition of Probation Organizations
Ventura County Professional Peace Officers Association

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

Amended Mock-up for 2025-2026 AB-1376 (Bonta (A))

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

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

SECTION 1. (a) Evidence demonstrates that community safety is best achieved through provision of individualized, comprehensive youth development and health-based approaches to address youth challenges and behaviors, keeping youth in families and communities whenever possible, and prioritizing family connection and reunification.

(b) Research shows that imposing lengthy periods of probation on youth compounds trauma, exacerbates mental health problems, interferes with healthy development, increases recidivism, and is counterproductive as a means of achieving public health and safety.

(c) Data shows that youth of color, tribal youth, and youth in the child welfare system are overrepresented at every decisionmaking point in the justice system and bear the brunt of the harms of system contact.

(d) It is the intent of the Legislature that all of the following apply:

(1) Counties use evidence-based and promising practices and programs that prioritize non-law enforcement, community-based, and individualized interventions that promote youth development, build on youths' strengths, are culturally rooted, and address trauma.

(2) Interventions be governed by a public health focus and not a correctional model.

(3) The utilization of state intervention and court-ordered supervision occurs in rare circumstances and only when all forms of community-based, developmentally appropriate interventions have been exhausted.

(4) Youth that come into contact with the delinquency system should not be denied any available protections and benefits under the foster care system and other youth-serving systems.

(5) The justice system must promote equity and eliminate systemic biases and structural barriers that disparately impact youth and families of color, those impacted by poverty, and other marginalized groups.

(6) In the limited instances in which probation is used, engagement should be as short and minimally disruptive as possible, aiming to connect youth and their families with resources in their community that can provide consistency and support for the youth without the harms of the justice system.

SEC. 2. Section 602.05 is added to the Welfare and Institutions Code, to read:

602.05. (a) A minor adjudged to be a ward of the court pursuant to Section 601 or 602 who is subject to an order of probation pursuant to Section 727, with or without supervision of the probation officer, shall not remain on probation for a period that exceeds ~~six~~ ***nine*** months, except as specified in subdivision (b).

(b) A court may extend the probation period for a period not to exceed six months after a noticed hearing and upon proof by a preponderance of the evidence that it is in the ward's best interest, consistent with Section 202.

(1) At the noticed hearing, the probation agency shall submit a report to the court detailing the basis for any request to extend probation.

(2) The court shall provide the ward and the prosecuting attorney with the opportunity to present relevant evidence. The court has discretion to receive evidence by testimony, declaration, and other documentary evidence.

(3) In cases in which the court finds by a preponderance of the evidence a basis for extending probation ~~beyond the six-month period~~, the court shall state the reasons for the findings orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or when the proceedings are not being recorded electronically or reported by a court reporter.

(c) If, pursuant to subdivision (b), the court extends probation, the court shall schedule and hold a noticed hearing for the ward not less frequently than every six months for the remainder of the wardship period.

(d) Prior to terminating jurisdiction over a youth who is described by subdivision (a) of Section 607.2, the court shall comply with the provisions of Section 607.2.

(e) The requirement to comply with the provisions of Section 607.2 shall not be a basis for continuing an order imposing terms and conditions of probation, as referenced in subdivision (b) of Section 730. If the court retains jurisdiction pursuant to this subdivision, the ward shall not be subject to a petition pursuant to Section 777 or a violation of probation.

(f) This section does not preclude termination of a ward's probation before the end of a ~~six-month~~ ***nine-month*** period.

(g) This section does not apply to any ward who is transferred from a secure youth treatment facility to a less restrictive program pursuant to paragraph (2) of subdivision (f) of Section 875 and who is subject to any remaining baseline or modified baseline term until the ward is discharged pursuant to a probation discharge hearing described in subdivision (e) of Section 875.

SEC. 3. Section 729 of the Welfare and Institutions Code is amended to read:

729. If a minor is found to be a person described in Section 602 by reason of the commission of a battery on school property as described in Penal Code Section 243.5, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may require the minor to make restitution to the victim of the battery. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may require the minor to perform specified community service. Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

SEC. 4. Section 729.1 of the Welfare and Institutions Code is amended to read:

729.1. (a) (1) If a minor is found to be a person described in Section 602 by reason of the commission of a crime which takes place on a public transit vehicle, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may require the minor to wash, paint, repair or replace the damaged or destroyed property, or otherwise make restitution to the property owner. If restitution is found to be inappropriate, the court, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may require the minor to perform specified community service. Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(2) In lieu of the community service authorized pursuant to paragraph (1), the court may, if a jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594 of the Penal Code, order the defendant, and the defendant's parents or guardians, as a condition of probation, to keep a specified property in the community free of graffiti for 90 days. Participation of a parent or guardian is not required under this paragraph if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(b) As used in subdivision (a), "public transit vehicle" means any motor vehicle, street car, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.

(c) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (a) to undergo counseling.

SEC. 5. Section 729.2 of the Welfare and Institutions Code is amended to read:

729.2. If a minor is found to be a person described in Section 601 or 602 and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may:

(a) Require the minor to attend a school program approved by the probation officer without absence.

(b) Require the parents or guardian of the minor to participate with the minor in a counseling or education program, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court or the probation department, unless the minor has been declared a dependent child of the court pursuant to Section 300 or a petition to declare the minor a dependent child of the court pursuant to Section 300 is pending.

(c) Require the minor to be at the minor's legal residence between the hours of 10:00 p.m. and 6:00 a.m. unless the minor is accompanied by the minor's parent or parents, legal guardian or other adult person having the legal care or custody of the minor.

SEC. 6. Section 729.6 of the Welfare and Institutions Code is amended to read:

729.6. If a minor is found to be a person described in Section 602 by reason of the commission of an offense described in Section 241.2 or 243.2 of the Penal Code, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling.

SEC. 7. Section 729.8 of the Welfare and Institutions Code is amended to read:

729.8. (a) If a minor is found to be a person described in Section 602 by reason of the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of the Health and Safety Code, an imitation controlled substance, as defined in Section 109550 of the Health and Safety Code, or toluene or a toxic, as described in Section 381 of the Penal Code, upon the grounds of any school providing instruction in kindergarten, or any of grades 1 to 12, inclusive, or any church or synagogue, playground, public or private youth center, child day care facility, or public swimming pool, during hours in which these facilities are open for business, classes, or school-related activities or programs, or at any time when minors are using the facility, the court, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, may require the minor to perform not more than 100 hours of community service.

(b) The definitions contained in subdivision (e) of Section 11353.1 of the Health and Safety Code shall apply to this section.

(c) As used in this section, "community service" means any of the following:

(1) Picking up litter along public streets or highways.

(2) Cleaning up graffiti on school grounds or any public property.

(3) Performing services in a drug rehabilitation center.

SEC. 8. Section 729.9 of the Welfare and Institutions Code is amended to read:

729.9. If a minor is found to be a person described in Section 602 by reason of the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, and, unless it makes a finding that this condition would not serve the interests of justice, the court, when recommended by the probation officer, may require, as a condition of probation, in addition to any other disposition authorized by law, that the minor shall not use or be under the influence of any controlled substance and shall submit to drug and substance abuse testing as directed by the probation officer.

SEC. 9. Section 730 of the Welfare and Institutions Code is amended to read:

730. (a) (1) When a minor is adjudged a ward of the court on the ground that they are a person described by Section 602, the court may order any of the types of treatment referred to in Section 727, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp, or forestry camp. If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall. In addition, the court may also make any of the following orders:

(A) Order the ward to make restitution.

(B) Commit the ward to a sheltered-care facility.

(C) Order that the ward and the ward's family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(D) Order placement of the ward at the Pine Grove Youth Conservation Camp if the ward meets the placement criteria, the county has entered into a contract with the Department of Corrections and Rehabilitation, either directly or through another county, the department has found the ward amenable, and there is space and resources available for the placement. The county probation department shall receive approval from the department prior to transporting the ward to the camp. The department shall immediately notify the county probation department if the ward is no longer

amenable for continued camp placement and coordinate the immediate return of the ward to the county of jurisdiction.

(2) A court shall not commit a juvenile to any juvenile facility for a period that exceeds the middle term of imprisonment that could be imposed upon an adult convicted of the same offense.

(b) When a ward described in subdivision (a) is placed under the supervision of the probation officer, or committed to the care, custody, and control of the probation officer, or the court orders the youth on unsupervised probation pursuant to paragraph (2) of subdivision (a) of Section 727, the court may make any and all reasonable orders for the conduct of the ward, including conditions of probation that shall meet all of the following requirements:

(1) The conditions are individually tailored, developmentally appropriate, and reasonable.

(2) The burden imposed by the conditions shall be proportional to the legitimate interests served by the conditions.

(3) The conditions are determined by the court to be fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

(c) When a ward described in subdivision (a) is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, and is required as a condition of probation to participate in community service or graffiti cleanup, the court may impose a condition that if the minor unreasonably fails to attend or unreasonably leaves prior to completing the assigned daily hours of community service or graffiti cleanup, a law enforcement officer may take the minor into custody for the purpose of returning the minor to the site of the community service or graffiti cleanup.

(d) When a minor is adjudged or continued as a ward of the court on the ground that the ward is a person described by Section 602 by reason of the commission of rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code, the court shall order the minor to complete a sex offender treatment program, if the court determines, in consultation with the county probation officer, that suitable programs are available. In determining what type of treatment is appropriate, the court shall consider all of the following: the seriousness and circumstances of the offense, the vulnerability of the victim, the minor's criminal history and prior attempts at rehabilitation, the sophistication of the minor, the threat to public safety, the minor's likelihood of reoffending, and any other relevant information presented. If ordered by the court to complete a sex offender treatment program, the minor shall pay all or a portion of the reasonable costs of the sex offender treatment program after a determination is made of the ability of the minor to pay.

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

SEC. 10. Section 742.16 of the Welfare and Institutions Code is amended to read:

742.16. (a) If a minor is found to be a person described in Section 602 of this code by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate, may require the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. In any case in which the minor is not granted probation or in which the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages. The court may order the minor or the minor's estate to pay that restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both, only if the court determines that the minor or the minor's estate has the ability to do so, except in any case in which the court makes a finding and states on the record its reasons why full restitution would be inappropriate. If full restitution is found to be inappropriate, the court may require the minor to perform specified community service, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate.

(b) If a minor is found to be a person described in Section 602 of this code by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the graffiti or other material inscribed by the minor has been removed, or the property defaced by the minor has been repaired or replaced by a public entity that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section and has made cost findings in accordance with subdivision (c) or (d) of Section 742.14, the court shall determine the total cost incurred by the public entity for said removal, repair, or replacement, using, if applicable, the cost findings most recently adopted by the public entity pursuant to subdivision (c) or (d) of Section 742.14. The court may order the minor or the minor's estate to pay those costs to the probation officer of the county only if the court determines that the minor or the minor's estate has the ability to do so.

(c) If the minor is found to be a person described in Section 602 of this code by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the minor was identified or apprehended by the law enforcement agency of a city or county that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section, the court shall determine the cost of identifying or apprehending the minor, or both, using, if applicable, the cost findings adopted by the city or county pursuant to subdivision (b) of Section 742.14. The court may order the minor or the minor's estate to pay those costs to the probation officer of the county only if the court determines that the minor or the minor's estate has the ability to do so.

(d) If the court determines that the minor or the minor's estate is unable to pay in full the costs and damages determined pursuant to subdivisions (a), (b), and (c), and if the minor's parent or parents have been cited into court pursuant to Section 742.18, the court shall hold a hearing to determine

the liability of the minor's parent or parents pursuant to Section 1714.1 of the Civil Code for those costs and damages. Except when the court makes a finding setting forth unusual circumstances in which parental liability would not serve the interests of justice, the court may order the minor's parent or parents to pay those costs and damages to the probation officer of the county only if the court determines that the parent or parents have the ability to pay, if the minor was in the custody or control of the parent or parents at the time the minor committed the act that forms the basis for the finding that the minor is a person described in Section 602. In evaluating the parent's or parents' ability to pay, the court shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income.

(e) The hearing described in subdivision (d) may be held immediately following the disposition hearing or at a later date, at the option of the court.

(f) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) is five thousand dollars ($5,000) or less, the parent or parents may not be represented by counsel and the probation officer of the county shall be represented by a nonattorney designee. The court shall conduct that hearing in accordance with Sections 116.510 and 116.520 of the Code of Civil Procedure. Notwithstanding the foregoing, if the court determines that a parent cannot properly present their defense, the court may, in its discretion, allow another individual to assist that parent. In addition, a spouse may appear and participate in the hearing on behalf of their spouse if the representative's spouse has given consent and the court determines that the interest of justice would be served thereby.

(g) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) exceeds five thousand dollars ($5,000), the parent or parents may be represented by counsel of their own choosing, and the probation officer of the county shall be represented by the district attorney or an attorney or nonattorney designee of the probation officer. The parent or parents shall not be entitled to court-appointed counsel or to counsel compensated at public expense.

(h) At the hearing conducted pursuant to subdivision (d), there shall be a presumption affecting the burden of proof that the findings of the court made pursuant to subdivisions (a), (b), and (c) represent the actual damages and costs attributable to the act of the minor that forms the basis of the finding that the minor is a person described in Section 602.

(i) If the parent or parents, after having been cited to appear pursuant to Section 742.18, fail to appear as ordered, the court shall order the parent or parents to pay the full amount of the costs and damages determined by the court pursuant to subdivisions (a), (b), and (c).

(j) Execution may be issued on an order issued by the court pursuant to this section in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor.

(k) At any time prior to the satisfaction of a judgment entered pursuant to this section, a person against whom the judgment was entered may petition the rendering court to modify or vacate the

judgment on the showing of a change in circumstances relating to the person's ability to pay the judgment.

(l) For purposes of a hearing conducted pursuant to subdivision (d), the judge of the juvenile court shall have the jurisdiction of a judge of the superior court in a limited civil case, and if the amount of the demand is within the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the judge of the juvenile court shall have the powers of a judge presiding over the small claims court.

(m) Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(n) The options available to the court pursuant to subdivisions (a), (b), (c), (d), and (k), to order payment by the minor and the minor's parent or parents of less than the full costs described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons of justice, shall not be available to a superior court in an ordinary civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in any proceeding pursuant to either subdivision (b) of Section 1714.1 of the Civil Code or this section, the maximum amount that a parent or a minor may be ordered to pay shall not exceed twenty thousand dollars ($20,000) for each tort of the minor.

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1380 (Elhawary) – As Amended April 10, 2025

SUMMARY: Requires the Department of Forestry and Fire Protection (CAL FIRE), in partnership with the California Department of Corrections and Rehabilitation (CDCR) and the California Conservation Camp program (CCC), to provide for official certification for all individuals who complete CAL FIRE's firefighting training (FFT) program while incarcerated. Specifically, **this bill**:

1) Requires CAL FIRE, within six months from the date this chapter becomes operative, in partnership with CDCR and CCC, to implement a standardized process to ensure that all individuals who successfully complete the department's FFT program while incarcerated receive official written certification before their release from prison.

2) Requires that certification to be considered adequate for employment at CAL FIRE in the classification of Fire Fighter 1.

3) Requires the official written certification to include, but is not limited to, the following certifications:

    a) L180 Human Factors in the Wildland Fire Service.

    b) S130 Wildland Fire Safety Training.

    c) S190 Introduction to Wildland Fire Behavior.

    d) Public Safety First Aid.

    e) Fire Protection Orientation.

    f) Confined Space Rescue Awareness.

    g) Fire Fighter 1B: HazMat Certificate.

4) Requires the CAL FIRE, on or before January 1, 2027, to ensure a minimum percentage of Fire Fighter Classification 1 positions are reserved for the hiring of qualified formerly incarcerated individuals as follows:

    a) CAL FIRE, subject to the receipt of a sufficient quantity of job applications from qualified formerly incarcerated individuals, to reserve at least 15 percent of all vacant Fire Fighter 1 classification positions each year for the hiring of qualified formerly

incarcerated individuals.

b) If in any year the department does not receive enough applications from qualified formerly incarcerated individuals to meet the specified percentage threshold, the department shall nevertheless remain in compliance with this subdivision if the following conditions are meet:

i) CAL FIRE took meaningful steps to recruit qualified formerly incarcerated individuals to comply with the 15 percent threshold.

ii) CAL FIRE hired all qualified formerly incarcerated individuals who submitted an application that year.

5) Requires CAL FIRE, in partnership with the CDCR, to annually track the number of incarcerated individuals who have completed the FFT program and are set to be released from prison within the next 90 days to ensure a sufficient number of vacant Fire Fighter 1 classification positions are available for hiring purposes.

6) Provides that these provisions do not preclude other state agencies with wildland management responsibilities from establishing similar pathways to support wildfire prevention, mitigation, and response efforts with priority hiring reserved for formerly incarcerated individuals who completed the FFT program.

7) Requires CAL FIRE develop and implement policies and procedures to track and report the outcomes of this chapter, including, but not limited to, the number of participants hired, retention rates, and career advancement opportunities.

8) Provides that for three years from the date this bill becomes operative, CAL FIRE shall submit an annual report to the Legislature on the implementation and effectiveness of this chapter, including recommendations for improvement.

9) Defines "qualified formerly incarcerated individual" as any formerly incarcerated individual who completed the FFT program and has a valid certification, as specified.

10) Makes all of the above contingent upon appropriation by the Legislature.

EXISTING LAW:

1) 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.)

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

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

4) 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.)

5) 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.)

6) States any department, division, bureau, commission or other agency of the State of California or the Federal Government may use or cause to be used convicts confined in the state prisons to perform work necessary and proper to be done by them at permanent, temporary, and mobile camps to be established under this article. The director may enter into contracts for the purposes of work, as specified. (Pen. Code, § 2780.)

7) Requires money received from the rendering of services under the prison camp work program be paid to the Treasurer monthly and shall be credited to the support appropriation of the prison rendering such services, in augmentation thereof. The appropriation to be credited shall be the appropriation current at the time of rendering the services. (Pen. Code, § 2780.1.)

8) Authorizes the Director of Corrections, during declared fire emergencies, to allow the CAL FIRE to use prisoners for fire suppression efforts outside of the boundaries of California, not to exceed a distance in excess of 25 miles from the California border, along the borders of Oregon, Nevada, or Arizona. (Pen. Code, § 2780.5.)

9) States all money received in the Inmate Welfare Fund of CDCR is hereby appropriated for educational, recreational, and other purposes at the various prison camps and shall be expended by the secretary upon warrants drawn upon the State Treasury by the Controller after approval of the claims by the Department of General Services. It is the intent of the Legislature that moneys in this fund only be expended on services other than those that the department is required to provide to inmates. (Pen. Code, § 2786.)

10) Provides that if a defendant successfully participated in the CCC program as an incarcerated individual hand crew member, as determined by the Secretary of CDCR, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, or successfully participated at an institutional firehouse, as determined by the Secretary of CDCR, and has been released from custody, the defendant is eligible for expungement relief, except that incarcerated individuals who have been convicted of specified violent crimes are automatically ineligible for relief. (Pen. Code, § 1203.4b, subd.v(a)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1380 is a restorative justice measure that creates a real path to employment for formerly incarcerated individuals who trained and served in California's fire camps. Despite gaining hands-on experience fighting wildfires alongside CAL FIRE, these individuals are often released without certification and shut out of the very workforce they helped sustain.

"By requiring CAL FIRE and CDCR to issue formal certification and establishing a pathway to Firefighter I positions for qualified former fire camp participants, AB 1380 invests in rehabilitation, reduces recidivism, strengthens our firefighting workforce, and promotes equity by ensuring that those most impacted by the justice system have the opportunity to serve their communities with dignity."

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

> CDCR initiated the Conservation (Fire) Camp Program to provide able-bodied incarcerated people the opportunity to work on meaningful projects throughout the state. The CDCR road camps were established in 1915. During World War II, much of the work force that was used by the Division of Forestry (now known as CAL FIRE), was depleted.
>
> CDCR provided the needed work force by having incarcerated people occupy "temporary camps" to augment the regular firefighting forces. During WWII, were 41 "interim camps," which would become the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983. The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980's.[1]

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

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

Incarcerated people convicted of homicide, kidnapping, rape, child molestation, any offense for which sex offender registration is required, any offense punishable by death or life in

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

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

prison, escape, or arson are automatically ineligible for fire camps. (Pen. Code, § 1203.4b, sub. (a)(1)(A-H).) Fire camp participants must also have "minimum custody" status, or the lowest-security classification based on their sustained good behavior in prison and participation in rehabilitative programming. Participants must also have eight years or less remaining on their sentence to be considered. Participants also have to be medically cleared to participate in a fire crew.

3) **Ventura Training Center:** The VTC began training participants in October 2018.[3] 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.[4] 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.[5] Participants in the 18-month certification program are provided with additional rehabilitation and job training skills to help them be more successful after completion of the program.[6] Cadets who complete the program will be qualified to apply for entry-level firefighting jobs with local, state, and federal firefighting agencies.[7]

   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.[8] 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.

4) **Additional Considerations**

   a) *Hiring Preferences:* The bill requires CAL FIRE to have at least 15% of its Fire Fighter 1 positions reserved for qualified formerly incarcerated individuals. The Firefighter Candidate Testing Center maintains a list of eligible candidates to be used by California fire departments during their hiring process. According to the California Professional Firefighters, there are currently more than 4,000 individuals on list that have completed the physical agility and written exams through the Firefighting Joint Apprenticeship Committee and are actively trying to get hired by CAL FIRE.

   b) *CAL FIRE Employment and Supervised Release:* This bill would require CAL FIRE to hire a minimum number of formerly incarcerated individuals who have successfully

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[3] *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].
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Ventura Training Center,* Anti-Recidivism Coalition (ARC) <https://antirecidivism.org/our-programs/vtc/> [as of Apr. 24, 2025].
[8] *Ibid.*

completed the FFT program. People released from CDCR custody after having participated in a fire camp will be placed on either parole or postrelease community supervision, both of which require those individuals to comply with specified terms and conditions. Among others, the terms and conditions of parole or PRCS almost always include limitations on travel beyond a certain distance from the individual's residence, at least without prior authorization from the supervising agent. CAL FIRE responds to emergencies throughout the state, often requiring firefighters to travel far from where they live, sometimes even outside the state. (Cf. Pen. Code, § 2780.5.) As such, whether a person on parole or PRCS would be able to fulfill the obligations of a firefighter during the period of supervision is unclear.

5) **Argument in Support**: According to *Initiate Justice Action*, a cosponsor of the bill, "The Conservation Camp Program, dually run by CAL FIRE and CDCR, provides incarcerated hand crews with training in services such as wildland fire safety (S-130), basic fire suppression (S-100), chainsaw competency, and other types of training. However, the agencies do not currently have a process to issue official certifications for every completed training. This means that incarcerated individuals are putting in the work to fulfill these essential training requirements but are not receiving the recognition and credentialing. Without these certifications, incarcerated individuals can't qualify for entry-level positions in firefighting upon release, and would likely have to recomplete them, which can be both costly and cumbersome. It makes little sense for the state to expend the time and resources to train incarcerated people in firefighting skills

"AB 1380 recognizes the heroism, bravery, sacrifice and commitment of incarcerated handcrews by creating gainful employment opportunities. These entry-level certifications play a vital role in the livelihood of these individuals, allowing them to apply for the entry level Firefighter Level 1 positions with the Department of Forestry and Fire Protection (CAL FIRE). Importantly, the bill would require CAL FIRE to ensure that a percentage of Firefighter Level 1 positions be made available for committed and qualified fire camp participants who wish to continue to pursue a career in firefighting after being released from prison.

"California is experiencing more frequent and devastating fires causing historic levels of burned property, and lives lost. According to CAL FIRE, in 2025 there have already been 57,768 acres burned, of which the Palisades and Eaton fires alone burned 37,728 acres. Every year, California's firefighting force is composed of incarcerated men and women, fighting fires alongside County firefighters and CAL FIRE. Incarcerated hand crews put their lives on the line to defend life and property, just like professional firefighters. The program is also a key part of California's efforts to end recidivism - according to CDCR, individuals who participated in the fire camps for one year or longer had a significantly lower recidivism rate (31.6%) than those who did not (45.2%)."

6) **Argument in Opposition**: According to *California Professional Firefighters*, "AB 1380, as recently amended, would among other things require CAL FIRE to reserve 15% of vacant positions to be filled with formerly incarcerated individuals.

"Let us preface our concerns by saying CAL FIRE's respect for the work of inmates and efforts towards providing a pathway to employment is a matter of record. Inmates who excel during their time in the camp have found entry in programs teaching fire prevention and

suppression skills and have for decades been hired by the Department. We have extraordinary managers who overcame tough times to be excellent leaders in CAL FIRE.

"During the January firestorms in Los Angeles County there was significant media coverage and public conversation about the courageous work of the brave firefighters on the front lines, as well as the work of the incarcerated individual hand crew members. Additionally, we are also aware that firefighter staffing levels or shortages were a hot topic of conversation. It is immensely important that we share that there are literally thousands of Californians with various levels of previous training and experience that are actively trying to get hired as a full-time firefighter in this state.

"In fact, the California Firefighter Joint Apprenticeship Committee (Cal-JAC), which is co-sponsored by the Office of the State Fire Marshal and California Professional Firefighters, maintains a Statewide Eligibility List of eligible candidates that have passed the Firefighter Candidate Testing Center's written and physical agility tests. There are currently about 4,000 people on this list. These individuals may have also already worked to get their Firefighter 1 Certification, EMT certification or Paramedic license. Any "shortage" of firefighters is not a result of a limited number of applicants but rather limitations on the investments made by fire departments throughout the State.

"Creating a hiring requirement for CAL FIRE that only formerly incarcerated individuals are eligible for is extremely concerning and does not take into account the thousands of women and men who have put in time and effort to become a firefighter but through no fault of their own cannot be considered for an open position. The only similar hiring preference we are aware of that currently exists is for former military personnel.

"Over the last several years, the State has established several different pathways for previously incarcerated individuals. The Ventura Training Center (VTC) was established specifically to provide opportunities for those who served on incarcerated individual hand crews to continue training in the pursuit of jobs after incarceration, and many graduates of the VTC are currently employed by CAL FIRE.

"Additionally, the Legislature passed and the Governor signed AB 1668 (Carrillo, 2019) which established the statutory structure for the Employment and Education Reentry Program. We continue to advocate that the state should fund this program that would provide training opportunities in forest management and vegetation management occupations, where there is currently a strong demand for workforce and extensive job opportunities.

"Along with this program the Legislature passed and the Governor signed AB 2147 (Reyes, 2020), which provides a pathway for record expungement for those who served in Conservation Camps.

"Finally, this measure creates significant new training requirements for incarcerated hand crew members that are not attached to the job duties performed when they are in one of these camps. Currently, training for those who participate in a Conservation Camp includes one week of classroom training (29 hours) and one week of field training. Estimates suggest that training to the standards in AB 1380 will take five weeks to complete. Because of the new time demands, CAL FIRE would likely require the training prior to service on the fire line. Further, the measure provides no direction on what happens if crew members cannot pass or

complete that training.

"Rather than move forward with this measure, we would respectfully recommend collaboration on funding and further development of the existing Employment and Education Reentry Program."

7) **Related Legislation**:

   a) 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

   b) AB 619 (Ransom) requires CAL FIRE and CDCR to jointly evaluate the Ventura Training Center (VTC) and report to the Legislature on its evaluation. AB 619 is scheduled for hearing today in this committee.

8) **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

ACLU California Action
California for Safety and Justice
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Debt Free Justice California
Ella Baker Center for Human Rights
Fair Chance Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
LA Defensa
Michelson Center for Public Policy
Prosecutors Alliance Action
Rubicon Programs
San Francisco Public Defender
The Change Parallel Project
The W. Haywood Burns Institute
Vera Institute of Justice

Oppose Unless Amended

Cal Fire Local 2881
California Professional Firefighters

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1388 (Bryan) – As Amended April 10, 2025

SUMMARY: Prohibits a law enforcement agency from entering into an agreement with the peace officer that requires the agency to destroy a record of a misconduct investigation, or otherwise halt or make particular findings in a misconduct investigation, declares any such agreements void and unenforceable, and specifies that such agreements are subject to disclosure under the California Public Records Act (CPRA). Specifically, **this bill**:

1) Prohibits an agency employing a peace officer from entering into an agreement with a peace officer that requires any of the following:

   a) The agency to destroy, remove, or conceal a record of a misconduct investigation.

   b) The agency to halt or make particular findings in a misconduct investigation.

   c) The agency to otherwise restrict the disclosure of information about an allegation or investigation of misconduct pursuant to any provision of law, including, but not limited to separation of employment records that law enforcement agencies must report to the Commission on Peace Officer Standards and Training (POST), personnel records disclosable under the CPRA, misconduct records required to be maintained in an officer's personnel file and subject to review by a prospective employer, discovery evidence required to be disclosed by the prosecution, and specified records subject to disclosure in decertification investigations and hearings.

2) Provides that a provision of an agreement that violates the above prohibition is contrary to law and public policy and is void and unenforceable.

3) Specifies that such a prohibited agreement constitutes a disclosable peace officer personnel record under the CPRA.

4) Clarifies that any of the following that occurred after January, 2020 must be reported to POST:

   a) The employment, appointment, or termination or separation from employment or appointment, by an agency, of any peace officer. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.

   b) Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification POST

c) Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification POST.

d) The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification POST, regardless of the discipline imposed.

e) Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification revocation of certification POST.

5) Clarifies that any peace officer's separation from employment or appointment after January 1, 2023, including the reason for the separation and whether the separation was part of the resolution or settlement of any charge or investigation, must be reported to POST.

6) Provides that the provisions of this bill are severable, and if any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

7) Makes specified findings and declarations.

EXISTING LAW:

1) 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).)

2) Requires any complaints and reports or findings relating to citizen complaints against law enforcement or custodial personnel, including all complaints and any reports currently in the possession of the department or agency, to 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).)

3) 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, and requires all complaints retained to be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency. (Pen. Code, § 832.5, subd. (b).)

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

1) 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).)

2) 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 POST. (Pen. Code, § 832.7, subd. (a).)

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

4) States, notwithstanding exceptions in the CPRA, 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 CPRA:

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

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

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

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

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

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

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

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

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

5) Requires all records pertaining to the following to be 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).)

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

7) Requires an agency to redact a peace officer, or custodial officer record that is subject to release as described above, for a list of specified reasons, (Pen. Code, § 832.7, subd. (b)(6).)

8) Outlines the process and timeline for which an agency can delay disclosure of disclosable records that are the subject of an active criminal or administrative investigation, (Pen. Code, § 832.7, subd. (b)(8).)

9) Provides that notwithstanding any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident. 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. (Pen. Code, § 832.7, subd. (b)(13).)

10) Authorizes a department or agency that employs peace or custodial officers to 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. (Pen. Code, § 832.7, subd. (c).)

11) Requires each agency in this state that employs peace officers to make a record of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by agency and requires a peace officer seeking employment with an agency in this state that employs peace officers to give written permission for the hiring agency to view the officer's general personnel file and any separate file designated by a agency. (Pen. Code, § 832.12, subd. (b).)

12) Requires, prior to employing any peace officer, each agency in this state that employs peace officers to request, and the hiring agency to review, any records made available pursuant to the above paragraph. (Pen. Code, § 13510.8, subd. (a).)

13) Authorizes POST to suspend or revoke the certification of a peace officer if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct, as specified. (Pen. Code, § 13510.8, subd. (a).)

14) Requires, beginning January 1, 2023, each law enforcement agency to be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status. (Pen. Code, § 13510.8, subd. (c).)

15) Authorizes the Peace Officer Standards Accountability Division to review any agency or other investigative authority file, as well as to conduct additional investigation for purposes of decertification. (Pen. Code, § 13510.8, subd. (c).)

16) Requires records of an investigation of any person by POST to be retained for 30 years following the date that the investigation is deemed concluded by POST. (Pen. Code, § 13510.8, subd. (e).)

17) Requires, beginning, January 1, 2023, any agency employing peace officers to report to POST within 10 days, any of the following events:

    a) The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.

    b) Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification POST

    c) Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification POST.

    d) The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification POST, regardless of the discipline imposed.

    e) Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification revocation of certification POST. (Pen. Code, § 13510.9, subd. (e).)

18) Requires, by July 1, 2023, any agency employing peace officers to report to POST any of the events described above, that occurred between January 1, 2020, and January 1, 2023. (Pen. Code, § 13510.9, subd. (b).)

19) Requires an agency employing peace officers to make available for inspection or duplication by POST any investigation into any complaint, charge, or allegation of conduct that could render an officer subject to suspension or revocation of certification by POST, for no less

than two years after reporting of the finding or recommendation by an oversight agency, the final disposition of the investigation reported, or the civil judgment or court finding, as applicable, whichever is latest. (Pen. Code, § 13510.9, subd. (c).)

20) Provides that in a case of separation from employment or appointment, the employing agency shall execute and maintain an affidavit-of-separation form describing the reason for separation and shall include whether the separation is part of the resolution or settlement of any criminal, civil, or administrative charge or investigation. The affidavit shall be signed under penalty of perjury and submitted to POST. (Pen. Code, § 13510.9, subd. (d).)

21) Requires, before employing or appointing any peace officer who has previously been employed or appointed as a peace officer by another agency, the agency to contact the commission to inquire as to the facts and reasons a peace officer became separated from any previous employing agency. POST shall, upon request and without prejudice, provide to the subsequent employing agency any information regarding the separation in its possession. (Pen. Code, § 13510.9, subd. (d).)

22) Requires POST to shall maintain the above information, and in a manner that may be accessed by the subject peace officer, any employing law enforcement agency of that peace officer, any law enforcement agency that is performing a pre-employment background investigation of that peace officer, or POST when necessary for the purposes of decertification. Information that the commission releases to an agency pursuant to this section that has been withheld from the subject peace officer shall be kept confidential by the receiving agency. (Pen. Code, § 13510.9, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Every year, harmful police misconduct goes overlooked and concealed, leaving those affected without justice. Across the state, numerous officers have reached settlements with law enforcement agencies through non-disclosure agreements (NDAs), allowing their misconduct to remain hidden in exchange for a quiet departure. As a direct result, these officers are effectively shielded from accountability, allowing them to continue working in other law enforcement agencies. AB 1388 seeks to end the unjustifiable practice of law enforcement agencies entering into police misconduct nondisclosure agreements (NDAs), ensuring that dangerous and dishonest police officers are held accountable. It also ensures that these NDAs are made readily accessible to the public, prioritizing the safety and well-being of our communities and those they are meant to serve over the protection of officers who departments have already self-identified as problematic."

2) **Need for this Bill**: A recent report by the San Francisco Chronicle shone light on the prior use of "clean-record agreements" between law enforcement agencies and peace officers. The terms and manner of these agreements can vary. For example, this can include a separation agreement with an officer alleged to have engaged in misconduct, whereby the officer's employing agency may agree to conceal, destroy, or otherwise refuse to disclose the officer's misconduct, or even issue the officer a lump sum payment, in exchange for the officer resigning from their position. As stated by the San Francisco Chronicle:

At least 163 California police agencies have executed separation agreements concealing misconduct allegations against at least 297 officers and deputies, records obtained by this investigation show. The actual numbers are likely much higher, because one-third of police agencies asked to release the agreements refused, citing privacy laws.

Those whose conduct is hidden by these deals — also known as "clean-record agreements" — include a deputy accused of groping a woman held in a county jail, an officer who investigators determined falsified a report to link a man to a crime, and a deputy who was found to have violated department policy when he fatally shot a teenager as he lay wounded.

More than half of the officers who secured clean-record agreements uncovered by the investigation also received lump-sum payments as part of the deals, totaling $23.7 million. One officer got $3.1 million. At least five officers have secured multiple clean-record agreements.

In many cases, police departments hid alleged misconduct even while maintaining it occurred. In every case where reporters could establish the outcome of a department's internal investigation through documents or interviews, they found that clean-record agreements were given after police agencies had fired the officer, or had begun the process of doing so, based on what they saw as clear evidence of wrongdoing.

In interviews, police chiefs said they reluctantly approve clean-record agreements because it is expensive and difficult to fire even the worst officers. California public employees have the right to appeal any disciplinary action, including termination. Police officers, however, are entitled to a second appeal, typically through evidentiary hearings in front of an arbitrator or civil service commission.

"It's just cheaper to settle, even if you're 100% right," said Scott Fairfield, the former chief of the Bell Gardens Police Department outside of Los Angeles.

The clean-record agreements obtained by this investigation were in most cases signed between 2012 and 2022, though some were executed as far back as 1995. They often were negotiated by the same attorneys and share identical terms, structures and language, even those that were approved years apart or by agencies at opposite ends of the state.

The central objective is always secrecy. Some police forces bury disciplinary records in confidential folders. Others order their outright destruction. In many cases, the separation agreements themselves are made secret, or they outline financial penalties for anyone who reveals their existence."[1]

3) **Confidentiality of Peace Officer Records:** The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Under the California Constitution, statutes, court rules, or other authorities are to be broadly

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[1] San Francisco Chronicle, *This is the secret system that covers up police misconduct — and ensures problem officers can get hired again* (Sept. 24, 2024), available at: https://www.sfchronicle.com/projects/2024/police-clean-record-agreements/

construed if they further the people's right of access, and narrowly construed if they limit the right of access. (Cal. Const. Art. I § 3.) Thus, under the CPRA, generally all public records are open to public inspection unless a statutory exception exists. In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely: 1) records of complaints to, or investigations conducted by, any state or local police agency; 2) personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law. (Gov. Code, §§ 7923.600, 7927.700, 7927.705.)

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

The Legislature has recently passed laws that have expanded and strengthened the public's access to peace officer personnel records, and particularly those records pertaining to misconduct.

In 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public's ability to access previously confidential peace officer personnel records. SB 1421 removed *Pitchess* protection from records pertaining to officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty. SB 1421 also permitted the redaction of specified personal identifying information and identity of officers, specified that records of unfounded complaints are not required to be disclosed, and clarified that the Legislature did not intend to change or overrule the California Supreme Court's holding in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.[2]

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

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[2] In *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, the California Supreme Court held that the names of police officers involved in shootings generally must be disclosed under the CPRA. The California Supreme Court reasoned that such evidence is too vague and generalized to overcome the strong public interest in disclosure. "In a case such as this one, which concerns officer-involved shootings, the public's interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death. Here, therefore, in weighing the competing interests, the balance tips strongly in favor of identity disclosure and against the personal privacy interests of the officers involved."

grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training.

4) **Effect of this Bill:** This bill seeks to further expand the public right to access records of peace officer misconduct by explicitly prohibiting agencies employing peace officers from entering into agreements requiring the agency to conceal misconduct, or make particular findings in a misconduct investigation. First, it prohibits an agency employing a peace officer from entering into an agreement with a peace officer that requires an agency to: 1) destroy, remove, or conceal a record of a misconduct investigation; 2) halt or make particular findings in a misconduct investigation; or 3) otherwise restrict the disclosure of information about an allegation or investigation of misconduct required to be reported or disclosed pursuant to any other provision of law. Second, in addition to prohibiting such agreements, it seeks to subject such agreements to disclosure by specifying that such a prohibited agreement constitutes a disclosable peace officer personnel record under the CPRA.

   Second, it declares that any prohibited provision of such an agreement contrary to law and public policy and is void and unenforceable. The Civil Code specifies that unlawful contracts include those that are: 1) contrary to an express provision of law; 2) contrary to the policy of express law, although not expressly prohibited; or 3) otherwise contrary to good morals. (Civ. Code, § 1667.) To ensure that this provision does not retroactively impair existing contractual obligations,[3] author may wish to consider clarifying that this provision applies to future resignation-in-lieu of termination agreements entered into between peace officers and their employers, rather than agreements entered into prior to the effective date of this bill.

   Lastly, it requires certain information to be reported to POST. Specifically, it requires that any peace officer's separation from employment or appointment after January 1, 2023, including the reason for the separation and whether the separation was part of the resolution or settlement of any charge or investigation, must be reported to POST. Additionally, it requires certain acts, such as a peace officer's separation from employment, whether by involuntary termination, resignation, or retirement, that occurred after January 1, 2020, to be reported to POST. These reporting requirements already largely exist in existing law. A law enforcement agency is already required to report to POST a peace officer's separation from employment, among other information, and similarly must record whether separation from employment or appointment is part of the resolution or settlement of any criminal, civil, or administrative charge or investigation. (Pen. Code, § 13510.9, subd. (b).) The author may wish to consider removing these additional reporting requirements given their overlap with existing law.

5) **Recent Legislative Reforms Prohibit Certain Conduct This Bill Seeks to Address:** As previously noted, the Legislature has taken significant steps in recent years to increase access to records pertaining to peace officer misconduct. The San Francisco Chronicle's reporting on clean record agreements analyzed clean-record agreements from 2012-2022.[4] Notably, several of the most impactful pieces of legislation that expanded access to peace officer records of misconduct were enacted between 2018 and 2021, with many of the proposed

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[3] *See* U.S. Const., art. I, Sec. 10, cl. I ("no state shall . . . pass any . . . law impairing the obligation of contracts."); (Cal. Const. art. I, § 9) ("A . . . law impairing the obligation of contracts may not be passed.")

[4] San Francisco Chronicle, *This is the secret system that covers up police misconduct — and ensures problem officers can get hired again* (Sept. 24, 2024), available at: https://www.sfchronicle.com/projects/2024/police-clean-record-agreements/

changes entering into effect in 2022. As a result, some of the type of clean record agreements discussed in the San Francisco Chronicle article are now largely subject to disclosure or even prohibited. That said, this bill provides improved clarity by explicitly prohibiting any type of settlement agreement that would require a law enforcement agency to conceal misconduct or restrict access to otherwise disclosable records.

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

Prospective peace officer employers also have access to misconduct records for prospective peace officer hires. A law enforcement agency is required to make a record of any investigations of misconduct involving an officer in the officer's general personnel file or a separate file. (Pen. Code, § 832.12, subd. (b).) Further an officer seeking employment with an agency employing peace officers in California is required to give written permission for the agency to view the officer's general personnel file as well as any separate file designated by an agency. (*Ibid.*) More importantly, an agency that employers peace officers, prior to employing any officer, is required to request, and the hiring department or agency to review, any records made available pursuant to the above. (Pen. Code, § 13510.8, subd. (a).)

Notably, beginning January 1, 2023, each law enforcement agency is now responsible for the completion of investigations of allegations of serious misconduct by a peace officer, *regardless of their employment status.* (Pen. Code, § 13510.8, subd. (c).) As such, an agreement between an agency and an officer that would require an agency to halt investigations into an alleged incident of serious misconduct, in exchange for an officer resigning in lieu of termination, is not permissible.

Complaints against peace officers are additionally required to be maintained for certain periods of time, and are prohibited from being destroyed. Specifically, any citizen complaints against law enforcement, including all complaints and any reports currently in the possession of the agency, must 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).) Further, personnel records are prohibited 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. (Pen. Code, § 832.5, subd. (b).)

Finally, law enforcement agencies are now required to report to POST specified information such as terminations, or separation from employment or appointment, of any peace officer, as well as any complaint, charge, or allegation of conduct against an officer that could render them subject to suspension or revocation of certification by POST. (Pen. Code, § 13510.9, subd. (e).) Moreover, in a case of separation from employment or appointment, the employing agency must maintain an affidavit-of-separation form describing the reason for separation and shall *specifically include whether the separation is part of the resolution or settlement of any criminal, civil, or administrative charge or investigation.* The affidavit shall be signed under penalty of perjury and submitted to POST. (Pen. Code, § 13510.9, subd. (d).) Further, before employing a previously employed peace officer, a law enforcement agency is now required to contact POST to inquire as to the facts and reasons a that peace officer became separated from any previous employing agency. (Pen. Code, § 13510.9, subd. (e).)

6) **Argument in Support**: According to *ACLU California Action*, "AB 1388… will end the unjustifiable practice of law enforcement agencies signing police misconduct nondisclosure agreements (NDAs), also known as clean record agreements. Instead of holding unfit officers accountable, these agreements ***reward*** bad cops and make our communities less safe. AB 1388 will ensure that dishonest and dangerous officers are held accountable by the Commission on Peace Officers Standards and Training (POST), prospective employers, and the public.

"These NDAs obscure egregious, and oftentimes illegal, misconduct.

"Police misconduct nondisclosure agreements (NDAs) have shielded officers who have sexually harassed and assaulted people, embezzled taxpayer dollars, destroyed evidence of sex crimes against minors, and falsified police reports. These officers face no civil liability, criminal charges, or other consequences.

"One terrible example comes from the Burbank Police Department. Internal investigations determined that Officer Lamoureaux repeatedly pressured women to have sex with him in exchange for avoiding arrest or citation. The agency put a veil over this horrendous conduct by allowing Lamoureaux to sign an NDA in exchange for his resignation. Soon after, Lamoureaux began an 8-year career as a Title IX officer at several universities – a job that made him responsible for protecting students from sexual harassment and sexual assault. Lamoureaux repeatedly faced complaints from students who stated they did not feel safe talking to him. The immense harm caused by Lamoureaux as a police officer is incalculable, and the unknowable harms he caused as a Title IX administrator were completely preventable.

"Hundreds, perhaps thousands, of California law enforcement officers have had their misconduct veiled by these NDAs.

"The scale of the problem is immense – a recent exposé by the *San Francisco Chronicle* revealed that 163 law enforcement agencies in California had signed NDAs covering hundreds of officers. Yet the true scale of the problem is even larger as two-thirds of the 501 police agencies investigated refused to produce documents in response to the researcher's public records requests, including the state's ten largest police agencies. One agency who refused to allow the public to know about their NDAs was the state's largest law enforcement

agency, the Los Angeles County Sheriff's Department, which has an entire division dedicated to crafting these NDAs. The majority of the identified clean record agreements were established between 2012 and 2022; however, some date as far back as 1995, highlighting the longstanding nature of this practice.

"Police misconduct NDAs disregard victims of police misconduct and endanger public safety.

"These police misconduct NDAs put our communities at risk, preventing police officer misconduct from showing up in future employers' background checks, and allowing police officers who have abused their authority to continue assuming positions of power. Even when dangerous and dishonest officers apply to work for a neighboring law enforcement agency, seek to work with children, or run for public office – these NDAs keep their misconduct shrouded. Nearly a third of the officers identified in the *Chronicle* investigation went on to work as officers at another law enforcement agency, and three were even elected or appointed to public office.8 Some police benefit from multiple NDAs over the course of their career. Californians, especially those who have been victimized by police, deserve better.

"Agencies mistakenly believe police misconduct NDAs prohibit them from complying with various transparency laws.

"California law is clear – a contract cannot be contrary to an express provision of law nor can a contract exempt anyone from responsibility for his own fraud, or willful injury to persons or property, or violation of law. Just as clear are the obligations under current transparency laws. For example, Penal Code § 832.12 requires prospective law enforcement employers to be given access to an applicant's misconduct records; Penal Code § 13509.5 et seq. requires agencies to report information about serious misconduct and officer separations to POST; and Penal Code § 832.7(b) & Gov Code § 7920 et seq. require agencies to produce misconduct investigation documents pursuant to public records requests.

"Despite this, some agencies mistakenly believe that the NDAs prohibit them from reporting bad cops to POST or releasing records of such agreements to the public. Further, some NDAs have led agencies to destroy evidence of the extent of this misconduct or enter an exonerated disciplinary finding, obscuring future employers' ability to identify past misconduct and allowing these officers to protect their reputations at the expense of the public. Moreover, because the overarching purpose of these NDAs is to exempt officers from responsibility for the harms they have caused, the NDAs are void as a matter of public policy....

"AB 1388 puts public safety over the police lobby's self-interest.

"AB 1388 will protect our communities from dangerous and dishonest cops and bring justice to those they have harmed, by:

- Prohibiting law enforcement agencies from signing police misconduct NDAs.

- Voiding the secrecy clauses of hundreds of police misconduct NDAs that currently shield bad cops from scrutiny and accountability.

- Clarifying that members of the public and journalists have access to information about the serious misconduct these NDAs have obscured.

- And emphasizing existing duties for agencies to report to the Commission on Peace Officer Standards and Training (POST) serious misconduct and recent separations."

7) **Argument in Opposition**: According to the *Peace Officers' Research Institute of California*, "AB 1388 is unnecessary, as recent legislation and case law already completely addressed the sponsors' concerns. Moreover, the overbroad scope of the bill will collaterally impair employee labor rights and conflicts with statutory retention provisions. PORAC has offered amendments to codify the supremacy of recent disclosure laws over confidentiality agreements ahead of April 22, 2025, hearing before the Assembly Committee on Public Safety. Those amendments would render PORAC neutral.

"**AB 1388 Is Redundant with Existing Law**

"Current statutes and judicial precedents already prevent the concealment of police misconduct and ensure transparency:

- **Prohibited Destruction of Records:** Penal Code § 832.7(b), as amended by SB 1421 (2018) and SB 16 (2021), mandates preservation and public disclosure of records related to serious misconduct, including investigative reports, findings, and disciplinary records, prohibiting their destruction (Penal Code § 832.7(b)(3)). This applies even if an officer resigns before an investigation concludes.

- **Mandatory Investigation Completion**: SB 2 (2021) (Penal Code § 13510.8(f)) requires agencies to complete investigations of serious misconduct that could lead to suspension or revocation of certification, regardless of an officer's resignation or any settlement agreement, closing any loophole.

- **Confidentiality Agreements Subordinate:** In Collondrez v. City of Rio Vista, 61 Cal. App. 5th 1039, 1051–52 (2021), the court ruled that confidentiality agreements cannot override § 832.7(b)'s disclosure requirements. Similarly, Ventura County Deputy Sheriffs' Association v. County of Ventura, 61 Cal. App. 5th 585, 592 (2021), established that § 832.7 amendments apply retroactively, ensuring public access to records requested post-amendment, regardless of prior agreements.

"A recent San Francisco Chronicle investigation (February 27, 2025) cited by AB 1388's sponsors relies on pre-SB 1421 cases to highlight "clean-record agreements" that concealed misconduct. However, the Chronicle's ability to obtain these agreements—covering 297 officers across 163 agencies—stems directly from SB 1421 and SB 16, which made such records disclosable under Penal Code § 832.7(b). This demonstrates that the Legislature has already remedied the issue, as the Chronicle could not have accessed these records or written its article without these reforms.

"**Conflict with Statutory Expungement Provisions**

"AB 1388's categorical ban on agreements to "destroy, remove, or conceal" records conflicts with Penal Code § 832.5(b), which permits expungement of certain disciplinary records. Specifically, Penal Code § 832.5(b) allows complaints and related reports to be removed from an officer's file after five years if no further complaints arise or if the complaint was not sustained, subject to agency discretion. These retention periods balance transparency interests with employee fairness interests against stale disciplinary permanently impairing careers. Agreements consistent with this statute are necessary to effectuate lawful expungement, which is permissive but not mandatory. By prohibiting such agreements, AB 1388 undermines existing law.

"**Proposed Amendment**

"To align AB 1388 with existing law, PORAC proposes amending Penal Code § 832.7(b)(3) to codify *Collondrez*, clarifying that settlement agreements, regardless of confidentiality terms, are subject to disclosure for incidents under § 832.7(b)(1):

> "Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process**, including settlement agreements regardless of any confidentiality term,** 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."

"**Conclusion**

"AB 1388 is unnecessary and targets a problem already solved by the Legislature through SB 1421, SB 16, and SB 2. Tellingly, the motivation for this legislation, the San Francisco Chronicle's investigation, could only access "clean-record agreements" because of the Legislature's changes to Penal Code § 832.7(b). In readdressing a previous resolved concern with overbroad labor prohibitions, AB 1388 undermines employee rights to enforce Penal Code § 832.7(a) confidentiality rights and the retention periods in Penal Code § 832.5(b) through contract. We respectfully request that the Legislature reject AB 1388 unless amended."

8) **Related Legislation**:

a) AB 847 (Sharp-Collins) would grant access to confidential peace officer personnel records maintained by their employing agencies, as specified, to civilian law enforcement oversight boards or commissions. AB 847 will be heard in this Committee today.

b) AB 1178 (Pacheco) requires a court to consider whether a particular peace officer is currently operating undercover and their duties demand anonymity when determining if an agency that employs peace officers or custodial officers shall redact a disclosable personnel record under the California Public Records Act (CPRA), as specified.

9) **Prior Legislation**:

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

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

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

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

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

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

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

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

i) AB 2327 (Quirk), Chapter 966, Statutes of 2018, r requires peace officers seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view their general personnel file and any separate disciplinary file and requires each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in their general personnel file or a separate file designated by the department or agency.

REGISTERED SUPPORT / OPPOSITION:

Support

1 Individual
ACLU California Action
All of US or None (HQ)
Anti Police-terror Project
Asian American Journalists Association, Los Angeles
Bend the Arc: Jewish Action California
Bend the Arc: Jewish Action, California
California Attorneys for Criminal Justice
California Coalition for Sheriff Oversight (CCSO)
California Innocence Coalition
California News Publishers Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Cancel the Contract
Care First California
Ccnma: Latino Journalists of California
Center for Policing Equity
Check the Sheriff
Chispa, a Project of Tides Advocacy
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Disability Rights California
Ella Baker Center for Human Rights
First Amendment Coalition
Fixin San Mateo County
Freedom of the Press Foundation
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Los Angeles Press Club
Loyola Law School Project for the Innocent
National Association of Criminal Defense Lawyers
National Police Accountability Project (UNREG)
National Press Photographers Association
National Writers Union
Oakland Privacy
Orange County Press Club
Pacific Media Workers Guild (the Newsguild-communications Workers of America Local 39521)
Rubicon Programs
Saving Lives in Custody California

Secure Justice
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Starting Over Strong
3 Private Individuals

Opposition

Peace Officers Research Association of California (PORAC)

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1489 (Bryan) – As Amended April 22, 2025

SUMMARY: Requires a law enforcement agency that issues a firearm to have a policy prohibiting a peace officer from carrying a firearm on or off duty, if their blood alcohol concentration is greater than 0.0 percent. Specifically, **this bill**:

1) Defines "carry" as having direct physical control of, or be physically connected to a firearm, including, but not limited to, when it is in a holster and that hostler is affixed to an individual's person.

2) States the requirement that an officer not have a BAC greater than 0.0 percent does not apply to an undercover officer on duty in the course of their employment.

EXISTING LAW:

1) Requires, commencing January 1, 2020, the Commission on Peace Officer Standards and Training (POST) and each local law enforcement agency to conspicuously post on their Internet Web sites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act. (Pen. Code, § 13650.)

2) Allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person's employing agency, to purchase, possess, or transport any less lethal weapon or ammunition for any less lethal weapon, for official use in the discharge of the person's duties. (Pen. Code, § 19400.)

3) Allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person's employing agency, to purchase, possess, or transport firearms. (Pen. Code, §§ 830.3 - 831.6.)

4) Requires each law enforcement agency to maintain a policy that provides a minimum standard on the use of force which shall include comprehensive and specific guidelines regarding approved methods and devices available for the application of force. (Gov. Code, § 7286, subd. (b).)

5) Requires peace officer and custodial officers, as defined, who are permitted to carry firearms to satisfactorily complete the training course prescribed by POST prior to being assigned to perform their duties. (Pen. Code, §§ 830.3 - 831.6.)

6) States it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the

discrimination is based upon any of the following:

a) The person's use of cannabis off the job and away from the workplace.

b) This prohibition does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites.

c) An employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. (Gov. Code, § 12954, subd. (a)(1)(A)-(B).)

7) Prohibits discrimination based on a person's use of cannabis off the job and away from the workplace unless the employer is permitted to consider or inquire about that information, as specified. (Gov. Code, § 12954, subd. (c).)

8) States this prohibition does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in existing law. (Gov. Code, § 12954, subd. (d).)

9) Specifies if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined, or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions, as specified. (Gov. Code, § 12926, subd. (n).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There is no standardized and consistent policy prohibiting police officers from carrying firearms while consuming alcohol, creating significant risks to public safety and law enforcement accountability. Los Angeles Police Department (LAPD) have only partially addressed the issue by lowering the legal blood-alcohol limit for armed officers from 0.08% to 0.04%. Unfortunately, this approach does not fully prevent firearm-related incidents, as seen in multiple cases where officers used their weapons while under the influence, leading to harmful consequences, internal investigations, and erosion of public trust.

"AB 1489 addresses the absence of a standardized policy by mandating all law enforcement agencies to implement a policy prohibiting officers—on or off duty—from carrying their firearms while consuming alcohol. By closing this dangerous loophole, the bill ensures that officers abide by clear, enforceable guidelines that protect both themselves and the communities they serve. National firearm safety organizations, including the NRA, emphasize that alcohol should never be used while handling weapons. Yet police officers, entrusted with public safety, currently operate without a universal prohibition. AB 1489 will align law enforcement practices with fundamental firearm safety principles, preventing

tragic, avoidable incidents and reinforcing trust and accountability between law enforcement and the public."

2) **Existing Policies**: Cities in California vary regarding whether an officer may consume alcohol while in possession of a firearm. San Francisco Police Department General Order 2.02 prohibits any officer from consuming alcohol, being impaired or being under the influence of alcohol while carrying any firearm. (See SFPD General Order 2.02.03, subd. (D).) The City of Los Angeles recently changed its policy regarding consumption of alcohol when handling firearms in 2023. LAPD Manual, section 610.93 states "Sworn personnel carrying or handling any firearm while off-duty shall not consume alcoholic beverages **to the extent in which it causes impairment**. In addition, sworn personnel shall not be impaired when carrying or handling any firearm. For the evaluation of impairment, only those personnel who exhibit objective symptoms of being under the influence of alcohol, or where there is a reasonable and articulable suspicion that the employee has consumed an alcoholic beverage shall be required to submit to testing."

   The Los Angeles County Sheriff's Department only prohibits consumption of alcohol while on duty, in uniform, or at a Department-sponsored or related event. (LASD Manual, 3-01/030.40 - Use of Alcohol). The City of Sacramento is similar to Los Angeles in that it prohibits carrying a firearm on or off duty when impaired due to being under the influence of alcohol, medication, or other substance. (See SPD General Order 210.04, General and Professional Conduct, subd. (H)(1)(e).)

   This bill would set a state standard that prohibits consumption of alcohol at all while carrying a firearm. A total of 15 states prohibit police officers or any other person from possessing a firearm in an establishment that serves alcohol.[1] However, most states do not prohibit law enforcement officers from consuming alcohol at all when carrying a firearm off duty.

3) **Law Enforcement Officers Safety Act of 2004:** When a police officer is off duty, it is likely, if they carry a firearm, they carry it in a concealed fashion, since they are not wearing their uniform. However, federal law allows qualified law enforcement to conceal carry in all fifty states. The FBI Law Enforcement Bulletin, acknowledged as much in 2011, in describing the Law Enforcement Officers Safety Act:[2]

> The Law Enforcement officers Safety Act of 2004 (LEOSA) allows officers to carry concealed weapons not only in their jurisdictions but in all 50 states, and the territories of the United States, provided certain conditions are met. (18 U.S.C. § 926 B and C.) On July 22, 2004, President George W. Bush signed into law H.R. 218, which created a general nationwide recognition that the public is better served by allowing law enforcement officers to carry their firearms outside of their jurisdictions whether they are on or off duty. The theory behind LEOSA was recognized among a number of states. That is, law enforcement officers retain their identity, training, experience,

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[1] https://everytownresearch.org/rankings/law/no-guns-in-bars/
[2] https://leb.fbi.gov/articles/legal-digest/legal-digest-off-duty-officers-and-firearms

> and dedication to the safety and welfare of the community regardless of whether they are on duty in their employer's jurisdiction, going home to another community, or merely traveling for leisure purposes. However, LEOSA creates a limited privilege to carry concealed weapons for law enforcement officers, not a right to bear arms.

LEOSA applies to qualified active duty and retired officers. Qualification under LEOSA requires employment by or retirement from a local, state, or federal law enforcement agency as someone charged with the ability to investigate, prosecute, and arrest people for violations of law.

If an agency has firearms proficiency standards, the officer must meet them to qualify to carry. The statute also prohibits carrying firearms when under the influence of alcohol or any intoxicating or hallucinatory substance. (See 18 U.S.C. § 926C(c)(6).) If a current or retired officer is prohibited by federal law from possessing a firearm, they are not qualified to carry one under this legislation. It also is important to note that if an officer is under a disciplinary action that may result in suspension or termination by their agency, they are not qualified to carry under the LEOSA. Qualified retired officers must have retired in good standing for reasons other than mental instability and served at least an aggregate of 15 years.

4) **Practical Considerations:** Prohibiting any law enforcement officer from consuming any alcohol while carrying a firearm may create employment and discipline issues in enforcement. If an employer learns an officer had anything to drink, the agency will have to take disciplinary action against them. Demonstrating an officer is impaired is difficult enough. It ordinarily involves seeing indicia of being of under the influence (bloodshot, watery eyes, slurred speech, unsteady gait, etc.) and asking the officer to submit to a medical exam for a blood draw or preliminary alcohol screening test. (See *Kraslawsky v. Upper Deck Co.* (1997) 56 Cal.App.4th 179, 186.) That may be difficult to enforce if an officer is off duty. Any officer that faces discipline is entitled to numerous procedural rights before discipline may be imposed. (See Gov. Code, § 3304.) Any violation of policy or law usually requires showing the violation occurred by a preponderance of evidence. (*Chamberlin v. Ventura County Civil Service Commission* (1977) 69 Cal.App.3d 362.) Demonstrating an officer drank anything off duty while carrying a firearm would be difficult to prove by a preponderance of the evidence unless there were witnesses willing to testify at an administrative hearing, some sort of video recording, or an admission of guilt. This may be difficult to demonstrate and would likely not involve significant discipline.

   Additionally, peace officers are not prohibited from using marijuana, so long as the officer's use of cannabis is off the job and away from the workplace. (Gov. Code, § 12954, subd. (a)(1-2).) Presumably, that includes when carrying a firearm off duty. So, this bill would prohibit use of any alcohol, but allow for use of marijuana. Furthermore, a law enforcement agency may not take an adverse action against an officer so long as the person is found to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. (*Ibid.*) It is possible that only a mere allegation of alcohol use off duty while an officer is carrying a firearm would result in proposed discipline. That would create an uneven standard.

   This bill makes sense from a safety point of view. Use of alcohol and firearms is clearly very dangerous. A study released by John Hopkins Bloomberg School of Public Health found that

just over thirty percent of victims and a similar number of perpetrators of homicide using a gun had been drinking heavily just before the fatal event.[3] The report also notes that one-fourth of those who died by suicide using a firearm had been drinking heavily before their death. Clearly, alcohol use combined with gun availability represents an avoidable safety threat. However, the practical implications may make it difficult to enforce.

5) **Possible Constitutional Concern:** This bill prohibits a peace officer from carrying a firearm at any time if a BAC of more than 0.00 percent. However, since the U.S. Supreme Court's decision in *Bruen v. New York Rifle & Pistol Association, Inc.*, (2022) 597 U.S. 1, this prohibition likely violates the Second Amendment because it does not rest on a sufficiently acceptable historical basis at the time of the Framers of the Constitution.

> "If laws at the Founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category. [A] law may not be compatible with the right if it is regulated to an extent beyond what was done at the Founding, even when that law regulates arms-bearing for a permissible reason." (*United States v. Connelly* (5th Cir. 2024) 117 F.4th 269, 273, citing *Bruen*, at 17.)

The 5th Circuit in *Connelly*, in interpreting part of the Gun Control Act of 1968 related to possession of a firearm if a person is an unlawful user of alcohol or a controlled substance, held that a person may be prohibited from possessing a firearm if they are "under the influence," but may not simply prohibit someone from possessing a firearm short of that. (*Connelly*, 117 F.4th at 282 rejecting 18 U.S.C. 922, subd. (g)(3) as applied to the defendant.) Given this bill would prohibit a peace officer from carrying a firearm with any amount of alcohol in their body, this bill may be vulnerable to constitutional attack on Second Amendment grounds.[4]

6) **Argument in Support**: According to *Courage California*, "Police officers have a responsibility to protect the public while maintaining the highest standards of professionalism and safety. In California, there is no requirement that police departments prohibit officers from carrying their agency-issued firearms while consuming alcohol, whether on or off duty. Departments across the state take inconsistent approaches to regulating this practice. Predictably, firearms and alcohol make an incredibly dangerous combination, and that combination has led to preventable firearm-related incidents.

"In 2019, the Los Angeles County Office of Inspector General created a report on the Safety of Firearms. The report cited some examples of law enforcement agencies with strict firearms

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[3] https://publichealth.jhu.edu/sites/default/files/2023-05/2023-may-cgvs-alcohol-misuse-and-gun-violence.pdf

[4] While the 5th Circuit's rulings are only persuasive authority to the 9th Circuit, who have not ruled on this issue so far, the Supreme Court in *Bruen* and *United States v. Rahimi* (2024) 602 U.S. 680, 692, clearly laid out the historical requirements for constitutional approval. Connelly takes great pains to recount the possible historical bases for prohibition based on use of alcohol and controlled substances such that the Court could persuasively argue to any other court that such prohibition is not constitutional in most cases. Connelly was not appealed to the U.S. Supreme Court.

policies, including the Albuquerque Police Department, which has a zero-tolerance policy when it comes to drinking while armed and applies to on and off-duty personnel. Additionally, in San Francisco, police officers cannot consume alcohol or be impaired while armed. In 2023, the Los Angeles Police Department (LAPD) lowered its blood-alcohol limit for armed officers from 0.08% to 0.04%. These piecemeal approaches have failed to prevent dangerous situations in which officers under the influence have used their firearms irresponsibly.

"Mixing firearms and alcohol is a recipe for disaster, and police officers are not immune from those risks. And this risk is not simply theoretical. Across California, there have been far too many cases of police officers misusing their weapons while under the influence of alcohol, endangering themselves, civilians, and fellow officers."

7) **Argument in Opposition**: According to the *California Fraternal Order of Police*, "While well-intentioned in theory, AB 1489 overreaches and creates serious risks for both peace officers and the public they serve when confronted with reality. By imposing a zero-tolerance alcohol policy for officers carrying a firearm—on or off duty—the bill criminalizes personal behavior with no connection to misconduct or public safety concerns.

"This bill would penalize officers performing undercover work, where carrying a firearm is often essential. A blood alcohol concentration (BAC) of just 0.01%—a single drink or less—could put an officer's career at risk under this proposal. Worse, it could discourage officers from carrying their firearm when off duty, potentially compromising public safety in moments when their intervention is urgently needed.

"Under AB 1489, departments would bear the burden of monitoring, training, and disciplining officers over a policy that addresses no documented, widespread issue. Current laws and departmental policies already ensure accountability without overreaching into the work and personal lives of law enforcement professionals by mandating a zero-tolerance policy."

8) **Prior Legislation**:

   a) AB 2188 (Quirk), Chapter 392, Statutes of 2022, makes it unlawful for an employer to discriminate against a person in hiring or any term or condition of employment, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace or an employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their urine, hair, or bodily fluids.

   b) SB 700 (Bradford), Chapter 408, Statutes of 2023, made it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Moms Demand Action for Gun Sense in America
Prc Baker Places / Black Leadership Council
Prc/black Leadership Council
Rubicon Programs
Students Demand Action for Gun Sense in America

Oppose

Association of Orange County Deputy Sheriffs
California Association of Highway Patrolmen
California Fraternal Order of Police
California Statewide Law Enforcement Association
Long Beach Police Officers Association
Los Angeles Police Protective League
Peace Officers Research Association of California (PORAC)
Sacramento County Deputy Sheriff's Association
Sheriff's Employee Benefits Association (SEBA)

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

Date of Hearing: April 29, 2025
Consultant: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

ACR 60 (Pacheco) – As Introduced March 28, 2025

SUMMARY: Recognizes the importance of disability-informed response programs in promoting public safety and commends the efforts of law enforcement agencies that have implemented these disability-informed response programs. Specifically, **this resolution:**

1) States that Disability Pride Month is celebrated each year in July and commemorates the Americans with Disabilities Act of 1990, the landmark legislation that advanced inclusion and accessibility in American society;

2) States that interactions between law enforcement and people with disabilities often present unique challenges, with the National Alliance on Mental Illness reporting that one in four people with a serious mental illness have been arrested, resulting in more than 2,000,000 jail bookings each year;

3) States that law enforcement agencies across California are implementing innovative programs to better serve every member of the community with care and understanding, which helps families feel safer and better supported in critical situations;

4) States that several police departments have launched voluntary identification programs, such as a special needs sticker program that provides visual indicators to help an officer identify the residence of an individual who may require a specific communication approach or accommodation;

5) States that these programs aim to prevent misunderstandings during a law enforcement interaction by providing an officer with advance knowledge about the person with whom they are interacting so the officer can adjust their communication methods and response strategies;

6) States that as noted by Whittier Police Chief Aviv Bar, this information helps officers to adjust their approach and consider the involvement of additional resources, such as a mental health evaluation team;

7) States that the cost of a special needs sticker program is minimal and community member participation is voluntary;

8) States that a special needs sticker program is a model of outstanding work from our police officers in their communities;

9) States that multiple California law enforcement agencies, including the police departments in the Cities of Downey, Whittier, Santa Fe Springs, Seal Beach, Red Bluff, Gardena,

Tehachapi, Burbank, and Culver City, have already implemented a special needs sticker program;

10) Resolves that the Legislature recognizes the significance of disability-informed response programs in promoting public safety and community trust;

11) Resolves that the Legislature reaffirm its commitment to promote the safety, dignity, and full inclusion of Californians with disabilities; and,

12) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

EXISTING FEDERAL LAW: Provides that the Americans with Disabilities Act of 1990 (ADA) has the following purpose:

a) To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

b) To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

c) To ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

d) To invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. (USCS Article 42 § 12101 (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "ACR 60 highlights the work of various police departments across California that have found a simple yet effective way of identifying disabled individuals who may require a specific communication approach or accommodation."

2) **Disability-informed Response Programs:** According to the National Alliance on Mental Health (NAMI) and the federal Centers for Disease Control (CDC), approximately 53 million adults in the United States experienced mental illness in 2020, and 61 million American adults live with some type of disability.[1] Law enforcement agencies tend to overwhelmingly be the first responders to incidents involving mentally and physically disabled individuals that are in a crisis. In 2020, it was estimated that around 20% of law enforcement agencies' calls for service were to respond to incidents involving someone experiencing a mental

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[1] . ("Mental Health by the Numbers." *National Alliance on Mental Illness.* <https://www.nami.org/mhstats>; "Disability Impacts All of Us." *Centers for Disease Control and Prevention.* <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>

health or substance abuse crisis.[2]These frequent interactions have led to certain incidents being mishandled with using excessive force leading to deadly consequences.

California has taken action through passing legislation that mandates training for peace officers to complete. California law requires the Commission on Peace Officer Standards and Training (POST) to provide, and peace officers to complete, extensive training related to interactions with individuals with disabilities and mental illness. Most of these requirements were added by SB 11 (Beall, Chapter 468, Statutes of 2015) and SB 29 (Beall, Chapter 469, Statutes of 2015). These statutes require officers to complete, at a minimum, POST's Regular Basic Course (RBC) curriculum, which includes 15 hours of instruction on disability laws, developmental disabilities, physical disabilities and mental illness. SB 29 requires field training officers who are instructors in the field training program to have at least 8 hours of crisis intervention behavioral health training. Additionally, existing law requires officers to complete at least 24 hours of Continuing Professional Training (CPT) every two years, a part of which may be satisfied by the mental health training course developed by POST under SB 11. These trainings inform peace officers on how to carefully handle incidents involving individuals with disabilities and mental illnesses.

3) **Argument in Opposition**: According to *Disability Rights California*, "DRC believes this resolution fails to address critical components necessary for true safety and inclusion for the disability community. People with disabilities, particularly those with intellectual and developmental disabilities and mental health disabilities, are likely to encounter law enforcement at disproportionate rates. People with disabilities are more likely to be stopped, arrested, and victimized by law enforcement than non-disabled people. Studies suggest people with disabilities are seven times more likely to have police encounters than non-disabled people. According to the Urban Institute, police shootings kill Black people at twice the rate of white people, one-third to half of police use-of-force incidents involve a person with a disability, and 50 percent of people killed by police have a disability. Most killings by police begin with traffic stops, mental health checks, disturbances, non-violent offenses and where no crime was alleged.

"The major provisions in this resolution only focus on voluntary identification programs while ignoring alternatives the disability community supports and promotes. DRC has several concerns with identification programs mentioned in this resolution. They put the onus on people with disabilities, do not address racial bias, and potentially violate people with disabilities' privacy.

"Now is not the time to promote identification or register programs for people with disabilities. The federal government has recently stated they want to create an autism registry. While it claims to be for research purposes, it has created fear across the disability community and other marginalized communities due to echoes of eugenics programs. Now is the time to expand mobile crisis teams and community-based services.

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[2] ("Mental Health And Police Violence: How Crisis Intervention Teams Are Failing." *NPR.* <*https://www.npr.org/2020/09/18/913229469/mental-health-and-police-violence-how-crisis-intervention-teams-are-failing*>.)

"DRC appreciates the intention behind this resolution to protect individuals with disabilities but calls for other approaches to address this problem. For these reasons, DRC opposes this bill unless amended."

4) **Related Legislation**: SB 664 (Ochoa Bogh) would require the Department of Motor Vehicles to develop a Blue Envelope Program by January 1, 2027. This bill would require the blue envelope to contain specified information for requesters with a condition or disability. This bill is currently in the Senate Transportation Committee.

5) **Prior Legislation**:

   a) SB 2002 (Sanchez), of the 2023-2024 Legislative Session, would have required the Department of Motor Vehicles to develop a Blue Envelope Program by January 1, 2026. This bill would require the blue envelope to contain specified information for requesters with a condition or disability. This bill was held on the Assembly Appropriations suspense file.

   b) SB 29 (Beall) Chapter 469, Statutes of 2015, requires field training officers to undergo at least eight hours of crisis intervention behavioral health training.

   c) SB 11 (Beall) Chapter 468, Statutes of 2015, requires peace officers to undergo training related to interacting with person with mental illness, intellectual disability, or substance abuse disorder, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted

Opposition

Disability Rights California

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