California State Assembly

PUBLIC SAFETY

AGENDA

Tuesday, July 1, 2025
9 a.m. -- State Capitol, Room 126

Analysis Packet Part II
(SB 690 Caballero – SB 834 Durazo)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 690 (Caballero) – As Amended May 29, 2025

SUMMARY: Exempts any "commercial business purpose" as defined by the California Consumer Privacy Act (CCPA) from civil and criminal liability pursuant to the California Invasion of Privacy Act (CIPA) which prohibits wiretapping, eavesdropping on, or recording confidential communications, intercepting and recording cellular communications, or using a pen register or trap and trace device. Specifically, **this bill**:

1) Exempts a commercial business purpose from the general prohibition against eavesdropping or recording a confidential communication.

2) Specifies that the civil action, as authorized under current law for a person who has been injured by a violation of CIPA, does not apply to the processing of personal information for a commercial business purpose.

3) Specifies that a trap and trace device, as defined in the CIPA, does not include a device or process that is used in a manner consistent with a commercial business purpose.

4) Specifies that a pen register does not include a device or process used in a manner consistent with a commercial business purpose.

5) Defines a "commercial business purpose" to mean the processing of personal information either performed to further a business purpose, as defined in the CCPA, or subject to a consumer's opt-out rights, as specified.

EXISTING FEDERAL LAW

1) Provides, except as provided, no person may install or use a pen register or a trap and trace device without first obtaining a court order, as specified or under the Foreign Intelligence Surveillance Act of 1978. (18 U.S.C. § 3123; 50 U.S.C. § 1801, et seq.).

2) Defines the term "pen register" as a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication, but such term does not include any device or process used by a provider, or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device or process used by a provider, or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business. (18 U.S.C. § 3127, subd. (3).)

EXISTING STATE LAW:

1) Defines "business purpose" as the use of personal information for the business' operational purposes, or other notified purposes, or for the service provider or contractor's operational purposes, as defined, provided that the use of personal information shall be reasonably necessary and proportionate to achieve the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected. (Civ. Code, § 1795.140, subd. (e).)

2) Specifies that "business purpose" includes:

   a) Auditing related to counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards.

   b) Helping to ensure security and integrity to the extent the use of the consumer's personal information is reasonably necessary and proportionate for these purposes.

   c) Debugging to identify and repair errors that impair existing intended functionality.

   d) Short-term, transient use, including, but not limited to, non-personalized advertising shown as part of a consumer's current interaction with the business, provided that the consumer's personal information is not disclosed to another third party and is not used to build a profile about the consumer or otherwise alter the consumer's experience outside the current interaction with the business.

   e) Performing services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, or providing similar services on behalf of the business.

   f) Providing advertising and marketing services, except for cross-context behavioral advertising, to the consumer provided that, for the purpose of advertising and marketing, a service provider or contractor shall not combine the personal information of opted-out consumers that the service provider or contractor receives from, or on behalf of, the business with personal information that the service provider or contractor receives from, or on behalf of, another person or persons or collects from its own interaction with consumers.

   g) Undertaking internal research for technological development and demonstration.

   h) Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business. (Civ. Code, § 1798.140, subd. (e)(1)-(8).)

3) Prohibits tapping into a telephonic communication system (wiretapping), as specified, without the consent of all parties. (Pen. Code, § 631, subd. (a).)

4) Makes a violation of this provision a wobbler (alternatively misdemeanor or felony) punishable by a fine not exceeding $2,500, or by imprisonment in the county jail up to one year, or by imprisonment in the county jail for 16 months, two years, or three years, or by both a fine and imprisonment. (Pen. Code, § 631, subd. (a).)

5) Authorizes an increased fine not exceeding $10,000 for a violation of wiretapping if the person has previously been convicted of violating these provisions or other specified statutes. (Pen. Code, § 631, subd. (a).)

6) Provides that the general prohibition against wiretapping does not apply to the following:

   a) A public utility, or telephone company, engaged in the business of providing communication services and facilities, or to their employees or agents, for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility or telephone company;

   b) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility; or,

   c) Any telephonic communication system used or communication exclusively within a state, county, city and county, or city correctional facility. (Pen. Code, § 631, subd. (b)(1)-(3).)

7) Makes it a crime to intentionally and without the consent of all parties eavesdrop or record a confidential communication. (Pen. Code, § 632, subd. (a).)

8) Makes a violation of this provision a wobbler punishable by a fine not exceeding $2,500, or by imprisonment in the county jail up to one year, or by imprisonment in the state prison for 16 months, two years, or three years, or by both a fine and imprisonment. (Pen. Code, § 632, subd. (a).)

9) Authorizes an increased fine not exceeding $10,000 for violation of eavesdropping or recording a confidential communication if the person has previously been convicted of violating these provisions or other specified statutes. (Pen. Code, § 632, subd. (a).)

10) Defines "confidential communication" as "any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded." (Pen. Code, § 632, subd. (c).)

11) Provides that the general prohibition against eavesdropping or recording a confidential communication does not apply to the following:

a) A public utility engaged in the business of providing communication services and facilities, or to their employees or agents, for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility;

b) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility;

c) Any telephonic communication system used or communication exclusively within a state, county, city and county, or city correctional facility; or,

d) The use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily inaudible to the human ear. (Pen. Code, § 632, subd. (e)(1)-(4).)

12) Prohibits, without the consent of all parties, intercepting or receiving and intentionally recording a communication between two cellular phones. (Pen. Code, § 632.7, subd. (a).)

13) Makes a violation of this provision a wobbler punishable by a fine not exceeding $2,500, or by imprisonment in the county jail up to one year, or by imprisonment in the state prison for 16 months, two years, or three years, or by both a fine and imprisonment. (Pen. Code, § 632.7, subd. (a).)

14) Authorizes an increased fine not exceeding $10,000 for violation of intercepting or receiving and intentionally recording a cellular radio communication if the person has previously been convicted of violating these provisions or other specified statutes. (Pen. Code, § 632.7, subd. (a).)

15) Provides that the general prohibition against intercepting or receiving and intentionally recording a cellular radio communication does not apply to the following:

a) A public utility, or telephone company, engaged in the business of providing communication services and facilities, or to their employees or agents, for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility or telephone company;

b) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility; or,

c) Any telephonic communication system used or communication exclusively within a state, county, city and county, or city correctional facility. (Pen. Code, § 632.7, subd. (b)(1)-(3).)

16) Authorizes a person who has been injured by a violation of these prohibitions to bring an action against the person who committed the violation to enjoin and restrain the violation, as well as to bring an action for monetary damages, as specified. (Pen. Code, § 637.2.)

17) Prohibits the interception of electronic communications and prohibits the installation or use of a pen register or a trap and trace device without first obtaining a court order, except as

specified. (Pen. Code, § 638.51, subds. (a) & (b).)

18) Makes a violation punishable by a fine not exceeding $2,500, or by imprisonment in the county jail not exceeding one year, or by imprisonment in the county jail for 16 months, two years, or three years, or by both that fine and imprisonment. (Pen. Code, § 638.51, subd. (c).)

19) Defines a "trap and trace device" as a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication but not the contents of a communication. (Pen. Code, § 638.50, subd. (c).)

20) Defines a "pen register" for these purposes to mean a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted but not the contents of a communication, with specified exceptions. (Pen. Code, § 638.50, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Recently, a handful of trial lawyers have sent thousands of demand letters and sued over 1,800 businesses in California using a 1967 criminal wiretapping statute called the California Invasion of Privacy Act, which requires a court order before recording phone calls.

   "This small group of trial lawyers is alleging that typical online business activities, like web analytics or online advertising, constitute "wiretapping" or an illegal "pen register" under the wiretapping statute. They argue that businesses must get consumer consent – or "opt-in" consent – before a business can, for example, assess which pages are getting the most views, save an online shopping cart, or show an ad. Without that consent, trial lawyers are suing businesses for $5,000 of statutory damages – no proof of injury required - for every visit to their website under the wiretapping statute's private right of action.

   "Meanwhile, CCPA is the strongest privacy law in the nation and California businesses have invested significant revenue – by the state's own estimates, over $55 billion in initial compliance costs alone - to comply with CCPA. In 2018, the Legislature unanimously decided that consumers benefit most when these types of online business activities should be regulated by the CCPA, which requires "opt-out" consent. The first Executive Director of the California Privacy Protection Agency, Ashkan Soltani – also former Obama-era FTC Chief Technologist – explained why in a 2019 Senate Judiciary Committee hearing, stating:

   '…by moving to an opt-in regime where consumers have to opt-in and consent to the use of their information, not only are they not going to be able to understand and consent for immediate benefits…they're also going to experience opt-in fatigue when they're just going to opt-in to whatever the service is, like free coffee, in order to get that benefit today at the risk of anything that happens tomorrow.'

"Then, in 2020, California voters reaffirmed their support of CCPA via ballot measure and strengthened its privacy protections. The ballot measure also created the California Privacy Protection Agency, which has drafted over 150 pages of regulations on how a business must implement this extensive privacy regime."

"The CCPA is a floor, not a ceiling – and more privacy protections have been added to the CCPA every year. SB 690 would not change that. For example, in 2023, Assemblymember Wendy Carrillo, passed AB 1194, a bill that added additional protections in the CCPA for reproductive health data. That same year, Assemblymember Jesse Gabriel passed AB 947, which explicitly added immigration and citizenship protections to the statute. Even more bills have been proposed this year.

"Assemblymember Chris Ward introduced AB 1355 to add further protections for geolocation data. Although his legislation was not successful this year, Assemblymember Ward intends to continue to pursue this issue. Importantly, AB 566 (Lowenthal), sponsored by the Privacy Agency, continues to move through the legislature this year with the goal of further strengthening CCPA's opt-out regime by requiring internet browsers to provide consumers with the ability to opt-out at the browser level – which would automatically opt them out of the sale/sharing of their data for every website a consumer visits in a browser.

"Yet, California businesses are now being sued because of their compliance with CCPA's opt-out regime. These abusive lawsuits do nothing to help consumer privacy. They use the same "test plaintiffs" repeatedly – 60, 70, 80, or even 100+ times. The test plaintiff simply visits a website, looks to see if there are any cookies on the website, and if there is no corresponding opt-in consent mechanism, they send off a demand letter based on CIPA's $5000 per violation (read: per website visitor) and ask for, typically, between $20,000-$50,000 from a business (or non-profit).

"Smaller businesses typically cannot afford the cost to litigate and settle to make cases go away. As a result, many have struggled financially.

"For larger businesses with many viewers on their website, the liability is staggering. In the Senate Public Safety Committee, the President of the LA Times testified the Times has been sued for billions and called the lawsuit an "extinction level threat" to publishers. Even for those businesses who pay a trial lawyer to settle a case, another law firm can sue them the next day. This is why a legislative solution is necessary.

"SB 690 seeks to stop these abusive lawsuits by clarifying that CIPA, the 50-year-old criminal eavesdropping statute, does not apply to modern, online business activities that are already intentionally, purposefully, and extensively regulated by the CCPA.

"SB 690 intends to keep CIPA's intended protections in place, while ensuring that these lawsuits cannot continue to be based on a legal theory that creates liability for nearly every website on the internet in California, especially when CCPA was specifically designed to govern business website activity. Putting aside the unfairness to businesses, our state has been very clear as to how it wants to regulate online business activity - and these lawsuits have caused significant confusion for business compliance.

"Notably, the Attorney General has never brought a claim against a business under CIPA for online business activity. Instead, the AG as well as California Privacy Protection Agency have brought claims against businesses for not complying with the many, detailed requirements of the CCPA's opt-out regime. These state enforcement authorities are also shutting down data brokers and punishing businesses who are engaging in online tracking without complying with the CCPA's many notification requirements and consumer rights.

"Notably, the pen register and trap and trace provision of CIPA, which is the center of many of these lawsuits, was added to CIPA in 2015 with AB 929 (Chau). The legislative history of this provision makes it clear it was not intended to apply to online activity. At the time, former Assemblymember Ed Chau stated, "This bill is intended to authorize state and local law enforcement to seek emergency orders for pen registers/trap and trace devices, [which] are used by law enforcement for telephone surveillance to record incoming and outgoing phone numbers from a tapped line." He further explained, "[a] pen/trap order is only for the capture of incoming and outgoing phone numbers."

"To the extent opponents of SB 690 believe privacy protections in California are not strong enough, despite having the strongest law in the nation, reform belongs in the CCPA – not via an endless avalanche of CIPA lawsuits. The CCPA already includes a mechanism for regulatory updates via the California Privacy Protection Agency. Suing under CIPA for behavior explicitly regulated (or permitted) by CCPA short-circuits legislative intent.

"Opponents to SB 690 often cite to a few prominent cases against large technology companies as the reason the flood of CIPA lawsuits should be allowed to continue unabated. However, CIPA lawsuits against "Big Tech" companies account for about 1% of these lawsuits. About 40% of these lawsuits are against retailers. If opponents to SB 690 believe that certain aspects of cookie tracking, cross-contextual behavioral advertising, or pixel use allowed California's omnibus privacy law are too permissive, the fix is not to shoehorn these modern issues into an old eavesdropping criminal statute – it is to reform the CCPA through clear and democratically accountable updates.

"With respect to strengthening the regulatory guardrails for the data broker industry, which are often mentioned by opponents to SB 690, the Legislature and the regulatory enforcement authorities are on the case. In 2019, the Legislature amended CCPA by adding requirements that data brokers register with the state so that consumers wishing to exercise their deletion rights or to opt out of the sale and sharing of their data from data brokers would have a one-stop-shop to effectuate their CPPA rights. In 2023, the Legislature passed the DELETE Act with SB 362 (Becker), which created a new right for consumers with respect to data brokers. SB 362 requires that after a data broker receives a "deletion request" from a consumer, in addition to deleting all current data, every 45 days the data broker must delete any new data it has received regarding that consumer, and the data broker is prohibited from selling or sharing any new information it acquires for that consumer.

"This year, Senator Becker has introduced SB 361, another bill strengthening consumer protections with respect to data brokers that is moving through the Legislature. SB 361 expands the type of information data brokers must disclose that they collect, which will then be displayed on the data broker registry.

"Meanwhile, the California Privacy Protection Agency, now led by Executive Director, Tom Kemp, who was the chief sponsor of the DELETE Act, continues to crack down on data brokers – in some cases by shutting entire companies down - by enforcing the CCPA and the statutes intended to regulate this industry – ***not*** a wiretapping statute passed in 1967, with no legislative history stating that it is intended to apply to online activities.

"SB 690 will stop abusive shake down lawsuits for standard online business activities against California businesses and nonprofits filed under the CIPA enacted in 1967, long before the internet was even developed. Online business activity is regulated by the CCPA, and is California's omnibus privacy law which is the guiding statute for online privacy protections including data protections. Despite the enactment of the CCPA, vexatious litigation using the CIPA prey on small business owners and non-profits who cannot afford to defend themselves even though they are in compliance with existing law. SB 690 will clarify that online businesses that comply with the CCPA opt-out requirements cannot be punished under the CIPA.

"Finally, most of these CIPA lawsuits are settled without admission of wrongdoing. A private settlement does not create stronger protections for consumers or clearer rules for businesses. It just ends one case. The only beneficiaries of CIPA lawsuit settlements are the handful of trial lawyers pursuing these cases and the organizations that benefit from funding from the plaintiffs' bar."

2) **History of CIPA:** CIPA was enacted in 1967. It begins with the following policy statement added by the Legislature upon CIPA's passage:

> The Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society. The Legislature by this chapter intends to protect the right of privacy of the people of this state.
>
> The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter. (Pen. Code, § 630.)

This policy statement seems quite broad for its time and appears to contemplate CIPA's application to a continuing evolution of science and technology. In 1967, Californians communicated by rotary telephones. Law enforcement relied on basic tape recording devices. Yet, the broad nature of this statement could be read as applying to metadata, smart phones generally, wi-fi, and IP addresses.

Penal Code section 632, which was also initially enacted in 1967, was expanded in 1990 to expressly prohibit eavesdropping on cordless phone calls. (See Pen. Code, § 632, Leg. Intent, AB 3457 (Moore), Ch. 696, Stats. 1990.) CIPA appears generally to have intended, from its inception, to grant a litigant the power to bring a claim for violations rooted in third party access to confidential communications. (See *Gruber v. Yelp Inc.* (2020) 55 Cal.App.5th 591, 606.)

If a person is able to demonstrate: (a) they suffered a harm because a business breached a person's reasonable expectation of privacy; and (b) they did not expressly or impliedly consent to that access, the law seems to grant that person the right to make a CIPA claim in court – without reference to the type of technology at issue. The only exception it seems, as explained below, is whether there is an actual privacy interest at issue, whether there is consent, and whether the plaintiff can show damages.

In 2015, AB 929 (Chau) amended the CIPA to generally prohibit the installation or use of a pen register or a trap and trace device without first obtaining a court order. A pen register is a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted but not the contents of a communication. (Pen. Code, § 638.50, subd. (b).) A trap and trace device is a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication but not the contents of a communication. (Pen. Code, § 638.50, subd. (c).)

However, a provider of an electronic or wire communication service may use a pen register or a trap and trace device for any of the following purposes: (a) to operate, maintain, and test a wire or electronic communication service; (b) to protect the rights or property of the provider; (c) to protect users of the service from abuse of service or unlawful use of service; (d) to record the fact that a wire or electronic communication was initiated; or (e) completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service from fraudulent, unlawful or abusive use of service; or, if the consent of the user of that service has been obtained. (Pen. Code, § 638.51, subd. (b)(1)-(5).)

Plaintiffs' attorneys contend that tracking IP addresses violates sections 638.51 and 638.52 prohibiting the use of pen registers without court authorization. However, these sections are criminal and specify that any violations may result in a county jail sentence. (Pen. Code, § 638.51, subd. (c).) Otherwise, courts have generally held that tracking IP addresses while the user is on the site does not constitute a violation of the CIPA because the user consents to tracking by visiting the site and usually cannot demonstrate actual damages. (See *Heeger v. Facebook, infra,* 509 F.Supp.3d 1182.) Existing case law is explained below.

3) **Summary of CIPA Cases:** On August 5, 2024, the American Bar Journal Business Law Section published an article regarding the use of the CIPA as a basis for private attorneys to sue tech companies like Facebook and Google, as well as small companies operating websites for deploying cookies and other tracking technology as possible unlawful pen

registers. (Wade Cooney, "*California's Invasion of Privacy Act: A New Frontier for Website Tracking Litigation*," American Bar Association, Business Law Section, August 2024.)[1]

The definition of pen register and trap and trace device have changed since the CIPA was enacted because technology has changed. A "pen register," at the inception of CIPA, was a device that recorded all phone numbers called from a particular telephone line. (See also 18 U.S.C. § 3127, subd. (3).) The term has come to include any device or program that performs similar functions to an original pen register, including programs monitoring Internet communications. (Pen. Code, § 638.50, subd. (b).) A "trap and trace device" was defined as recording incoming phone calls to a particular number, similar to a how a pen register captures outgoing phone calls and was later expanded by AB 929 to include a device that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication. (Pen. Code, § 638.50, subd. (c).) As mentioned above, AB 929 updated the definitions of pen register and trap and trace device in 2015.

Existing law allows for civil remedies for violating the CIPA in the form of: (a) statutory damages of $5,000 per violation; (b) three times the actual damages suffered by the plaintiff, if any; and (c) injunctive relief. (See Pen. Code, § 637.2, subd. (a)(1-2)-(c).) But, as explained below, a plaintiff's success may hinge on what type of electronic data is being collected, by whom, and which causes of action are alleged. Also as explained below, the majority of litigation occurs during the pre-discovery phase (attacks on the legal sufficiency of the complaint).

The article in the American Bar Journal describes two different cases to illuminate the issue around CIPA litigation, and specifically, pen registers – *Heeger v. Facebook* (2020) 509 F.Supp.3d 1182 [litigating the use of location information and IP addresses as a violation of CIPA]; and *Licea v. Hickory Farms, LLP,* 23STCV26148, in the Los Angeles Superior Court [also alleging violations of CIPA based on IP addresses].

In the *Heeger* case, after protracted litigation on the complaint (pursuant to a Fed.R.Civ.Proc. § 12, subd. (b)(6) motion to dismiss), the U.S. District Court dismissed portions of the Plaintiffs' First Amended Complaint holding there is no right of privacy under the CIPA for general location information or IP addresses. (*Heeger*, *supra*, at pp. 1189-1190 [granting defendant's motion to dismiss for lack of standing based on failure to state an injury].)

In *Licea*, the court granted a demurrer (motion to dismiss) with leave to amend because the Plaintiff's IP address claim was not sufficient to allege a violation of the CIPA without evidence of a "unique fingerprint" given that Plaintiff does not have a privacy interest in just their IP address.[2] A review of other cases at the Superior Court level appear to be resolved on demurrer before discovery.

---

[1] https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-august/californias-invasion-privacy-act/

[2] It appears the majority of these more frivolous cases filed in state and federal court are based on Penal Code sections 653.51 and 653.52 which generally prohibits use of pen registers or trap and trace devices. However, Law360 points out that *Licea* may largely end meritless CIPA lawsuits against small companies that retain IP addresses for first party advertisements or coupons. (See https://www.law360.com/articles/1820394.)

Additionally, these issues have bounced around the federal courts since the 2010s. One case culminated with *Davis v. Facebook, Inc.* (*In re Facebook Inc. Internet Tracking Litig.*) (9th Cir. 2020) 956 F.3d 589, 607.) *Davis* evaluated whether compiling browser data[3] when someone is **no longer** on Facebook violates the CIPA or whether the user, by visiting a website at any time, engages the party exception to the CIPA. Also, one of the biggest issues Plaintiffs confronted is whether they are able to demonstrate standing (meaning some type of damages).

The 9th Circuit in *Davis* held the plaintiffs had standing because "the legislative history and statutory text demonstrated that … the California Legislature intended to protect these historical privacy rights when they passed the … CIPA. In addition plaintiffs adequately alleged that Facebook's tracking and collection practices would cause harm or a material risk to their interest in controlling their personal information." (*Davis, supra*, at pp. 601-02.)

The 9th Circuit also found that the existing party exception in the CIPA did not apply to the plaintiff class' case because the information being compiled is beyond what is expected by visiting Facebook.

> CIPA contains an exemption from liability for a person who is a "party" to the communication, whether acting under the color of law or not. (See *Warden v. Kahn* (1979) 99 Cal. App. 3d 805 ["[S]ection 631 . . . has been held to apply only to eavesdropping by a third party and not to recording by a participant to a conversation."].) The party exception must be considered in the technical context of this case. When an individual internet user visits a web page, his or her browser sends a message called a "GET request" to the web page's server. The GET request serves two purposes: it first tells the website what information is being requested and then instructs the website to send the information back to the user. The GET request also transmits a referer header containing the personally-identifiable URL information. Typically, this communication occurs only between the user's web browser and the third-party website. On websites with Facebook plug-ins, however, Facebook's code directs the user's browser to copy the referer header from the GET request and then send a separate but identical GET request and its associated referer header to Facebook's server. It is through this duplication and collection of GET requests that Facebook compiles users' browsing histories. (*Davis v. Facebook, Inc. (In re Facebook Inc. Internet Tracking Litig.)* (9th Cir. 2020) 956 F.3d 589, 607.)

---

[3] Plaintiffs alleged Facebook uses plug-ins to track users' browsing histories when visiting third-party websites, and then compiles these histories into personal profiles which are sold to advertisers for a profit. (See *Davis*, at 596.)

In *Brown v. Google, LLC* (N.D.Cal. 2021) 525 F.Supp.3d 1049, Plaintiffs alleged Google intercepted users' private browsing activity in "Incognito Mode" without their consent, using analytics scripts and tracking pixels.

Google moved to dismiss on the grounds, *inter alia,* that Plaintiffs consented to the tracking by using Google generally and that the communications at issue were not confidential. Google also alleged that users impliedly consent to third party data trackers by visiting Google because it was disclosed in their terms of service. Similar to *In re Facebook*, Plaintiffs alleged the presence of Google's code on its website caused Plaintiffs' browsers to send a duplicate GET request to Google's servers for purposes of third party data tracking. The court ultimately rejected Google's motion to dismiss Plaintiffs' CIPA and invasion of privacy claims because much of their tracking was not disclosed to the user and Plaintiffs' searches in Incognito mode was clearly designed to be confidential.

Finally, the court noted that the invasion of privacy claim was sufficiently "offensive" to survive a motion to dismiss because of the data implicated in the surreptitious recording. Citing to the Facebook litigation, the court stated:

> Plaintiffs in this case allege that Google was surreptitiously collecting the same type of data through the same process that was at issue in *Facebook Tracking*. Furthermore, Plaintiffs in the instant case have an even stronger argument that Google's intrusion was highly offensive because, at the time Google collected the data, they were using private browsing mode, which is often used to prevent others from learning the user's most private and personal interests. (*Brown v. Google LLC* (N.D.Cal. 2021) 525 F. Supp. 3d at 1079.)

While smaller "mom and pop" websites may be uniquely harmed by frivolous CIPA lawsuits because they do not have the resources to litigate the claims, larger tech companies like Oracle, Google, and Facebook may be sued for violations of the CIPA and invasions of privacy if the plaintiff or plaintiff class can demonstrate standing and that the party exception does not apply.

This bill is not specific to just small company retail sites. It broadly applies to any "commercial purpose," as defined by the CCPA. It does not appear to stretch CIPA beyond its intent given that the 9th Circuit, and to some extent, the Supreme Court's standing ruling in *Transunion LLC v. Ramirez* (2021) 594 U.S. 413, support suing platforms and websites that collect information beyond just engaging with the website itself and the CCPA only requires the platform or website to allow a visitor to opt out of selling their personal information to another party. Invasion of privacy claims are different and do not necessarily involve the sale of information to third parties directly.

While some of the plaintiffs in *Heeger* were unable to demonstrate standing because Facebook only obtained IP addresses for users with no evidence of additional third party sales, the plaintiffs in *Davis* and *Brown* were able demonstrate third party access that directly implicated a person's right of privacy.

Given some of the onerous standards for proving these claims in early pleadings litigation, to say nothing of the likelihood of the success on the merits, it is unclear how much of an issue this is as it relates to larger tech companies dominating the litigation. It makes the language used in this bill even more concerning as it appears it may have less to do with protecting smaller companies from vexatious litigation and more about insulating tech giants that track user information.

4) **California Consumer Privacy Act (CCPA) and Privacy Rights Act of 2020:** The Legislature initially enacted AB 375 (Chau), Chapter 55, Statutes of 2018, to grant Californians the right to opt out of the collection of their personal information from any business that has annual gross revenues in excess of approximately $26 million; retains information for 50,000 or more consumers, households, or devices; or derives 50 percent or more of its annual revenues from selling consumers' personal information.

   The CCPA was amended by the California Privacy Rights Act in 2020. A business subject to the CCPA must comply with the following obligations, among others:

   a) Businesses must inform consumers, at or before the point of data collection, about the categories of personal information collected, the purposes for which it's collected or used, and whether it will be sold or shared.

   b) The notice must also include the length of time the business intends to retain each category of personal information and links to the privacy policy and opt-out options.

   c) Notices must be easy to understand, avoid jargon, and be accessible to individuals with disabilities.

   d) Inform consumers that they have the right to request that a business disclose the specific pieces of personal information it has collected about them, the categories of sources from which it was collected, the business or commercial purpose for collecting or selling it, and the categories of third parties with whom it's shared.

   e) Provide information about personal information free of charge and in a readily usable format within 45 days of the request (with a possible 45-day extension).

   f) Provide consumers the right to request that a business delete any personal information collected from them, with some narrow exceptions.

   g) If a business sells or shares consumers' personal information (including for cross-context behavioral advertising), it must provide a clear and conspicuous way for consumers to opt-out. This typically involves a "Do Not Sell My Personal Information" or "Do Not Share My Personal Information" link on the website.

   h) Businesses must also honor Global Privacy Control (GPC) signals.

   i) Consumers have the right to direct businesses to limit the use and disclosure of their sensitive personal information (e.g., Social Security number, financial account information, precise geolocation, health information) to only what is necessary for

specified purposes.

j) Businesses that use or disclose sensitive personal information for other purposes have additional notice requirements.

k) Prevents businesses from discriminating against consumers who exercise their CCPA rights by denying goods or services, providing a different level or quality of goods or services, or charging different prices.

l) The CCPA provides a private right of action for consumers if their non-encrypted and non-redacted personal information is breached due to a business's failure to implement reasonable security measures. (See Civ. Code, §§ 1798.100, *et seq*.)

However, the CCPA is not meant to operate to the exclusion of CIPA and generally applies to large companies that sell personal information to third parties directly. It grants consumers the right to opt out of the collection and sale of personal information.

However, as illustrated by *Katz-Lacabe v. Oracle Am., Inc.* (N.D.Cal. 2023) 668 F.Supp.3d 928, a business (such as Meta) that just installs an Oracle-style tracker on its site, is not necessarily selling the data directly. They are just allowing someone else to utilize technology that **surreptitiously** collects personal data on a Meta site. In *Katz-Lacabe*, Oracle was selling personal information to third parties – rather than Facebook directly. If a user were to demand, under the CCPA, that Facebook not retain their data or sell their data directly to another company, it is not clear that data tracking products like Oracle's would stop compiling information, as well. It would likely require a person to go to the Oracle website and opt out. But since Oracle is tracking information surreptitiously and Facebook is not required to specify which companies are gathering data from their sites, the CCPA may not provide a remedy here. This appears to be the exact circumstance contemplated by the CIPA.

While the CCPA regulations may note that both the first and third party are required to disclose a notice of collection, if a consumer is not aware that the collection is going well beyond just the use of the first party website, the consumer may not know they must opt out broadly to avoid collection and must opt out only at the point of the third party's website. (See Cal Code Regs., tit. 11, § 7012, subd. (g)[4].)

Additionally, as alluded to above, the first party site is not required to explain which firms or companies are operating on its sites, only that the site is selling data for "analytics" or "marketing." Most sites characterize an explanation this way: *"Marketing cookies are used to track visitors across websites. The intention is to display ads that are relevant and engaging for the individual user and thereby more valuable for publishers and third party advertisers."* It does not state, *"Oracle, located at www.oracle.com, tracks your personal*

---

[4] CCPA regulations related to Notice of Collection for third party trackers are not required to independently notify consumers that, for instance, both Meta and Oracle are tracking their information. Meta may just state "we are providing information to third parties." Section 7012, subdivision (g) states, in relevant part, "The first party and third parties **may provide a single Notice at Collection** that includes the required information about their collective information practices."

information for sale to other third parties, including possibly law enforcement." That would likely get much more attention than just general notices that state a site may be tracking user information to provide *"relevant marketing information."*

While the CCPA may provide a remedy in some cases, it may not provide remedies in others. (See *Shahnaz Zarif v. Hwareh.com, Inc.* (S.D. Cal. Feb. 12, 2025) No. 23-cv-0565-BAS-DEB) 2025 U.S. Dist. LEXIS 26519, at p. 27, citing *Greenley v. Kochava, Inc.* (S.D. Cal. 2023) 684 F.Supp.3d 1024, 1050.) This overlap between multiple privacy-related statutes seems to be particularly relevant where smaller websites rely on Facebook Pixel, or other tracking services, to track consumers across devices and sites.[5]

Finally, this bill defines "a commercial business purpose" broadly and refers to the definition of a "business purpose" in the CCPA. The CCPA defines "business purpose" as:

> "The use of personal information for the business' operational purposes, or other notified purposes, or for the service provider or contractor's operational purposes, as defined, provided that the use of personal information shall be reasonably necessary and proportionate to achieve the purpose for which the personal information was collected or processed or for another purpose that is compatible with the context in which the personal information was collected." (Civ. Code, § 1798.140.)

"Business purpose" also includes conduct such as:

a) Performing services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing analytic services, providing storage, or providing similar services on behalf of the business.

b) Providing advertising and marketing services, except for cross-context behavioral advertising, to the consumer provided that, for the purpose of advertising and marketing, a service provider or contractor shall not combine the personal information of opted-out consumers that the service provider or contractor receives from, or on behalf of, the business with personal information that the service provider or contractor receives from, or on behalf of, another person or persons or collects from its own interaction with

---

[5] See *Greenley v. Kochava, Inc.* (S.D.Cal. 2023) 684 F. Supp. 3d 1024, 1035 (In *Greenley*, the Plaintiff alleged: Defendant was a "data broker []' that provides a software developer kit ("SDK") to software application ("app") developers "to assist them in developing their apps. In return, the app developers allow Defendant to 'surreptitiously intercept location data' from an app user ("user") via its SDK. Defendant then sells 'customized data feeds to its clients'—such as Airbnb, Disney+, and Kroger—to 'assist in advertising and analyzing foot traffic at stores or other locations.' In other words, Defendant coded its SDK for data collection and embedded it in third-party apps; the SDK secretly collected app users' data; and then Defendant packaged that data and sold it to clients for advertising purposes.") This committee is not in a position to evaluate the success of CIPA or CCPA claims based on "data broker" actions.

consumers.

c) Undertaking internal research for technological development and demonstration.

This bill proposes to exempt any conduct considered a "business purpose" from the requirements of the CIPA, including prohibitions in wiretapping or eavesdropping in Penal Code sections 631 and 632. It is not clear whether surreptitious conduct would be prohibited by the CCPA as some conduct defined as "business purpose" is exempted from the CCPA. However, it appears that the basis for several questionable CIPA lawsuits is Penal Code section 638.50, et seq., related to the definition of "pen registers" which was amended in 2015. It may make sense to refine the definition of "pen register" to limit the vexatious litigation around IP addresses that are not sold to third parties, but amending Penal Code sections 631-633 is much more problematic.

5) **Unintended Consequences:** Both the proponents and opponents of this bill allege various concerns about rapacious, burdensome CIPA litigation and unchecked surreptitious recording of private communications by tech companies. This is particularly prescient at a time of significant federal government overreach, including a tech company CEO in charge of a government efficiency project. The proponents contend that the CCPA, and enforcement by the Department of Justice and the Privacy Protection Agency is preferable to individual consumer suits.

However, as noted in the opposition's letters, the CCPA is not necessarily aimed at preventing surreptitious recording or tracking by a first party actor where the intent is not necessarily for marketing. However, there are a barrage of arguably specious lawsuits being levied at smaller companies alleging violations of the "pen register" language added by AB 929 in 2015.

According to privacy advocates, the consequences of allowing these amendments may be considerable, and notes that the CCPA exempts efforts by businesses to comply with law enforcement objectives. (See Civ. Code, § 1798.145, subd. (a)(1)(B).)

Consumer Reports argues that, even if companies are not doing anything nefarious with consumer information, cyber criminals may access information obtained from customers under the broad exemption in this bill:

> Even if companies don't use the contents of individuals' private communications for unwanted internal or commercial purposes, the mass collection of this data for any purpose is incredibly dangerous on its own. If our private communications are lost to cybercriminals in a data breach, collected by data brokers, or otherwise obtained by bad actors, they can easily be weaponized against individuals in ways that directly threaten their physical safety, health, or bodily autonomy. As an example of how easily our sensitive data can be leaked, California's health insurance website, Covered California, was recently revealed to have shared web visitors' confidential information, such as whether they are pregnant, transgender, or victims of domestic abuse to social media companies like

> LinkedIn, claiming an accidental website misconfiguration.

Furthermore, according to the Electronic Frontier Foundation, the absence of any controls on how information may be used could result in greater weaponization against immigrants:

> Once the information is in a business's possession, S.B. 690 would place no limits on how it uses that information. The business could share the sensitive information with data brokers, immigration officials, or law enforcement officials in states that restrict reproductive health rights, or in other ways that threaten the health, safety, and privacy of the consumer. Moreover, because pen registers are by design a surreptitious surveillance technique, a consumer will have no ability to opt out of this use or selling of their sensitive information because they will not know they are being surveilled.

However, the Alliance of Legal Fairness, a consortium of business and technology advocates, counters these concerns by pointing out the CCPA still allows for considerable protections in the law for sensitive personal information:

> [T]he CCPA is highly specific in its treatment of sensitive data. The CCPA provides consumers with the ability to – and requires businesses to provide tools on their homepage that allow them to - limit the use of their sensitive data, which includes health data, biometric data, and precise geolocation data, offering strong privacy protections tailored to modern digital practices. When it comes to this type of data and the use of common web technologies on websites, the legislature and the voters of this state intentionally chose to regulate those activities through the CCPA, and not to have a private right of action as an enforcement mechanism for violations of the law.

The Alliance also explains that existing state agencies should ultimately be responsible for enforcing protection of personal information.

> The newly created California Privacy Protection Agency (Privacy Agency) has drafted over 150 pages of regulations on how businesses must implement this "opt-out" privacy regime. The Legislature is considering further legislation this year. Moreover, both the Privacy Agency and the Attorney General are empowered to enforce the statute, and the Attorney General's office has initiated enforcement actions against companies for violating these opt-out requirements. The Privacy Agency is also sponsoring legislation to further strengthen this opt-out regime. CIPA, a 1967 criminal wiretapping statute that requires consent before recording phone calls, was never intended to apply to this type of activity. These lawsuits are unfair and must be stopped.

While some amendment to sections in the CIPA may be necessary to stymie frivolous litigation against small companies, large tech companies already have several advocates in every level of government. The amendments proposed in this bill may have serious unintended consequences for more privacy protections long held sacred by California residents.

6) **Argument in Support**: According to the *Los Angeles County Business Federation*: "As detailed in recent reports from the Alliance for Legal Fairness support letter, California has seen an unprecedented surge in lawsuits, over 1,100 filed and thousands more threatened, based on a novel legal interpretation of CIPA. These lawsuits allege that routine online practices, such as using cookies or web analytics without explicit opt-in consent, amount to unlawful "wiretapping." This interpretation not only distorts CIPA's original legislative intent, which was aimed at protecting Californians from unauthorized telephone recordings, but also places a dangerous financial burden on small and medium-sized businesses across our region.

   "SB 690 offers a much-needed corrective. It clarifies that commercial business purposes already governed by CCPA, including activities related to internal operations, digital advertising, analytics, and other data processing practices—do not fall within the purview of CIPA. This clarification is essential to preventing further exploitation of the legal system and reinforcing the opt-out privacy framework established by both the California Legislature and voters through the CCPA and its subsequent expansion under CPRA in 2020. In its current form, SB 690 achieves a smart, narrow balance. It preserves strong consumer protections under CCPA while closing a dangerous loophole that trial attorneys are using to extract settlements from compliant businesses. By affirming the primacy of CCPA as California's comprehensive consumer data privacy framework, SB 690 ensures that the state's privacy laws remain coherent and enforceable without creating conflicting obligations for businesses."

7) **Argument in Opposition**: According to *Oakland Privacy*: "The inclusion of commercial data, often collected surreptitiously on the web by hidden third party pixels and trackers that users have no idea are collecting their information, is a leading source of information for data brokers who aggregate and organize large scale databases and then sell them, quite often to law enforcement agencies who purchase what they otherwise could not obtain without a warrant. This is a severe public safety risk. It should be in the jurisdiction of this committee to ensure that tools that provide the only form of redress against the equivalent of warrantless searches are maintained and not eradicated. Amendments that would rein in SB 690 so that it only addresses legitimate business uses are attached at the end of this position letter. We strongly encourage the committee to adopt them.

   "SB 690 is the wrong answer to the problem that the author has identified, which is a string of questionable lawsuit threats directed at fairly small businesses for first party online tracking on their websites. These lawsuits, which to date have largely been thrown out of court as meritless, 1 may in fact cause distress to some small businesses. A corollary example may be the many lawsuit threats that have accompanied the thirty five years that the Americans with Disabilities Act has been law.

   "While probably someone suggested it at one point, it has not been considered sound public policy to eviscerate the ADA just because some clever lawyers have taken advantage of it. It

is just as unsound to take the path suggested by this bill to eviscerate a long-standing and important civil rights law because some attorneys are attempting to use it in a way not intended. Such abuse of the legal system is for the courts to resolve and the courts are doing so, as the Law360 article cited above describes.

"The California Invasion of Privacy Act is not aimed at small businesses, nor is it aimed at what would normally be defined as legitimate business practices. What CIPA targets and what it has effectively been used for, is third party secretive tracking. Third party tracking is a process by which embedded cookies, Javascript tags, pixels and other tracking devices are hidden on devices or websites that are not connected with the specific business the user is interacting with. They then extract data without the consent or knowledge of the user and then sell it to customers, among them law enforcement agencies. This is the precise practice used by giant multinational corporation Oracle in its "ID Graph" adtech program.

"ID Graph was discontinued after Oracle was sued by Oakland Privacy member Mike Katz-Lacabe for violations of the California Invasion of Privacy Act. The company settled the class action lawsuit for $115 million dollars to avoid a jury trial. The settlement also terminated the IDGraph program."

8) **Related Legislation:** SB 361 (Becker) would require data brokers registering with the California Privacy Protection Agency to indicate whether they collect the following information on consumers: (a) account login or account number in combination with any required security code, access code, or password that would permit access to a consumer's account with a third party; (b) drivers' license number, California identification card number, tax identification number, social security number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual; (c) citizenship data, including immigration status; (d) union membership status; (e) sexual orientation status; (f) gender identity and gender expression data; or (g) biometric data. SB 361 is pending in the Assembly Appropriations Committee.

9) **Prior Legislation**: SB 1272 (Becker), Chapter 27, Statutes of 2022, clarified that the exemption from wiretapping for maintenance and operation purposes, applies to a telephone company as well as a utility.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Legal Fairness
Apartment Owners Association of California
Apartment Owners Association of California,
Berkeley Chamber of Commerce
Brea Chamber of Commerce
Cal Asian Chamber of Commerce
Calasian Chamber of Commerce

Calbroadband
California African American Chamber of Commerce
California Black Chamber of Commerce
California Broadcasters Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Farm Bureau
California Fuels and Convenience Alliance
California Hispanic Chamber of Commerce
California New Car Dealers Association
California News Publishers Association
California Restaurant Association
California Retailers Associaiton
California Retailers Association
Central Valley Business Federation
Chamber of Progress
Citizens Against Lawsuit Abuse
Civil Justice Association of California (CJAC)
Ecomback
Ecommerce Innovation Alliance
Independent Insurance Agents & Brokers of California, INC.
Information Technology Industry Council
Internet.works
LA South Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation (BIZ-FED)
Los Angeles County Business Federation (BIZFED) (UNREG)
National Federation of Independent Business (NFIB)
News Media Alliance
Orange County Business Council
San Deigo Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce
Silicon Valley Leadership Group
State Privacy and Security Coalition, INC.
Technet
Technology Industry Association of California (TECHCA)
Trimble
Visit Greater Palm Springs

Oppose

ACLU California Action
Afm Local 7
Anti Police-terror Project
Asian Americans Advancing Justice-southern California
Black Women for Wellness Action Project
California Alliance for Retired Americans

California Alliance for Retired Americans (CARA)
California Civil Liberties Advocacy
California Employment Lawyers Association
California Federation of Labor Unions, Afl-cio
California Low-income Consumer Coalition
California Nurses Association
California Public Defenders Association
Center for Democracy and Technology
Church State Council
Consumer Attorneys of California
Consumer Federation of America
Consumer Federation of California
Consumer Reports
Courage California
Dolores Huerta Foundation
Economic Security California Action
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Epic
Freefrom
Housing and Economic Rights Advocates (HERA)
Initiate Justice
Justice Teams Network
Justice2jobs Coalition
LA Defensa
Lgbt Tech
National Consumer Law Center
National Consumer Law Center, INC.
Oakland Privacy
Pflag Sacramento
Privacy Rights Clearinghouse
Public Law Center
Rise Economy
Secure Justice
Services, Immigrant Rights and Education Network (SIREN)
Sister Warrior Freedom Coalition
Teamsters California
Tech Oversight Project
Techequity Action
The Law Office of J.r. Howell
The Translatin@ Coalition
The United Food and Commercial Workers Western States Council
Ultraviolet Action
Viet Rainbow of Orange County

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 692 (Arreguín) – As Amended May 23, 2025

As Proposed to be Amended in Committee

SUMMARY: Lessens the procedures a local agency must comply with in order to remove and dispose of specified low-value vehicles that have been determined to be abandoned. Specifically, **this bill**:

1) Specifies that the provisions required to be included in any city, county, or city and county ordinance establishing procedures for the removal of abandoned vehicles, also apply to an ordinance establishing procedures for the removal of inoperable vehicles.

2) Provides the following, for purposes of what must be included in an ordinance establishing procedures for the removal of abandoned or inoperable vehicles:

   a) Expands the requirements that: 1) a 10-day notice of intention to remove a vehicle, or part thereof,[1] as a public nuisance be issued unless the property owner and owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle; 2) prior to final disposition of a vehicle, a local agency must provide notice to the applicable owners of intent to dispose of the vehicle and wait 12 days from mailing such notice before disposal; and 3) a local agency cannot be liable for damage to the vehicle caused by removal, provisions that currently apply only to inoperable vehicles located on land zoned for agricultural use or not improved with a residential structure containing at least one dwelling unit, to apply to abandoned vehicles more generally.

   b) Authorizes removal of a vehicle located on agriculturally-zoned land or land not improved with a residential dwelling unit, as a public nuisance, without issuing a prior 10 day notice of intention if the vehicle is inoperable due to the absence of a motor, transmission, or wheels, incapable of being towed, valued at less than $200 by a specified person, and if *either* the vehicle is determined to be a public nuisance presenting an imminent threat to public health or safety, *or* (rather than requiring both) the owner has signed a release authorizing removal and waiving their interest in the vehicle.

   c) Exempts local agencies from the requirement that final disposition of a vehicle may only occur 12 days after notifying the owner, in cases where the owner signs a release waiving the 12-day waiting period.

---

[1] Hereafter referred to as "vehicle."

3) Exempts an abandoned vehicle that is inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, determined by the local agency to be a public nuisance presenting an immediate threat to public health or safety, and determined to have a value of $300 or less, from the requirement that before removing and disposing of a vehicle valued at $500 or less because there are reasonable grounds to believe it was abandoned, an officer must, 72 hours before removal, securely attach to the vehicle a distinctive notice stating that the vehicle will be removed.

EXISTING LAW:

1) Gives specified peace officers the authority to make appraisals of the value of vehicles, for the purposes of determining when the vehicle may be subject to removal or disposal, as specified. (Veh. Code, § 22855.)

2) Authorizes a peace officer and other specified persons to remove a vehicle, subject to specified notice, storage, and release requirements, in a variety of enumerated circumstances, including where a vehicle is left unattended upon a bridge and constitutes an obstruction to traffic, where a vehicle is parked on a highway in a position that obstructs traffic or creates a hazard to other traffic, and if the vehicle is parked so as to block the entrance to a private driveway. (Veh. Code, §§ 22651 – 22856.)

3) Authorizes a city, county, or city and county to adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of abandoned, wrecked, dismantled, or inoperative vehicles, from private or public property. (Veh. Code, § 22660.)

4) Requires an ordinance establishing procedures for the removal of abandoned vehicles to:

   a) Give notice to the Department of Motor Vehicles within five days of removal that identifies the vehicle and any evidence of registration. (Veh. Code, § 22661, subd. (a).)

   b) Make the ordinance inapplicable to a vehicle lawfully enclosed within a building in a manner where it is not visible, as specified, or a vehicle lawfully stored in connection with a licensed dismantler, licensed vehicle dealer, or a junkyard, although this does not authorize a public or private nuisance. (Veh. Code, § 22661, subd. (b).)

   c) Require the issuing of a 10 day notice of intention to abate and remove the vehicle as a public nuisance, unless the applicable owners have signed a release authorizing removal and waiving further interest in the vehicle, subject to the following:

      i) This does not apply to a removal of a vehicle that is: 1) inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed; 2) valued under $200; 3) determined to be a public nuisance presenting an immediate threat to public health or safety; and 4) provided that the property owner has signed a release authorizing removal and waiving further interest in the vehicle.

      ii) Prior to final disposition of such a low-valued vehicle, if evidence of registration was recovered the agency shall provide notice to the applicable property owners of intent to dispose of the vehicle, and if it is not claimed and removed within 12 days after the notice is mailed, as specified, final disposition may proceed.

iii) No local agency or contractor shall be liable for damage caused to a vehicle by removal, as specified.

iv) This only applies to inoperable vehicles located upon a parcel that is zoned for agricultural use or not improved with a residential structure containing one or more dwelling units. (Veh. Code, § 22661, subd. (c).)

d) Require the 10 day notice of intention, when required, to be mailed to the applicable property owners, and to contain a statement of the owners hearing rights, including their right to appear in person and to deny responsibility for the presence of the vehicle. (Veh. Code, § 22661, subd. (d).)

e) Provide that an owner may request a public hearing within 12 days of the mailing of the notice of intention or signing of the release, which must be held if requested. If the owner of the land submits a statement denying responsibility for the vehicle within this time period, that statement constitutes a request for a hearing, however, if a request is not received within this time period, the governing body may remove the vehicle. (Veh. Code, § 22661, subd. (e).)

f) Prohibit a vehicle, after it has been removed, from being reconstructed or made operable, unless as otherwise specified. (Veh. Code, § 22661, subd. (f).)

g) Provide that if an owner of the land denies responsibility for the presence of the vehicle and it is determined the vehicle was placed on the land without the consent of the landowner and that they have not subsequently acquiesced to its presence, the local authority shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect those costs from the owner. (Veh. Code, § 22661, subd. (g).)

5) Provides that vehicles may be disposed of by removal to a scrapyard, automobile dismantler's yard, or any suitable site operated by a local authority for processing as scrap, or other final disposition, consistent with the above requirements. (Veh. Code, § 22662.)

6) Authorizes peace officers or other designated person who have reasonable grounds to believe that the vehicle has been abandoned, to remove the vehicle from a highway or from public or private property. (Veh. Code, § 22669, subd. (a).)

7) Declares motor vehicles that are parked, resting, or otherwise immobilized on any highway or public right-of-way and which lack an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highways of this state, to be a hazard to public health, safety, and welfare, and authorizes their removal, immediately upon discovery by a peace officer or other authorized person. (Veh. Code, § 22669, subd. (d).)

8) Provides that when a peace officer or other authorized person removes a vehicle because they have reasonable grounds to believe that the vehicle has been abandoned or because the vehicle constitutes a hazard to public health safety and welfare, and where the estimated

value of the vehicle is $500 or less, the agency that removed the vehicle shall cause its disposal, subject to the following:

a) The peace officer or authorized person must securely attach to the vehicle a distinctive notice stating that the vehicle will be removed at least 72 hours before the vehicle is removed, unless it is an abandoned vehicle valued at $300 or less that is a hazard to public health, safety, and welfare, as specified. (Veh. Code, § 22851.3, subd. (a).)

b) The agency, immediately after removal, must notify the Stolen Vehicle System of the Department of Justice of the removal. (Veh. Code, § 22851.3, subd. (b).)

c) The agency or lienholder shall obtain a copy of the names and addresses of persons with an interest in the vehicle, as specified, but if such information is not available, the agency may authorize disposal at any time after removal. (Veh. Code, § 22851.3, subd. (c) & (k).)

d) Within 48 hours of the removal, excluding weekends and holidays, the public agency or lienholder shall send a notice to the applicable owners, and to any other person known to have an interest in the vehicle, informing such persons, among other things, that the vehicle may be disposed of 15 days from the date of the notice, and that such persons may request a hearing within 10 days of the notice, in which case the requested hearing must take place within 48 hours of the request. (Veh. Code, § 22851.3, subds. (d) & (e).)

e) The agency that removed the vehicle and directed any towing or storage is responsible for towing and storage costs if a hearing does not establish there was reasonable grounds to believe a vehicle was abandoned. (Veh. Code, § 22851.3, subd. (f).)

f) A public agency may not issue an authorization for disposal to a lienholder storing the vehicle prior to the conclusion of a requested post-storage hearing or any judicial review of that hearing. (Veh. Code, § 22851.3, subd. (g).)

g) If the vehicle remains unclaimed within 15 days from the notification date, the towing and storage fees have not been paid, and no post-storage hearing has been requested, the public agency shall authorize disposal of the vehicle. (Veh. Code, § 22851.3, subd. (h).)

h) If the vehicle is claimed within 15 days of the notice date, the lienholder storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as specified. (Veh. Code, § 22851.3, subd. (h).)

i) Disposal of the vehicle by the lienholder storing the vehicle may only be to a licensed dismantler or scrap iron processor, subject to specified record keeping requirements. (Veh. Code, § 22851.3, subd. (i).)

j) The disposed vehicle may not be reconstructed or made operable, subject to specified exemptions. (Veh. Code, § 22851.3, subd. (i).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 692 allows local governments the ability to abate and remove abandoned or inoperable vehicles that are valued at less than $200 and pose an imminent threat to public health or safety while still ensuring adequate noticing and hearing requirements are followed.

   "When an individual experiencing homelessness is moved indoors, these abandoned, and oftentimes inoperable, vehicles remain on the street. In many cases, these vehicles are in such poor condition and pose serious health and safety risks to the community, with local towing companies refusing to take the vehicles given the conditions. The current Vehicle Code prohibits local governments from abating and addressing imminent health and safety risks when these conditions occur in a vehicle.

   "SB 692 is a moderate change in the Vehicle Code that will allow local governments to take action when an abandoned or inoperable vehicle is posing an imminent threat to public health or safety, thereby delivering the results that California communities are demanding."

2) **Background: Fourth Amendment and Warrantless Removal of Vehicles under the Community Caretaker Exception**: The Fourth Amendment of the U.S. Constitution protects people from excessively intrusive government searches and seizures. The Supreme Court has emphasized that the Fourth Amendment requires adherence to judicial processes, and has stressed that searches and seizures occurring without a warrant issued by a judge or magistrate are considered to be per se unreasonable under the Fourth Amendment. (*Katz v. U.S.* (1967) 389 U.S. 347, 357.) There are exceptions, however, such exceptions must comply with the touchstone of the Fourth Amendment—reasonableness. (*Florida v. Jimeno* (1991) 500 U.S. 248, 250.)

   Generally speaking, officers may remove a vehicle without a warrant under certain conditions. Officers have the authority to remove vehicles that jeopardize public safety or impede the movement of vehicular traffic as part of their "community caretaking function." *South Dakota v. Opperman* (1976) 428 U.S. 364, 368-369.) "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." (*Ibid.*)

   The removal of the car must be reasonable in relation to the officer's community caretaking function. (*People v. Williams* (2006) 145 Cal.App.4th 756, 761-62.) Whether a vehicle may be impounded under the community caretaking doctrine "depends on the location of the vehicle and the police officer's duty to prevent it from creating a hazard to other drivers or being a target for vandalism of theft. (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 864.) Community caretaking functions include removing vehicles that block traffic, damaged vehicles, or vehicles that cannot be safely locked and are left by the side of the road. (*Opperman, supra*, 428 U.S. at pp. 368-369.) As most recently summarized, it encompasses "cars that are illegally parked, create a hazard to other drivers or an obstacle to the flow of traffic, or are a target for vandalism or theft," (*Coal. on Homelessness v. City & Cnty. of San Francisco* (2023) 93 Cal.App.5th 928, 942.)

   Existing law outlines numerous circumstances wherein an officer may remove a vehicle. (Veh. Code, § 22650 et seq.) However, a statute authorizing the removal of a vehicle must still be reasonable under the Fourth Amendment. (*Williams*, *supra,* 145 Cal.App.4th at pp.

761-762.); see also Veh. Code, § 22650, subd. (b).) AB 2876 (Jones-Sawyer), Chapter 592, Statutes of 2018, codified the case law holding that a warrantless removal of a vehicle must be reasonable, regardless of whether the removal was made pursuant to an authorizing statute. Specifically, a removal authorized by statute that is based on community caretaking "is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism." (Veh. Code, § 22650, subd. (b).)

Accordingly, certain removals authorized by statute have been found unconstitutional. In *Coal. on Homelessness v. City & Cnty. of San Francisco*, a court found that the community caretaking doctrine did not apply to a transportation agency's policy of towing safely and lawfully parked vehicles purely because of unpaid parking tickets, as authorized by Vehicle Code section 22651 (i)(1). (*Coal. on Homelessness*, *supra,* 93 Cal.App.5th at p. 941-948.) In *People v. Williams*, an officer stopped the defendant for a seat belt violation and arrested them for an outstanding warrant. (*Williams*, *supra*, 145 Cal.App.4th at p. 762-763.) This impoundment was made pursuant to Vehicle Code section 226651 (h), which authorizes an officer to impound a vehicle when they make a custodial arrest of a person driving a vehicle. The Court found that the impoundment held no community caretaking function, and therefore, a policy of impounding vehicles when making a custodial arrest of the driver violated the Fourth Amendment. (*Id.* at p. 762-763.)

3) **Effect of this Bill:** The California Vehicle Code section 22651 sets forth numerous circumstances under which local authorities may remove and impound a vehicle. Basis for removal include leaving a vehicle unattended, obstructing traffic so as to create a hazard, identifying a stolen vehicle, blocking a private driveway or firefighting equipment (including a hydrant), when an officer arrests a person in control of a vehicle and is required to take the person into custody, identifying a vehicle which has been issued five or more unaddressed parking citations, and leaving the vehicle parked or standing on a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal. (Veh. Code, § 22651.)[2] Such removals must comply with specified notice, storage, and release requirements. (Veh. Code, §§ 22651- 22856.)

   After removing a vehicle, per one of the aforementioned reasons or otherwise, the officer is required to take the vehicle to "the nearest garage or place of safety or to a garage designated or maintained" by the officer's employing agency, a process commonly referred to as "impoundment." (Veh. Code, § 22850.) Impoundments can last anywhere from 24 hours to 30 calendar days depending on a variety of factors, and a vehicle's registered owner can usually reclaim their impounded vehicle by showing proof of registration and paying a specified fee. (Veh. Code, §§ 22850.3, 22850.5, 22851, 22851.3.) However, if a vehicle remains unclaimed for a certain length of time depending on the value of the vehicle, the keeper of that vehicle (usually the owner of the tow yard or impound lot, referred to as a "lienholder"), may dispose of the vehicle, as specified.

   As proposed to be amended, SB 692's changes can be broken down into three categories.

---

[2] Many local ordinances explicitly prohibit leaving a vehicle on any public street or parking facility for 72 or more consecutive hours and authorize removal pursuant to this Vehicle Code provision (Veh. Code, § 22651, subd. (k).) *See* Roseville Municipal Code § 11.20.020, City of Roseville, CA Parking in General. For an example of a 72-hour notice, see https://www.cityofsacramento.gov/content/dam/portal/cdd/Code-Compliance/VEHICLE-VIOLATION-NOTICE-2018.pdf

First, this bill clarifies the authority of local governments to adopt ordinances pertaining to the removal of abandoned or inoperable vehicles.

In addition to basis to remove a vehicle discussed above, Vehicle Code section 22660 authorizes local governments to adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of *abandoned*, wrecked, dismantled, or *inoperative* vehicles, from private or public property. (Veh. Code, § 22660) (emphasis added.) The immediately following section, Vehicle Code section 22661 outlines the provisions that must be included in such an ordinance, although this section refers specifically to "an ordinance establishing procedures for the removal of *abandoned* vehicles." (Veh. Code, § 22661) (emphasis added).

Notably, there is no definition of "abandoned" in the Vehicle Code. This gives local some discretion to make this determination. For example, some cities considered a vehicle to be "abandoned" if it is "left 72 hours or more on the highway."[3] Others define an abandoned vehicle as a vehicle that is "left on a highway, public property, or private property in such inoperable or neglected condition that the owner's intention to relinquish all further rights or interests in it may be reasonably concluded."[4]

This bill specifies that Vehicle Code section 22661, which outlines the removal procedures that must be included in an ordinance pertaining to abandoned vehicles, also applies to *inoperable* vehicles. This appears largely declarative of existing law. In *City of Costa Mesa*, the Fourth District Court of Appeal, stated that Vehicle Code 22661, which references only "abandoned vehicles," "clearly relates back to Vehicle Code section 22660, which governs 'abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof'." (*City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 383, FN 5.) As such, the provisions that must be included in an ordinance establishing procedures for "abandoned" vehicles would likely already have to be included in any ordinance establishing procedures for "inoperable" vehicles.

Second, this bill lessens the procedures requirements that must be included in an ordinance establishing procedures for removing abandoned or inoperable vehicles.

An ordinance establishing procedures for the removal of abandoned vehicles must generally comply with the following: 1) require notice to be given to the DMV within five days of removal; 2) make the ordinance inapplicable to specified vehicles such as those lawfully enclosed in a building; 3) require a notice of intention to be mailed to the applicable owner describing their hearing rights and an opportunity to be heard; 4) give the applicable owner the right to request a public hearing within 12 days of receiving the notice of intention (if no request is made the vehicle may be removed); 5) prohibit a removed vehicle from being reconstructed; and 6) provide that the applicable owner may appear at the hearing to deny responsibility for the presence of the vehicle, and if successful, the local authority shall not attempted collect specified costs from that owner. (Veh. Code, § 22661.)

---

[3] *See,* Pacific Grove Municipal Code 9.40.020(a).
[4] *See*, Eureka Municipal Code 90.01 (2).

Most relevant to this bill, such an ordinance must outline distinct procedures for the removal and disposal of inoperable vehicles located upon a parcel zoned for agricultural use or not improved with a residential structure with at least one dwelling unit. In such cases, the ordinance must require at least a 10 day notice of intention to abate the vehicle as a public nuisance to be issued, unless the applicable owner of the vehicle or land have signed removal releases. (Veh. Code, § 22661, subd. (c).) However, such a 10 day notice of intention is not required for removal of a vehicle that is: 1) inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed; 2) valued at less than $200; 3) determined by the local agency to be a public nuisance presenting an immediate threat to public health or safety; and 4) provided that the property owner has signed a release authorizing removal and waiving further interest in the vehicle or part thereof. Prior to the final disposal of such a low-valued vehicle or part, the local agency shall provide notice of intent to dispose of such a vehicle, and if the vehicle or part is not claimed and removed within 12 days after the notice is mailed, final disposition of the vehicle may proceed. (Veh. Code, § 22661, subd. (c).)

Here, this bill reduces the requirements that must be met to remove such a low-valued vehicle, located on agricultural-zoned or land unimproved residential land, as a public nuisance. Specifically, it authorizes removal of such an inoperable vehicle on agricultural or unimproved residential land that is incapable of being towed, and valued at less than $200 without issuing a 10 day notice if *either* the vehicle or part is determined to be a public nuisance presenting an immediate threat to public health or safety, *or* the owner has signed a release authorizing removal. Under existing law, to bypass the notice of intention requirement the agency must determine the vehicle poses an imminent threat to public safety and health *and* have the owner sign a release authorizing removal.

SB 692 also appears to expand the statutory requirements that a local agency provide a 10-day pre-removal notice, notify the applicable owners of intent to *dispose* and wait 12 days from mailing of such notice before disposal and cannot be liable for damage to the vehicle caused by removal. These provisions currently apply only to vehicles located on land zoned for agricultural use or unimproved residential land. (*See* (Veh. Code, § 22661, subd. (c) ["[t]his *subdivision* applies only to inoperable vehicles located upon a parcel that is (1) zoned for agricultural use or (2) not improved with a residential structure containing one or more dwelling units. ."]) (emphasis added). This bill removes this restriction on the type of property these provisions apply to, making these provisions applicable to abandoned vehicles more generally, regardless of their presence on agricultural-zoned or unimproved residential land. This bill additionally expedites the disposal of abandoned or inoperable vehicles by exempting local agencies from the requirement that final disposition of such a vehicle may only occur 12 days after notifying the owner, in cases where the owner of the vehicle or part signs a release waiving that 12-day waiting period.

Third, this bill exempts specified low-valued vehicles that pose an immediate public health and safety threat, from the requirement that before removing and disposing of a specified low-value abandoned vehicle an officer must, 72 hours before removal, securely attach to the vehicle a distinctive notice stating that the vehicle will be removed.

For context, existing law establishes a set of distinct procedures that must be followed for vehicles that have been removed from a highway or from public or private property by law enforcement[5] because they have reasonable grounds to believe that the vehicle has been abandoned or because the vehicle is parked, resting, or otherwise immobilized on any highway or public right-of-way and lacks specified parts as to such constitute a hazard to public health safety and welfare, and where the estimated value of the vehicle is $500 or less. (Veh. Code, §§ 22669, 22851.3, subd. (a).) Under this procedure, law enforcement must attach a notice ("pre-removal notice") to the vehicle at least 72 hours prior to its removal indicating that the removal will take place. Within 48 hours of removal, either the removing agency or the lienholder must send another notice ("post-removal notice") to the vehicle's registered owner at their addresses of record with the DMV, with the following information: contact information for the public agency providing the notice, information regarding where the vehicle is being stored, the legal authority for removal, a statement that the vehicle may be disposed of 15 days from the date of notice, and a notice that the owners have the opportunity for a hearing to determine the validity of the storage if a request is made within 10 days of the notice. (Veh. Code, § 22851.3, subds. (a)-(d).) If, after 15 days from the post-removal notification, the vehicle remains unclaimed and the towing and storage fees have not been paid, and no request for post storage hearing was received, the removal agency must provide the lienholder with authorization to dispose of the vehicle. If the names and addresses of the registered owners of the vehicle are not available from the DMV, the removing agency may immediately authorize the disposal of the vehicle by the lienholder. (Veh. Code, § 22851.3, subds.(h), (j), (k).)

Specified hazardous vehicles are already exempt from this 72 hour pre-removal notice requirement for abandoned vehicles valued at $500 or less. (Veh. Code, § 22851.3, subd. (a).) Particularly, this requirement does not apply to abandoned motor vehicles which are parked, resting, or otherwise immobilized on any highway or public right-of-way and which lack an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highways of this state, to be a hazard to public health, safety, and welfare, which an agency determines to have a value of $300 or less. (Veh. Code, §§ 22669, subd. (d), 22851.3, subd. (a).) Such vehicles can be immediately removed upon discovery by a peace officer or other authorized person. As proposed to be amended, SB 692 exempts another class of abandoned and inoperable vehicles from this pre-removal requirement. Specifically, it exempts an abandoned vehicle or part thereof that is inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, is determined by the local agency to be a public nuisance presenting an immediate threat to public health or safety, and is determined to have a value of $300 or less. This seeks to provide local governments with a streamlined process for removing abandoned, inoperable vehicles that post health and safety threats, even if such vehicles are necessarily considered to be "a hazard to public health, safety, and welfare." (Veh. Code, § 22669, subd. (d).)

4) **Impoundments of Vehicles Used for Shelter:** California has the highest poverty rate in the country.[6] California's poverty rate rose from 11.7% in 2021 to 13.2% in 2023, and nearly a

---

[5] The statute indicates that any public agency authorized to remove abandoned vehicles may perform the functions described, but for the sake of brevity will simply refer to all authorized entities as "law enforcement."

[6] Dan Walters, *Once again, California beats every other state when it comes to poverty* (Sept. 11, 2024), available at: https://calmatters.org/commentary/2024/09/california-again-top-state-poverty/

third of Californians are living in or near poverty.[7] This rising poverty rate, as well as increased costs of living, has coincided with a significant increase in California's homelessness population—increasing by as much as 7.5% between 2022 and 2023.[8] Recent data suggests that more than 180,000 persons were experiencing homelessness in California in 2024.[9] Racial disparities among the homeless population is well documented. The share of Black, American Indian, Alaska Native, or Indigenous people experiencing homelessness is five times greater than their share of the total population. [10]

Unhoused individuals are increasingly policed and subject to criminal penalties. As summarized by a peer reviewed journal, *Transport Reviews*:

> [There has been] a general trend of increasing criminalization of homelessness over the last three decades; transit environments are no exception. Broadly, this has entailed the adoption of ordinances restricting activities associated with homelessness (such as camping, loitering, and panhandling), more intensive policing, and the use of hostile architecture in public spaces [citation omitted]). For example, a number of municipalities have enacted since the early 1990s "sit-lie" ordinances, which prohibit individuals from lingering, sitting, or sleeping in public spaces.[11]

This is particularly true following the 2024 U.S. Supreme Court decision in *City of Grants Pass v. Johnson*, which overturned legal precedent and permitted local governments to arrest and fine unhoused persons in public spaces, even when no alternative shelter is available. (*City of Grants Pass v. Johnson* (2024) 603 U.S. 52.) Following this court case, there has been an uptick in criminal penalties associated with being unhoused.[12] For example, the City of Fresno has since made it a misdemeanor to camp anywhere, even if no shelter is available.[13] As of September, 2024, at least 15 local jurisdictions in California modified their ordinances to further punish conduct associated with homelessness.[14]

This rise of homelessness has led to an increasing number of persons living in their vehicles.[15] In San Jose, an estimated 17% of people experiencing homelessness live in their vehicles, while in Sonoma County the estimate is 29%.[16] Notably, in Los Angeles, *almost half of the unsheltered population are estimated to live in their vehicles*.[17] Vehicles represent

---

[7] Bohn et. al., *Poverty in California*, Public Policy Institute of California (Oct. 2023)., available at: https://www.ppic.org/publication/poverty-in-california/
[8] Cuellar and Perez, *An Update on Homelessness in California*, PPIC (March 21, 2024), available at: https://www.ppic.org/blog/an-update-on-homelessness-in-california/
[9] *Ibid.*
[10] Business, Consumer Services and Housing Agency, *Acting to Prevent, Reduce, and End Homelessness* (accessed March 6, 2025), available at: https://bcsh.ca.gov/calich/hdis.html
[11] Ding et. al., *Homelessness on public transit: A review of problems and responses*, Transportation Reviews, 2022, Vol. 42: 2, 134-156, at p. 135, available at: https://doi.org/10.1080/01441647.2021.1923583
[12] Kendall, *No sleeping bags, keep moving: California cities increase crackdown on homeless encampments* (Sept. 12, 2024), available at: https://calmatters.org/housing/homelessness/2024/09/camping-ban-ordinances/
[13] *Ibid.*
[14] *Ibid.*
[15] Giamarino, et. al., *Geographic and Regulatory Impacts on Vehicle Homelessness in Los Angeles* (June 28, 2022), available at: https://www.its.ucla.edu/publication/geographic-regulatory-impacts-vehicular-homelessness-los-angeles/
[16] Madeline Brozen, *Where you Go When Your Car is Home* (Jan. 2023), *Transfer Magazine*, available at: https://transfersmagazine.org/magazine-article/issue-10/where-you-go-when-your-car-is-home/
[17] Giamarino, et. al., *Geographic and Regulatory Impacts on Vehicle Homelessness in Los Angeles* (June 28, 2022), available at: https://www.its.ucla.edu/publication/geographic-regulatory-impacts-vehicular-homelessness-los-angeles/

a critical last-resort for persons on the verge of losing shelter. As stated by Transfer Magazine, a publication of the Pacific Southwest Region University Transportation Center:

> A car is often shelter of last resort for housing-insecure people. If a person loses their housing and has a vehicle, that vehicle can prevent them from living on sidewalks and other public places. Tents and other makeshift shelters can offer protection from the elements, but cars tend to offer more safety and stability, and more mobility. A car can be locked to secure one's belongings, blends into the neighborhood in ways a sidewalk tent doesn't, and offers a way to reach jobs, schools, and services.[18]

For an unhoused person who utilizes their car not only as shelter, but as a means to get to their job, services, or medical needs, losing their car to impoundment is a tipping point that can lead to unsheltered homelessness.[19] This is particularly true, given that once a vehicle is towed, the person living in it often are unable to afford to recover their cars.[20]

This bill seeks to make it easier to remove and dispose of low-valued vehicles that are considered "abandoned" by removing certain pre-removal notice requirements currently required to be provided before removal and disposal. Notably, the Vehicle Code does not define when a vehicle is "abandoned." This gives local governments a certain amount of discretion to make this determination. This has led some localities to create a very permissible standard for abandonment such as where a vehicle "is left 72 hours or more on the highway."[21] Further, the persons authorized to appraise the value of vehicles, for the purposes of determining when the vehicle may be subject to removal or disposal, include peace officers. (Veh. Code, § 22855.) Expediting the process of removing and disposing low-value "abandoned vehicles," could provide localities that are hostile to persons living in their vehicles, with more streamlined tool to seize such means of shelter, which may contribute to the homelessness crisis in this state.

Committee amendments seek to limit the expedited removal processes proposed by this bill to vehicles that pose an immediate threat to public health or safety, however, the author may wish to consider further amendments to prevent the expedited removals proposed by this bill from being used to remove vehicles that are actively being used for human shelter.

5) **Argument in Support:** According to the *Bay Area Council*, "SB 692 [] would provide local jurisdictions with the ability to more effectively address the growing public health and safety risks associated with inoperable vehicles in the public right of way.

"As communities across the Bay Area work to create safer, cleaner, and more accessible and vibrant public spaces, SB 692 is a welcomed and pragmatic approach to removing abandoned vehicles that present an imminent risk to health and safety. SB 692 equips local governments with the tools to swiftly address hazardous conditions caused by abandoned or inoperable vehicles, while maintaining appropriate legal safeguards. The bill strikes a balance between

---

[18] Madeline Brozen, *Where you Go When Your Car is Home* (Jan. 2023), *Transfer Magazine*, available at: https://transfersmagazine.org/magazine-article/issue-10/where-you-go-when-your-car-is-home/
[19] *Gorn, with thousands of Californians living in vehicles, lawsuit aims to stop cities from towing their homes* (June 23, 2020), available at: https://calmatters.org/economy/2018/09/lawsuit-homeless-vehicle-tow-california-impound/
[20] *Ibid.*
[21] *See,* Pacific Grove Municipal Code 9.40.020(a).

enforcement and compassion, streamlining notice and abatement procedures in urgent situations while still preserving due process. By addressing this issue thoughtfully and proactively, SB 692 supports the health and safety of all communities.

"SB 692 is in alignment with the Bay Area Council's long-standing commitment to improve the quality of life of residents, employers and employees, and visitors. Safe and well-maintained streets are foundational to our broader economic vitality and are therefore key to the sustainability and resilience of the Bay Area."

6) **Argument in Opposition**: According to *Initiate Justice*, "As amended, SB 692 also allows vehicles to be abated if they are abandoned or inoperable. In its present form, SB 692 gives jurisdictions and law enforcement enormous discretion and lacks sufficient safeguards to prevent localities from misclassifying inhabited vehicles as abandoned or inoperable. Currently, there is no definition of what constitutes an "abandoned" or "inoperable" vehicle that can be towed pursuant to CVC 22669(a). The Vehicle Code merely states that localities may tow vehicles that they "ha[ve] reasonable grounds to believe… [have] been abandoned." Without any statutory definition, some localities have defined "abandoned vehicle" as simply a vehicle parked in the same place for 72 hours or more, even though there is a separate Vehicle Code section (22651(k)) for tows for such violations. The amendment allowing localities to tow vehicles as "inoperable" is even more troubling. Is a vehicle inoperable if it has a flat tire? If the battery is dead? In effect, by streamlining the dismantling of vehicles towed as abandoned or inoperable, SB 692 could easily lead to the destruction of many vehicles that were just parked in the same place for 72-hours or more, regardless of whether they were abandoned or not. This could lead to many people permanently losing their vehicles, and, of particular concern, vehicularly-housed people losing their homes.

"SB 692 would also streamline the dismantling of vehicles deemed to be "low-value" or worth less than $500 by the officer or other local employee authorizing the tow. By streamlining such destruction, SB 692 would heap problems onto an already faulty system. Under current state law, there are no requirements that the evaluator of towed vehicles have any training on how to properly evaluate vehicles' worth, that such evaluations be done by an independent actor, or that such evaluations are appealable by vehicle owners. In the absence of such protections – and with the benefit of SB 692's streamlining – localities could tow a vehicle of any worth, mark it as less than $500, and dismantle it. This is not a hypothetical concern. In 2024, for instance, the ACLU assisted a vehicularly-housed man in Santa Cruz County whose RV had been towed as abandoned and then immediately dismantled as a low-value vehicle, even though he was inside of the vehicle at the time of the tow and his vehicle had been insured at approximately $20,000. Because his vehicle was immediately dismantled after the tow, he was left without recourse and lost both his shelter and all his belongings. If SB 692 were to become law as currently written, such tragedies would only increase.

"By "streamlining," SB 692 would allow the immediate dismantling of a vehicle towed as low-value and abandoned if 15-days of advance notice is provided. Current state law requires both pre-removal and post-removal notice for such vehicle tows; SB 692 would remove the latter. This would deny vehicle owners adequate due process. If a vehicle was not abandoned, or worth more than $500, or otherwise had unlawfully towed, vehicle owners would be up the creek without any ability to appeal or get the vehicle back. If a local government made a mistake with the tow, it wouldn't matter – the vehicle would already be gone. Moreover, SB 692 does not specify what constitutes acceptable pre-removal notice, so localities could

dismantle a vehicle after merely posting a notice on the vehicle, whether the vehicle owner had seen the notice or not.

"We should not have to emphasize the harm that the destruction of a vehicle used as shelter can do to a houseless person. Due to the exorbitant cost of housing in this state – which directly stems from the bureaucratic morass that local governments have imposed on affordable housing construction – there are tens of thousands of people living in RVs and other vehicles parked on public streets. In 2023 in Los Angeles County, 39% of people experiencing homelessness were vehicularly housed; in San Jose and Sonoma Counties, those numbers were 17% and 29%, respectively. Further, "[p]eople living in vehicles [are] more likely to work and to have experienced homelessness for shorter durations and were less chronically unhoused." In other words, targeting these vehicles would target a group of people who are on the threshold of either short-term or chronic houselessness, making it more likely that they will fall further into poverty, lose what remaining belongings they have, and further exacerbate the problem of homelessness in our communities."

7) **Related Legislation**:

a) AB 630 (Mark Gonzalez), authorizes a public agency to remove and dispose of an abandoned recreational vehicle if the recreational vehicle is estimated to have a value of $4,000 or less and the public agency has verified that the recreational vehicle is inoperable, as specified. AB 630 is pending in Senate Appropriations Committee.

b) AB 1022 (Kalra), would have removes from existing law the authority of a peace officer to impound a vehicle that has five or more unpaid parking tickets or traffic violations, or to place a device designed to immobilize such a vehicle, effective January 1, 2026. AB 1022 was held in Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 2876 (Jones-Sawyer), Chapter 592, Statutes of 2018, clarifies that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing California statute.

b) AB 478 (Ridley-Thomas), Chapter 67, Statutes of 2003, provides the amount of time a public agency may wait after sending a notice to the vehicle's owner prior to disposing of a suspected abandoned vehicle is 15 days, and increases the maximum dollar value, from $300 to $500, of a vehicle that may qualify for disposal.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Berkeley
Bay Area Council
City of Concord
City of Oakland
City of Stockton

League of California Cities
Sacramento County District Attorney's Office

Oppose

ACLU California Action
California Civil Liberties Advocacy
Debt Free Justice California
Fair Chance Project
Felony Murder Elimination Project
Initiate Justice
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender
Western Center on Law & Poverty, INC.

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

Amended Mock-up for 2025-2026 SB-692 (Arreguín (S))

Mock-up based on Version Number 96 - Amended Senate 5/23/25
Submitted by: Staff Name, Office Name

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

~~**SECTION 1. Section 22650 of the Vehicle Code is amended to read:**~~

~~**22650. (a) It is unlawful for a peace officer or an unauthorized person to remove an unattended vehicle from a highway to a garage or to any other place, except as provided in this code.**~~

~~**(b) Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.**~~

~~**(c) Those law enforcement and other agencies identified in this chapter as having the authority to remove vehicles shall also have the authority to provide hearings in compliance with the provisions of Section 22852. During these hearings the storing agency shall have the burden of establishing the authority for, and the validity of, the removal.**~~

~~**(d) This section does not prevent a review or other action as may be permitted by the laws of this state by a court of competent jurisdiction.**~~

~~**(e) This article does not prevent a local government from performing emergency summary abatement of vehicles that are creating imminent health and safety hazards, pursuant to state law or local ordinance.**~~

SEC. ~~1~~2. Section 22661 of the Vehicle Code is amended to read:

22661. Any ordinance establishing procedures for the removal of abandoned or inoperable vehicles shall contain all of the following provisions:

(a) The requirement that notice be given to the Department of Motor Vehicles within five days after the date of removal, identifying the vehicle or part thereof and any evidence of registration

available, including, but not limited to, the registration card, certificates of ownership, or license plates.

(b) Making the ordinance inapplicable to (1) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (2) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard. This exception shall not, however, authorize the maintenance of a public or private nuisance as defined under provisions of law other than this chapter.

(c) (1) The requirement that not less than a 10-day notice of intention to abate and remove the vehicle or part thereof as a public nuisance be issued, unless the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle or part thereof.

(2) However, prior notice of intention is not required for removal of a vehicle or part thereof that is inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, and is valued at less than two hundred dollars ($200) by a person specified in Section 22855, if either of the following criteria is met:

(A) The property owner has signed a release authorizing removal and waiving their interest in the vehicle or part thereof.

(B) The vehicle or part is determined by the local agency to be a public nuisance presenting an imminent threat to public health or safety.

(3) Prior to final disposition pursuant to Section 22662 of a vehicle or part for which evidence of registration was recovered pursuant to subdivision (a), the local agency shall provide notice to the registered and legal owners of intent to dispose of the vehicle or part, and if the vehicle or part is not claimed and removed within 12 days after the notice is mailed, from a location specified in Section 22662, or if the owner signs a release waiving the waiting period, final disposition may proceed. A local agency or contractor thereof is not liable for damage caused to a vehicle or part thereof by removal consistent with this section.

(4) Paragraph (2) applies only as follows:

(A) To inoperable vehicles located upon a parcel that is zoned for agricultural use.

(B) To inoperable vehicles located upon a parcel that is not improved with a residential structure containing one or more dwelling units.

(d) The 10-day notice of intention to abate and remove a vehicle or part thereof, when required by this section, shall contain a statement of the hearing rights of the owner of the property on which the vehicle is located and of the owner of the vehicle. The statement shall include notice to the property owner that they may appear in person at a hearing or may submit a sworn written

statement denying responsibility for the presence of the vehicle on the land, with their reasons for such denial, in lieu of appearing. The notice of intention to abate shall be mailed, by registered or certified mail, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owners of record unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(e) The requirement that a public hearing be held before the governing body of the city, county, or city and county, or any other board, commissioner, or official of the city, county, or city and county as designated by the governing body, upon request for such a hearing by the owner of the vehicle or the owner of the land on which the vehicle is located. This request shall be made to the appropriate public body, agency, or officer within 10 days after the mailing of notice of intention to abate and remove the vehicle or at the time of signing a release pursuant to subdivision (c). If the owner of the land on which the vehicle is located submits a sworn written statement denying responsibility for the presence of the vehicle on their land within that time period, this statement shall be construed as a request for hearing that does not require the presence of the owner submitting the request. If the request is not received within that period, the appropriate public body, agency, or officer shall have the authority to remove the vehicle.

(f) The requirement that after a vehicle has been removed, it shall not be reconstructed or made operable, unless it is a vehicle that qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

(g) A provision authorizing the owner of the land on which the vehicle is located to appear in person at the hearing or present a sworn written statement denying responsibility for the presence of the vehicle on the land, with their reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that they have not subsequently acquiesced to its presence, then the local authority shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect those costs from the owner.

SEC. ~~23~~. Section 22851.3 of the Vehicle Code is amended to read:

22851.3. ~~(a)~~ Whenever a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of a public agency authorized pursuant to Section 22669, removes, or causes the removal of, a vehicle pursuant to Section 22669 and the public agency or, at the request of the public agency, the lienholder determines the estimated value of the vehicle is five hundred dollars ($500) or less, the public agency that removed, or caused the removal of, the vehicle shall cause the disposal of the vehicle under this section, subject to all of the following requirements:

~~(1)~~ (a) Not less than 72 hours before the vehicle is removed, the peace officer or the authorized public employee has securely attached to the vehicle a distinctive notice which states that the vehicle will be removed by the public agency. This subdivision does not apply to abandoned vehicles removed pursuant to subdivision (d) of Section 22669**, or abandoned vehicles or parts**

thereof that are inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, and is determined by the local agency to be a public nuisance presenting an immediate threat to public health or safety, which are determined by the public agency to have an estimated value of three hundred dollars ($300) or less.

~~(2)~~ (b) Immediately after removal of the vehicle, the public agency which removed, or caused the removal of, the vehicle shall notify the Stolen Vehicle System of the Department of Justice in Sacramento of the removal.

~~(3)~~ (c) The public agency that removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall obtain a copy of the names and addresses of all persons having an interest in the vehicle, if any, from the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System. This paragraph does not require the public agency or lienholder to obtain a copy of the actual record on file at the Department of Motor Vehicles.

~~(4)~~ (d) Within 48 hours of the removal, excluding weekends and holidays, the public agency that removed, or caused the removal of, the vehicle or, at the request of the public agency, the lienholder shall send a notice to the registered and legal owners at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the vehicle. A notice sent by the public agency shall be sent by certified or first-class mail, and a notice sent by the lienholder shall be sent by certified mail. The notice shall include all of the following information:

~~(A)~~ (1) The name, address, and telephone number of the public agency providing the notice.

~~(B)~~ (2) The location of the place of storage and description of the vehicle which shall include, if available, the vehicle make, license plate number, vehicle identification number, and mileage.

~~(C)~~ (3) The authority and purpose for the removal of the vehicle.

~~(D)~~ (4) A statement that the vehicle may be disposed of 15 days from the date of the notice.

~~(E)~~ (5) A statement that the owners and interested persons, or their agents, have the opportunity for a poststorage hearing before the public agency that removed, or caused the removal of, the vehicle to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within 10 days from the date of notice; that, if the owner or interested person, or their agent, disagrees with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vehicle in question may not be disposed of.

~~(5) (A)~~ (e)(1) A requested hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency that removed the vehicle may authorize its own

officers to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.

~~(B)~~ (2) Failure of either the registered or legal owner or interested person, or their agent, to request or to attend a scheduled hearing shall satisfy the poststorage validity hearing requirement of this section.

~~(6)~~ (f) The public agency employing the person, or utilizing the services of a contractor or franchiser pursuant to subdivision (b) of Section 22669, that removed, or caused the removal of, the vehicle and that directed any towing or storage, is responsible for the costs incurred for towing and storage if it is determined in the hearing that reasonable grounds to believe that the vehicle was abandoned are not established.

~~(7)~~ (g) An authorization for disposal may not be issued by the public agency that removed, or caused the removal of, the vehicle to a lienholder who is storing the vehicle prior to the conclusion of a requested poststorage hearing or any judicial review of that hearing.

~~(8)~~ (h) If, after 15 days from the notification date, the vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a poststorage hearing was requested or a poststorage hearing was not attended, the public agency that removed, or caused the removal of, the vehicle shall provide to the lienholder who is storing the vehicle, on a form approved by the Department of Motor Vehicles, authorization to dispose of the vehicle. The lienholder may request the public agency to provide the authorization to dispose of the vehicle.

~~(9)~~ (i) If the vehicle is claimed by the owner or their agent within 15 days of the notice date, the lienholder who is storing the vehicle may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in Section 22851.12.

~~(10)~~ (j) Disposal of the vehicle by the lienholder who is storing the vehicle may only be to a licensed dismantler or scrap iron processor. A copy of the public agency's authorization for disposal shall be forwarded to the licensed dismantler within five days of disposal to a licensed dismantler. A copy of the public agency's authorization for disposal shall be retained by the lienholder who stored the vehicle for a period of 90 days if the vehicle is disposed of to a scrap iron processor.

~~(11)~~ (k) If the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles, either directly or by use of the California Law Enforcement Telecommunications System, the public agency may issue to the lienholder who stored the vehicle an authorization for disposal at any time after the removal.

The lienholder may request the public agency to issue an authorization for disposal after the lienholder ascertains that the names and addresses of the registered and legal owners of the vehicle are not available from the records of the Department of Motor Vehicles either directly or by use of the California Law Enforcement Telecommunications System.

~~(12)~~ (l) A vehicle disposed of pursuant to this section may not be reconstructed or made operable, unless it is a vehicle that qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004, in which case the vehicle may be reconstructed or made operable.

~~**(b) The requirements in subdivision (a) shall be waived if the public agency meets either of the following conditions:**~~

~~**(1) Obtains a release signed by the owner of the vehicle assigning their interest in the vehicle to the public agency for purposes of disposition.**~~

~~**(2) Determines that the vehicle poses a public nuisance, has posted a 15-day public notice to the vehicle specifying that the vehicle is subject to disposal if not removed, and allows for a hearing pursuant to paragraphs (5) to (8), inclusive, of subdivision (a).**~~

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 701 (Wahab) – As Amended April 9, 2025

As Proposed to be Amended in Committee

SUMMARY: Establishes various criminal penalties for acts by a person with a signal jammer. Specifically, **this bill**:

1) Makes it an infraction for any person to manufacture, import, market, purchase, sell or operate a signal jammer, unless authorized by the Federal Communications Commission (FCC), punishable by forfeiture of the signal jamming device, and a fine not to exceed $500.

2) States that a second or subsequent offense involving manufacture, import, marketing, purchasing, selling or operating a signal jammer is punishable as a misdemeanor with up to one-year imprisonment in county jail, by a $1,000 fine, or by both fine and imprisonment.

3) Provides that a person who operates a signal jammer in conjunction with the commission of a misdemeanor or felony is guilty of a crime, punishable as a misdemeanor with up to one-year imprisonment in county jail, or by a fine of up to $1,000, or by both fine and imprisonment.

4) Provides that a person who willfully or maliciously uses a signal jammer to block state or local public safety communications, and who knows or should know that death or great bodily injury will result and death or great bodily injury do result, is guilty of an alternate felony/misdemeanor.

5) States that conviction of a crime with a signal jammer requires forfeiture of the device.

6) Specifies that the above prohibitions do not apply to the authorized and lawful use of signal jammers by local or state law enforcement.

7) Defines "signal jammer" to mean a device that intentionally blocks, jams, or interferes with authorized radio or wireless communications.

8) Defines "public safety communications" to mean the systems, technologies, and methods used by emergency response agencies, firefighters, and Emergency Management Services (EMS), to communicate with each other.

EXISTING FEDERAL LAW:

1) Prohibits a person from willfully or maliciously interfering with or causing interference to radio communications. (47 U.S.C. § 333.)

2) Prohibits a person from manufacturing, importing, selling, offering for sale, or shipping a device that interferes with radio communications. (47 U.S.C. § 302a, subds. (a)-(b).)
3) Provides that any person who willfully and knowingly violates specified requirements related to wire and radio communication, including the prohibitions above, shall be punished by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both, or up to two years for a subsequent offense. (47 U.S.C. § 501.)

4) Provides that any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used, sent, carried, manufactured, assembled, possessed, offered for sale, sold, or advertised with willful and knowing intent to violate § 302a, cited above, may be seized and forfeited to the United States. (47 U.S.C. § 510.)

5) Prohibits the intentional or malicious interference to satellite communications, including GPS, and subjects the operator to possible fines, imprisonment, or both. (18 U.S.C. § 1367, subd. (a).)

EXISTING LAW:

1) Provides that a person who unlawfully and maliciously removes, injures, destroys, damages, or obstructs the use of any wireless communication device with the intent to prevent the use of the device to summon assistance or notify law enforcement or any public safety agency of a crime is guilty of a misdemeanor. (Pen. Code, § 591.5.)

2) Provides that any person not authorized by the sender, who intercepts any public safety radio service communication, as defined, by use of a scanner or any other means, for the purpose of using that communication to assist in the commission of a criminal offense or to avoid or escape arrest, trial, conviction, or punishment or who divulges to any person he or she knows to be a suspect in the commission of any criminal offense, the existence, contents, substance, purport, effect or meaning of that communication concerning the offense with the intent that the suspect may avoid or escape from arrest, trial, conviction, or punishment is guilty of a misdemeanor. (Pen. Code, § 636.5.)

3) Requires the Department of Justice (DOJ) to maintain a statewide telecommunications system of communication for the use of law enforcement agencies (CLETS), and provides that CLETS shall be under the direction of the Attorney General, and shall be used exclusively for the official business of the state and any city, county, city and county, or other public agency. (Gov. Code, §§ 15152-15153.)

4) Makes it an infraction for a vehicle to be equipped with any device that is designed for, or is capable of, jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects. (Veh. Code, § 28150, subd. (a).)

5) Makes it an infraction for any person to use, buy, possess, manufacture, sell, or otherwise distribute any device that is designed for jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects. Possession of four or more of these devices is a misdemeanor. (Veh. Code, § 28150, subds. (b), (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Signal jammers are an increasingly prevalent problem across the US. They've been used in conjunction with burglaries, car thefts, bank heists, and more, blocking critical communication frequencies that WiFi, GPS, radio, and cell signals all rely on. While signal jammers are already illegal under federal law and Federal Communications Commission (FCC) rules, they continue to pose a major threat to emergency response and public safety due to an absence of adequate California state regulations.

   "SB 701 will allow state and local enforcement agencies to take direct action against these dangerous devices to protect the public from bad actors using signal jammers to facilitate serious crimes. SB 701 bans manufacturing, importing, marketing, purchasing, selling, or operating a signal jammer, with harsher penalties for possessing or operating a signal jammer in conjunction with a crime or maliciously using a signal jammer to block public safety communications."

2) **Effect of This Bill:** This bill would impose new criminal penalties for various acts by a person with a signal jammer. While existing California law contains no provisions pertaining explicitly to communications signal jamming, our laws currently make it an infraction for a vehicle to be equipped with a device that is capable of jamming or interfering with law enforcement speed detection devices, and additionally makes it an infraction to use, purchase, manufacture, or sell such a device. (Veh. Code, § 28150, subd. (a).) Existing law also makes it a misdemeanor to obstruct the use of any wireless communication device with the intent to prevent the use of the device to summon assistance or notify law enforcement. (Pen. Code, § 636.5.) Similarly, existing law makes it a misdemeanor to intercept any public safety radio communication for the purposes of committing a crime, escaping arrest, trial, conviction or punishment, or warn a suspect they are being investigated. (*Ibid.*)

   This bill creates three violations related to various conduct involving signal jammers. First, the bill makes it an infraction or misdemeanor to manufacture, import, market, purchase, sell, or operate a signal jammer, depending on the offense. The punishment for the infraction is a fine of up to $500, while the misdemeanor for a second or subsequent offense carries up to a year in county jail and the possibility of a $1,000 fine. Second, the bill prohibits the operation of a signal jammer in conjunction with the commission of a misdemeanor or felony, a violation of which is punishable as a misdemeanor with up to one year in county jail, or by a fine of up to $1,000, or by both the fine and imprisonment. Finally, the bill makes it a crime willfully or maliciously to use a signal jammer to block state or local public safety communications that results in great bodily injury or death, the punishment for which is an alternate felony/misdemeanor.

   Regarding the infraction for various conduct related to signal jammers, existing law provides that the default fine for an infraction is $250, unless a higher penalty is prescribed. (Pen. Code, § 19.8.) As mentioned above, this bill provides that any person who violates its prohibition against manufacturing, importing, marketing, purchasing, selling or operating a signal jammer may be fined up to $500, even for a first offense. Notably, the amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are

subject to statutorily-imposed penalty assessments, such as fees and surcharges. Though most base fines have not been increased since 2006, the penalty assessments attached to the fines have increased approximately 40% since 2006, thus increasing the total that a person actually pays. Current penalty assessments total roughly 310% of the initial fine, so a fine of $100 for a first offense, for instance, will actually cost an individual $410. (See Pen. Code, §§ 1464-1465.8, Gov. Code §§ 70373, 7600.5, 76000-76104.7.)

It is unclear whether increasing penalties has a deterrent effect. There is reliable evidence showing increased penalties generally fails to deter criminal behavior.[1] Data shows greater deterrent effects as the likelihood of being caught and the perception that one will get caught rises.[2] In contrast, the act of punishment and the length of punishment largely do not increase deterrence.[3]

Criminal fines rapidly balloon into unpayable amounts for most of the population, which create downstream economic consequences for impacted individuals and society. Unsurprisingly, the judicial branch reported that $8.6 billion in fines and fees remained unpaid at the end of 2019-20.[4] With evidence also showing that increasing criminal fines increases felony recidivism,[5] specifically among a population that historically has faced disproportionate punishment in the criminal justice system, it remains questionable whether increasing criminal punishment, as this bill does, would produce the desired impact.

Another useful point of reference here are the federal penalties for jammer-related crimes. For violations of the federal Communications Act of 1934, which include the manufacture, marketing, sale or operation of jammers and the willful or malicious interference with the radio communications of any station licensed or authorized under federal law, the penalty is up to a year in federal prison and a fine of up to $10,000 for a first offense, and up to 2 years in federal prison and another fine up to $10,000 for a subsequent offense. (47 U.S.C. § 501.) However, for the crime of willful or malicious interference to United States Government communications, federal law imposes a variable fine and/or up to 10 years in federal prison. (18 U.S.C. § 1362.)

In addition to statutory penalties, a state prison sentence may have immigration consequences for undocumented individuals. Existing law requires the California Department of Corrections and Rehabilitation (CDCR) to implement and maintain procedures to identify inmates in state prison who are undocumented felons subject to deportation, and requires

---

[1] *Five Things About Deterrence* (May 2016) National Institute of Justice <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of June 24, 2025].
[2] *Ibid.*
[3] *Ibid.*
[4] *Overview of Criminal Fine and Fee System* (May 13, 2021) Legislative Analyst's Office <https://lao.ca.gov/Publications/Detail/4427> [as of June 24, 2025].
[5] Giles, *The Government Revenue, Recidivism, and Financial Health Effects of Criminal Fines and Fees* (Sept. 9, 2023) Wellesley College <http://dx.doi.org/10.2139/ssrn.4568724> [as of June 27, 2025] (showing that the increase in fines levied for criminal punishment increased the likelihood of felony recidivism, especially among Black defendants).

specified communications between CDCR and the Department of Homeland Security. (Pen. Code, §§ 5025-5026.) Moreover, while existing law generally provides that state and local law enforcement agencies that operate county jails are prohibited from cooperating with the federal Immigrations and Customs Enforcement (ICE), as specified, CDCR is exempt from this prohibition. (Gov. Code, § 7284.4.)

The impact on immigrants and lawful assemblies are potentially significant. As the federal government continues its draconian enforcement of immigration laws, Californians are constitutionally exercising their rights to speak out, assemble, and petition for redress. Despite protections rooted in the First Amendment,[6] certain federal government officials appear to consider oppositional speech a security threat and potential crime. A recent, and not isolated, example of this approach includes physically taking to the ground, handcuffing, and briefly detaining US Senator Alex Padilla for attempting to ask questions at a press conference held by the Director of Homeland Security.[7]

While it is not difficult to imagine situations where the penalties attached to this bill could be justly applied (e.g., use of a signal jammer during a terrorist attack, or mass casualty event, to delay or prevent emergency medical aid from being rendered to those in need), new grants of public safety authority should warrant pause. Patrick Henry implored us to "guard with jealous attention the public liberty."[8] Also, as recently as 1989, the US Supreme Court held burning of the American flag was protected First Amendment conduct writing, "[our precedents] recognize that a principal 'function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'" (*Texas v. Johnson* (1989) 491 U.S. 397, 410.)

Creating any new criminal laws that could be used for the purposes of intimidating immigrants, lawful protestors, or both demands exacting consideration. Given the constitutional considerations, legal gray area surrounding whether possession alone is illegal under state law, and the potential for sweeping in too many people and conduct, it is significant that "possess" in any form has been excised from the bill. By not subjecting possession alone to criminal penalties (through Committee amendments which are discussed more fully in note 5), the potential for abuse of this law is likely reduced and a person who, for example, operates a small museum centered on displaying myriad telecommunications equipment does not have to worry about their exhibits being seized. The narrowed scope and sweep of prohibited behavior could lead to more precise application and accompanying public safety benefits.

---

[6] Gray, *12 Supreme Court Milestones that Helped Define First Amendment Rights* (Apr. 25, 2019) American Bar Association Journal <https://www.abajournal.com/news/article/check-out-12-supreme-court-milestones-that-help-defined-first-amendment-rights-gallery> [as of June 26, 2025].

[7] Breuninger, *Sen. Alex Padilla Handcuffed after Forced Removal from DHS Press Conference* (June 12, 2025) <https://www.cnbc.com/2025/06/12/alex-padilla-noem-dhs-handcuffed.html?msockid=370988c969f860f133059d8068b4610e> [as of June 26, 2025].

[8] *Patrick Henry Speech in the Virginia Convention* (June 5, 1788) Center for the Study of the American Constitution at p. 2 <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/Patrick_Henry_Speech_in_the_Virginia_Convention5.pdf.> [as of June 26, 2025].

3) **Signal Jammers and Public Safety Communications:** Police and other emergency response entities use an array of different systems and technologies to communicate with each other in a secure, reliable and efficient manner. An essential example of these technologies is the police radio, which has been the vital for law enforcement communication since the early 1930s.[9] A key principle guiding the development of public safety radio has been "interoperability," which is essentially the ability of one radio to connect and communicate with any other radio.[10] Interoperability is critical in the public safety context, where first responders, often from multiple agencies in different jurisdictions, need to be able efficiently and confidently to communicate during emergencies.[11] Other communications technologies employed by law enforcement include mobile data terminals (in-vehicle computers), GPS tracking and location systems, and computer-aided dispatch (CAD) systems.[12]

Signal jammers are devices that intentionally transmit signals on the same frequencies that other telecommunications devices operate on, preventing them from sending and receiving information. Signal jammers can emit frequencies that interfere with a range of devices, including radios, drones, cellular networks, GPS and WiFi. Although it is illegal to possess, manufacture, purchase, or sell signal jammers under federal law, it is not difficult to find such devices for sale online. A recent NBC News investigation found that:

> Several online retailers and drone technology companies are marketing the sale of radio frequency jammers as drone deterrence or privacy tools, sidestepping federal laws . . . . These companies take many forms: from Amazon third-party sellers to separate online stores based in China to small domestic companies that specialize in drone-related equipment . . . . On Amazon, nine independent sellers recently offered "jammer" devices for sale for as little as $25.63, according to searches by NBC News. The product listings said they could be used for a variety of situations, including interfering with microphones. All nine sellers described themselves as based in China. In messages to NBC News, several said they had no information to share beyond what was on the product pages. One seller sent a message confirming that they would ship the 'jammer' to California, writing, 'US customers can buy it.'[13]

While advocates for the use and legality of signal jammers have highlighted the privacy and security benefits of such devices, the FCC has warned that jammers can interfere with emergency and other public safety communications, disrupt normal phone use, and confuse airport navigation systems.[14] This bill largely would bring California law into alignment with federal law and prohibit various conduct related to signal jammers.

---

[9] Schneider, *The Development of Police Radio in the United States* (2018) The Radio Historian <http://www.theradiohistorian.org/police/police.html> [as of June 26, 2025].
[10] Hawkins, *Communications Interoperability* (2013) U.S. Department of Justice <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0714-pub.pdf> [as of June 26, 2025].
[11] *Ibid.*
[12] *Ibid.*
[13] Ingram, David, *Anti-drone companies market radio jammer devices online despite FCC rules outlawing them* (Mar. 20, 2024) NBC News < https://www.nbcnews.com/tech/security/drone-radio-frequency-jammer-signal-online-defense-technology-rcna135103> [as of June 18, 2025].
[14] *Ibid.*

4) **Federal Laws and Regulations:** The FCC is responsible for assigning licenses to individual law enforcement agencies for the operation of their radio systems on the "public safety spectrum," which serves the telecommunications needs of most public safety agencies across the country.[15] With the development of online radio streaming, many unencrypted police radio channels have become accessible via internet websites that provide a livestream.[16]

   The FCC's primary regulatory authority is derived from the Communications Act of 1934 (hereinafter, "the Act"), which established the agency and, among other things, generally prohibits the operation, manufacture, importation, marketing, and sale of equipment designed to jam or otherwise interfere with authorized radio communications, such as radar, GPS, and cell phone communications. (See U.S.C. 47 U.S.C. § 501 et seq.) The Act also imposes significant penalties for a violation of its provisions, including substantial fines and imprisonment, and allows the FCC to seize unlawful equipment. (47 U.S.C. § 510.) To assist state and local jurisdictions, and the public at-large, with jammer-related issues the FCC has a process by which a local law enforcement official or member of the public can file complaints directly with the agency.[17] Additionally, the Department of Homeland Security, primarily through the Cybersecurity & Infrastructure Security Agency (CISA), provides guidance to public safety organizations on mitigating radio frequency interference threats.[18]

   With substantial penalties available under federal law for acts this bill would punish, and some existing state law that targets some of the behavior precluded in the bill, it is unclear whether adding the new criminal penalties attached to this bill will achieve the desired public safety outcomes.

5) **Committee Amendments:** The author has agreed to accept amendments in committee which include:

   a) Removing "possess" from the list of proscribed behaviors;

   b) Specifying that a second or subsequent violation of behavior that would be an infraction for a first time offense is punishable as a misdemeanor with up to a $1,000 fine;

   c) Clarifying that operation of a signal jammer in conjunction with a crime applies to misdemeanors or felonies, which is punishable as a misdemeanor and up to a $1,000 fine;

   d) Willful and malicious use of a signal jammer that is punishable as an alternate felony/misdemeanor applies to state or local public safety communications and that the person engaging in willful or malicious use knows or should know that death or great bodily injury could result and that death or great bodily injury does in fact result from the

---

[15] Public Safety Spectrum." *Federal Communications Commission* <https://www.fcc.gov/public-safety/public-safety-and-homeland-security/policy-and-licensing-division/public-safety-spectrum> [as of June 18, 2025].
[16] See, *e.g.,* Sacramento County Sheriff and City Police radio can be streamed at: <https://www.broadcastify.com/listen/feed/5688> [as of June 18, 2025].
[17] *Consumer Inquiries and Complaints Center,* Federal Communications Commission <https://consumercomplaints.fcc.gov/hc/en-us> [as of June 26, 2025].
[18] *Radio Frequency Interference Best Practices Guidebook* (June 1, 2020) Cybersecurity and Infrastructure Security Agency SAFECOM/National Council of Statewide Interoperability Coordinators <https://www.cisa.gov/sites/default/files/publications/SAFECOM-NCSWIC_RF_Interference_Best_Practices_Guidebook_6-4-20-FINAL_508c.pdf> [as of June 18, 2025].

willful or malicious use; and,

e) Conviction under the sections of the bill require forfeiture of the signal jamming device.

6) **Argument in Support**: According to the *California Police Chiefs Association*, "By creating state laws regarding the use of these already illegal devices, we empower our state and local law enforcement agencies to investigate and take action against these dangerous devices. "Law enforcement agencies nationwide are dealing with severe and evolving threats posed by radio frequency signal jammers. These devices, which are already illegal under federal law and regulations, can cause interference, potentially resulting in a denial of service for critical communications such as cellular, land mobile radio, Global Position Systems, and wireless security systems. They may also significantly impact operation coordination and officer and first responder safety.

"Signal jammers emit radio frequency signals or noise in specific bands to overpower and block other signals, such as authorized communications transmissions. These devices come in all shapes and sizes, can be purchased online or constructed at home, and have been used to mask crimes, such as burglary, vehicle theft, cargo theft, parole violations, drug/human trafficking, and acts of terrorism. From fiscal years 2021-23, federal agencies recorded over 650 signal jammer seizures.

"Signal jamming is illegal under the United States Communication Act of 1934 and through accompanying regulations established by the Federal Communications Commission (FCC). Any use of unfederally authorized jamming technology is prohibited, as is the manufacturing, sale, importation, and marketing. In addition, several states – Florida, Texas, Arizona, and Alabama – have recently passed laws making it illegal under their statutes, thereby empowering local law enforcement to take necessary action against the problem."

7) **Argument in Opposition**: According to *La Defensa*, "While we appreciate the importance of deterring and addressing interference with lawful law enforcement activities, we believe existing law already sufficiently accomplishes this purpose. Therefore, this bill is duplicative and will unnecessarily increase state costs.

"Federal law already prohibits the manufacture, importation, marketing, sale or operation of signal jammers within the United States. (47 U.S.C. § 302a, subd. (b).) Federal law also prohibits the willful or malicious interference with the radio communications of any station licensed or authorized under the Federal Communications Act. (47 U.S.C. § 333.) California public safety communications fall under the Federal Communications Act and are regulated by the Federal Communications Commission. Any person who willfully or maliciously interferes with California public safety communications can already be charged with a federal offense and punished by significant fines and sentenced to a federal prison term. (47 U.S.C. § 501.)

"California law likewise prohibits the conduct contemplated by SB 701. Penal Code section 148 prohibits a person who maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency. (Penal Code, § 148, subd. (a)(2).)

"California's Penal Code has been criticized for its complexity and its unnecessary duplication of existing crimes. As former Governor Brown cautioned nearly 10 years ago in numerous veto messages:

> 'Each of these bills creates a new crime – usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.
> Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded…'

"Given existing state and federal penalties, we see no need to create new, overlapping state penalties and add to our already labyrinthine Penal Code."

8) **Related Legislation**: None.

9) **Prior Legislation**: None.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Santa Clara
California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
City of Los Angeles
City of Sunnyvale
League of California Cities

Oppose

ACLU California Action
California Civil Liberties Advocacy
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Initiate Justice
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender

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

Amended Mock-up for 2025-2026 SB-701 (Wahab (S))

Mock-up based on Version Number 97 - Amended Senate 4/9/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 636.6 is added to the Penal Code, to read:

636.6. (a)**(1)** A person who manufactures, imports, markets, purchases, sells, or operates a signal jammer, unless authorized to do so by the Federal Communications Commission, is guilty of an infraction, punishable ~~**by forfeiture of the signal jamming device and**~~ by a fine not to exceed five hundred dollars ($500). ~~**, or a misdemeanor, punishable by forfeiture of the signal jamming device and by imprisonment in a county jail not exceeding one year, by a fine not to exceed five hundred dollars ($500), or by both that fine and imprisonment.**~~

(2) A second or subsequent violation of paragraph (1) is a misdemeanor, punishable by imprisonment in a county jail not exceeding year, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) A person who ~~**possesses or**~~ operates a signal jammer in conjunction with the commission of a **misdemeanor or felony** ~~**crime**~~ is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) A person who willfully or maliciously uses a signal jammer to block **state or local** public safety communications**, and who knows or should know that using the signal jammer is likely to result in death or great bodily injury and great bodily injury or death is sustained by any person as a result of that use,** is guilty of a crime, punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(d) A conviction under this section requires forfeiture of the signal jamming device.

~~**(d)**~~**(e)** This section does not apply to the **authorized and lawful** use of signal jammers by local or state law enforcement.

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

(1) "Signal jammer" means a device that intentionally blocks, jams, or interferes with authorized radio or wireless communications.

(2) "Public safety communications" means the systems, technologies, and methods used by emergency response agencies, including law enforcement, firefighters, and EMS, to communicate with each other.

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

Date of Hearing: July 1, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 759 (Archuleta) – As Amended May 23, 2025

SUMMARY: Requires a supervising agency to petition a court to modify, revoke, or terminate post-release community supervision (PRCS) if a person on PRCS has violated the terms of their release for a third time and has committed a new felony or misdemeanor.

EXISTING LAW:

1) Provides that the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR):

   a) A person who committed a serious felony, as specified;

   b) A person who committed a violent felony, as specified;

   c) A person serving a sentence pursuant to California's Three Strikes Law;

   d) A high risk sex offender;

   e) A mentally disordered offender;

   f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which the person was sentenced to state prison; and,

   g) A person subject to lifetime parole at the time of the commission of the offense that resulted in a state prison sentence. (Pen. Code, § 3000.08, subds. (a) through (i).)

2) Requires all other individuals released from prison to be placed on PRCS provided by the probation department of the county to which the person is being released. (Pen. Code, §§ 3000.08, subd. (b), & 3451, subd. (a).)

3) Requires any individual paroled from state prison before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09, subd. (b).)

4) Delineates conditions of PRCS, including obeying all laws, following the directives and instructions of the supervising county agency, reporting to the supervising county agency as directed by that agency, immediately informing the supervising county agency if the person is arrested or receives a citation, obtaining the permission of the supervising county agency

to travel more than 50 miles from the person's place of residence, and participating in rehabilitation programming as recommended by the supervising county agency, among others. (Pen. Code, § 3453.)

5) Authorizes intermediate sanctions, including flash incarceration, for violating the terms of PRCS. (Pen. Code, § 3454, subd. (b).)

6) Defines "flash incarceration" as a period of detention in a city or county jail due to a violation of a person's conditions of parole or PRCS. Specifies the length of the detention period can range between one and 10 consecutive days in a county jail. (Pen. Code, §§ 3000.08, subd. (e), and 3454, subd. (c).)

7) Provides that intermediate sanctions include, but are not limited to, the following:

   a) Short-term "flash" incarceration in jail for a period of not more than 10 days.

   b) Intensive community supervision.

   c) Home detention with electronic monitoring or GPS monitoring.

   d) Mandatory community service.

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

   f) Work, training, or education in a furlough program.

   g) Work, in lieu of confinement, in a work release program.

   h) Day reporting.

   i) Mandatory residential or nonresidential substance abuse treatment programs.

   j) Mandatory random drug testing.

   k) Mother-infant care programs.

   l) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions. (Pen. Code, § 3450, subd. (b)(1-8).)

8) Requires the supervising county agency to petition the court to revoke, modify, or terminate PRCS if it has determined, following application of its assessment processes, that intermediate sanctions are not appropriate. Provides that upon a finding that the person has violated the conditions of PRCS, the revocation hearing officer has authority to do all of the following:

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

b) Revoke and terminate PRCS and order the person to confinement in a county jail.

c) Refer the person to a reentry court or other evidence-based program in the court's discretion. (Pen. Code, § 3455, subd. (a).)

9) Specifies that if PRCS is revoked or modified and confinement is ordered, the person may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, § 3455, subd. (d).)

10) Requires CDCR to provide local law enforcement agencies with specified information about a person released on PRCS. (Pen. Code, § 3003, subd. (e)(1).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "One of the primary responsibilities of government is to ensure people feel safe in their communities – safe in their home, at the park, or walking to school. There is no question that monitoring repeat offenders will help make our community safer for residents and law enforcement. SB 759 will help address the crimes being committed by repeat offenders and prevent future tragedies by holding these individuals accountable for their actions when they violate the terms of PRCS."

2) **Post-Release Community Supervision and Flash Incarceration:** In 2011, AB 109, also known as the Criminal Justice Realignment Act, created a new form of community supervision under which certain people exiting state prison are monitored by the probation departments of each county, instead of parole.[1] This new form of supervision is called Post-Release Community Supervision (PRCS). As of October 1, 2011, people who are released from state prisons for crimes not including serious or violent sex offenses, or offenses requiring sex offender registration, are placed on PRCS under the supervision of county probation officers.

   Individuals sentenced pursuant to Penal Code section 1170, subdivision (h)[2] to county jail are not released on parole or PRCS upon serving their terms—unlike those who serve time in state prison. Once the sentence has been fully served, the defendant must be released without any restrictions or supervision. A form of supervision, however, may be imposed under existing law.

---

[1] Parolees are supervised by the Division of Adult Parole Operations within the California Department of Corrections and Rehabilitation. (See https://www.cdcr.ca.gov/parole/, last visited on June 16, 2024.)

[2] Penal Code section 1170, subdivision (h) requires, in part, that any person sentenced pursuant to the Realignment Act that does not have a prior serious or violent felony on their record and is not a registered sex offender, may be sentenced to county jail on a felony, rather than state prison. Upon release, the person is supervised by county probation, not state parole.

With the creation of PRCS, the supervising agency was authorized to employ "flash incarceration" as an "intermediate sanction" for responding to both parole and PRCS violations. (See Pen. Code, §§ 3454, subd. (c), & 3000.08, subd. (e).) The Legislative Analyst's Office explained the context and reasoning behind "flash incarceration" as part of realignment:

> "[T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings."[3]

The period of PRCS cannot exceed three years. (Pen. Code, § 3456, subd. (a)(1).) However, a person who has been on post-release supervision for a continuous year with no violations of their conditions of post-release that result in a custodial sanction shall be discharged from supervision within 30 days. (*Ibid.*) A county agency supervising a person on community supervision may order flash incarceration without judicial authorization. (Pen. Code, § 3454, subd. (b).) ***Penal Code section 3453, subdivision (q), also provides that a person placed on such supervision must waive any right to a court hearing prior to the imposition of a period of flash incarceration.*** (See *People v. Superior Court (Ward)* (2014) 232 Cal.App.4th 345 [holding the imposition of flash incarceration is allowable as a custodial sanction and the defendant's waiver of a hearing was valid].)

The intent of intermediate sanctions, like flash incarceration, is to balance holding individuals accountable for violating the conditions of supervision while creating shorter disruptions from work, home, or programming which often results from longer-term revocations. Because flash incarceration has been used successfully by probation officers on persons supervised under PRCS, the Legislature authorized the use of flash incarceration for individuals granted probation or placed on mandatory supervision. The statute authorizing the use of flash incarceration contains a sunset provision which has been extended several times, most recently to January 1, 2028.

This bill proposes to mandate revocation or modification where a person has violated the terms and conditions of PRCS for a third time and is charged with a misdemeanor or felony. When Realignment was enacted, the intent was to provide maximum flexibility to county probation officers who carry the lion's share of the supervisory workload. Presumably, any probation officer would move to revoke or modify PRCS if a person violated three times and committed a new offense, but there may be circumstances where modification or termination are not appropriate. The intent of Realignment was to grant the supervising agency the

---

[3] Legislative Analyst's Office, *The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update* (Feb. 22, 2012), pp. 8-9, available at <https://lao.ca.gov/analysis/2021/crim_justice/2011-realignment-of-adult-offenders-022212.pdf .)

discretion to make that recommendation based on their wealth of experience and information. To mandate such curtailment of authority in law arguably defeats the purpose of Realignment. Finally, pursuant to Proposition 30 (2012), any new mandate on county jails is subject to reimbursement by the state. In eliminating probation discretion in this case, more people will be sentenced to county jail or prison resulting in a slowly escalating return to the overcrowding crisis of the mid-2000s and billions of dollars in costs just as the state is heading into a Recession.

3) **Flash Incarceration**: Changes to the supervision of individuals released from prison implemented by the 2011 realignment legislation included establishing a new sanction for a violation of supervised release known as flash incarceration. Flash incarceration is defined as "a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision" that "can range between one and 10 consecutive days." (Pen. Code, § 3455, subd. (c).)

With the creation of PRCS, the supervising agency was authorized to employ "flash incarceration" as an "intermediate sanction" for responding to PRCS violations. (Pen. Code, § 3454, subd. (c).) The Legislative Analyst's Office explained the context and reasoning behind "flash incarceration" as part of realignment:

> [T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders. . . . [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings. (Legislative Analyst's Office, *The 2012–13 Budget: The 2011 Realignment of Adult Offenders—An Update* (Feb. 22, 2012), pp. 8-9, available at <https://lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.pdf>.)

The purpose of intermediate sanctions, like flash incarceration, is to balance holding offenders accountable for violating the conditions of supervision while creating shorter disruptions—to the person's employment, home life, or programming—which often result from longer-term revocations. Because flash incarceration has been used successfully by probation officers on individuals supervised under PRCS, the Chief Probation Officers sponsored SB 266 (Block), Chapter 706, Statutes of 2016, to extend the use of flash incarceration to individuals granted probation or placed on mandatory supervision. The statute authorizing the use of flash incarceration contains a sunset provision which has been extended several times, most recently to January 1, 2028.

This bill limits the use of all intermediate sanctions, including flash incarceration, on individuals on PRCS. Specifically, the bill prohibits the use of any intermediate sanction if the person on PRCS has violated the terms of release for a third time and has committed a new felony or misdemeanor. In that instance, the supervising agency must petition the court to revoke, modify, or terminate PRCS.

4) **Supervision Conditions**: People who are subject to community supervision such as PRCS are generally required to comply with a set of conditions. Common supervision conditions include requirements to submit to regular drug testing, to attend certain types of classes, to refrain from consuming alcohol, to receive outpatient mental health treatment, to maintain employment, obtain permission from the supervising agent or officer to travel outside of a specified area, and to refrain from associating with specified individuals. Violations of supervision conditions can lead to a variety of sanctions, including, but not limited to, flash incarceration, revocation of that particular type of supervision, and re-incarceration.

   Penal Code section 3453 enumerates a list of conditions that apply to individuals on PRCS. Each county probation department is also authorized to impose additional conditions, but any additional PRCS conditions must be reasonably related to the underlying offense for which the person spent time in prison, or to the person's risk of recidivism and the person's criminal history, and be otherwise consistent with law. (Pen. Code, § 3454, subd. (a).)

5) **Prior Legislation:** This bill is substantially similar to SB 1262 (Archuleta), a bill that this Committee passed in 2024. This bill and SB 1262 are narrower versions of a prior bill, AB 1408 (Calderon), which was vetoed in 2017. In his veto message, Governor Brown wrote:

   > This bill—among other requirements placed on both the local and state correctional systems—would limit local probation departments' ability to use intermediate sanctions for individuals under post release community supervision.
   >
   > This bill was introduced as a response to the senseless and horrifying murder of a Whittier police officer, an event that shocked and saddened our entire state. Unfortunately—as history has taught us repeatedly—legislative responses to specific individual crimes often do not produce the intended results, and more often than not are found to be counterproductive once they are implemented.
   >
   > I believe this is such a bill, and while I appreciate the author's sincere attempt to respond to a truly terrible crime, I do not agree that a three-strikes and you're out approach is the correct solution. This measure would undermine the sound discretion of local probation authorities who, by training and sworn responsibility, are in the best position to make determinations on what type of sanctions or punishment should be imposed.

   This bill includes a provision that limits the use of intermediate sanctions if the person on PRCS has violated the terms of release for a third time, but additionally requires the person on PRCS to have committed a new felony or misdemeanor. Although this bill limits a probation department's discretion, it does require more than just violations of the terms of release, which as described above often entails non-criminal conduct with no obvious nexus to risk of future recidivism or threat to public safety. It should be noted that when a person has committed a new crime, as required by this bill, the prosecutor may file new charges instead of treating that act as a violation of a condition of supervision.

6) **Argument in Support**: According to the *City of Norwalk*, "Existing law requires county agencies supervising the release of individuals on post-release community supervision to petition the court for revocation, modification, or termination of that community supervision if the agency determines that release to no longer be appropriate.

"This bill would expand upon this existing statute by providing specific guidelines for the revocation of post-release community supervision after a person's third violation of their terms of release in addition to any new misdemeanor or felony committed.

"In 2017, the tragic loss of Whittier Police Officer Keith Boyer, when a parolee murdered Officer Boyer and another individual, serves as a stark reminder for the need for reform. The loss of Officer Boyer has had a dep impact on the community and highlights the need for effective management of post-release supervision. SB 759 prioritizes accountability to prevent repeat offenders on community supervision to ensure the appropriate persons receive this type of release, all of which are a testament to the lessons learned from the tragic loss of Officer Boyer.

"The enhanced regulations around the revocation of community custody would ensure that only those who are actively working to successfully re-enter the community and are not a danger to the community are eligible to remain within that community."

7) **Argument in Opposition**: According to *Ella Baker Center for Human Rights*, "As written, the bill will needlessly incarcerate people on PRCS for minor conduct that harms no one. Technical violations of supervision are violations that do not amount to a new crime. These violations are frequently for conduct as minor as having a low battery on one's GPS monitor, arriving 15 minutes late to a meeting with a probation officer because a bus was late, or arriving home after curfew.

"While the bill also requires the person to commit a new misdemeanor or felony before the petition is mandated, a misdemeanor can also include minor offenses such as possession of drug paraphernalia or simple possession of a small quantity of certain drugs. These misdemeanors are often considered too minor to be charged as new crimes and are instead charged as technical violations. If someone commits a more serious misdemeanor or a felony, then district attorneys can and do charge those as new criminal cases, or they already file petitions to revoke someone's supervision—making the bill unnecessary.

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

"California already over-incarcerates people for technical violations, wasting valuable taxpayer dollars. Technical violations also contribute to unnecessary jail and prison overcrowding at a time when prison and jail populations are projected to increase significantly due to Proposition 36. 27,266 people on parole were incarcerated for technical violations in 2023, amounting to 72% of the entire parole population. The estimated annual costs of incarcerating people in California prison (not jail) for technical violations is $149,210,102 5 for people on probation and $7,375,679 6 for people on parole. Importantly, this data does not include incarcerations for technical violations that result in jail, which

likely account for the majority of incarcerations for technical violations. Therefore, this data is underinclusive.

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

"SB 759 also supplants the expertise and experience of probation professionals, who make decisions whether to revoke someone's PRCS supervision. Under California Penal Code § 3455 as currently written, each supervising county agency has full authority and discretion to impose intermediate sanctions (including flash incarceration) as well as to petition the court to revoke and terminate post-release community supervision if it determines that intermediate sanctions are insufficient. SB 759 undermines this jurisdiction by requiring the supervising agency to impose the most severe penalty upon a third technical violation and a new misdemeanor.

"Furthermore, people of color are disproportionately incarcerated because of technical violations, nationally and in California. In California, Black people are 6.7 times more like to be admitted to prison for a revocation than white people. Latine people are 2.1 times more likely to be admitted to prison for a parole revocation than white people. 10 This bill is therefore likely to exacerbate racial disparities in incarceration.

"This bill, notably, is a re-do of Assembly Bill 1408 (Calderon), from 2017. Governor Brown vetoed this bill then because he did not agree that 'a three-strikes and you're out approach is the correct solution.' Additionally, he noted that while 'this bill was introduced as a response to the senseless and horrifying murder of a Whittier police officer, an event that shocked and saddened our entire state,' he nevertheless determined that 'unfortunately–as history has taught us repeatedly–legislative responses to specific individual crimes often do not produce the intended results, and more often than not are found to be counterproductive once they are implemented.'

"We need to invest in smart, supportive re-entry solutions instead of repeating punitive approaches to community supervision that are proven to be costly, harmful, and ineffective. California should be moving toward less incarceration for technical violations, not more. People on PRCS should be given a second chance. A three-strikes approach for people on PRCS is just too harsh."

8) **Related Legislation**: AB 1376 (Bonta), would provide that a ward may not remain on probation for a period that exceeds 6 months, except that a court may extend the probation period upon proof by a preponderance of the evidence that it is in the ward's best interest to extend probation for a period not to exceed 6 months. AB 1376 is pending hearing in the Senate Appropriations Committee.

9) **Prior Legislation**:

a) AB 1483 (Haney), of the 2025-2026 Legislative Session, would have prohibited the detention, arrest, or incarceration of a person on supervised release for a technical violation without a revocation order, and eliminates the use of flash incarceration for technical violations of supervised release. AB 1483 was held in suspense in the Assembly Appropriations Committee.

b) SB 537 (Archuleta), of the 2025-2026 Legislative Session, would have excluded a person sentenced to first- or second-degree murder with a maximum term of life imprisonment from the required 3-year parole period applicable to any person released from state prison on or after July 1, 2020. SB 537 was held in suspense in the Senate Appropriations Committee.

c) SB 1262 (Archuleta), of the 2023-2024 Legislative Session, was substantially similar to this bill. SB 1262 was held in suspense in the Assembly Appropriations Committee.

d) AB 1744 (Levine), Chapter 756, Statutes of 2022, extended authorization for the use of flash incarceration for individuals on probation or mandatory supervision until January 1, 2028.

e) AB 597 (Levine), Chapter 44, Statutes of 2019, extended authorization for the use of flash incarceration for individuals on probation or mandatory supervision until January 1, 2023.

f) AB 1408 (Calderon), of the 2017-2018 Legislative Session, would have limited the number of intermediate sanctions which the probation department may impose against a person on PRCS. The Governor vetoed AB 1408.

g) SB 266 (Block), Chapter 706, Statutes of 2016 authorized the use of a sanction known as "flash incarceration" for defendants granted probation or placed on mandatory supervision.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs (ALADS)
California Contract Cities Association
California Police Chiefs Association
City of Arcadia
City of Norwalk
City of Whittier
League of California Cities

Oppose

ACLU California Action
California Public Defenders Association
Californians United for a Responsible Budget

Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
San Francisco Public Defender
Uncommon Law
Universidad Popular

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 820 (Stern) – As Amended June 25, 2025

As Proposed to be Amended in Commitee

SUMMARY: Authorizes, until January 1, 2030, a separate process to involuntarily medicate individuals charged with a misdemeanor who have been found to be incompetent to stand trial (IST), as specified. Specifically, **this bill**:

1) States, notwithstanding existing procedures for involuntary medication of pretrial county jail inmates, if an individual charged with a misdemeanor and who is confined in county jail has been found IST, antipsychotic medication may be administered without the defendant's informed consent in either an emergency, as defined, or upon a court's determination that the defendant is gravely disabled, as defined, and does not have the capacity to consent to or refuse treatment with antipsychotic medication.

2) Provides that in case of an emergency, the following procedures apply:

   a) Antipsychotic medication may, despite the individual's objection, be administered before a capacity hearing if the medication is necessary to address the emergency condition and is administered in the least restrictive manner, only for the duration of the emergency, and in no case for more than 72 hours, except as provided below.

   b) If a psychiatrist determines that continued administration of antipsychotic medication is necessary beyond the initial 72 hours and the individual does not consent to take the medication voluntarily, the psychiatrist may petition the superior court in the county where the individual is confined to order continued treatment with antipsychotic medication.

   c) The petition and written notice describing the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication shall be filed within the initial 72-hour period that the antipsychotic medication is administered and served on the individual and their counsel.

3) Defines an "emergency" by way of reference to existing provisions of law, as either:

   a) A situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment; or,

b) When there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent.

4) Defines "gravely disabled" by way of reference to existing law as a condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care.

5) Provides that upon a court's determination that an individual is gravely disabled and that the individual does not have the capacity to consent to or refuse treatment with antipsychotic medication, the court shall consider opinions in the reports prepared by a licensed psychologist or psychiatrist evaluating the individual's competency as applicable to the issue of whether the individual lacks the capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

   a) The court shall conduct a hearing, which may occur at the same time as the competency hearing, before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer to determine whether any of the following is true:

      i) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court, the individual lacks the capacity to make decisions regarding antipsychotic medication, the individual's mental disorder requires medical treatment with antipsychotic medication, and, if the individual's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the individual will result. Probability of serious harm to the physical or mental health of the individual requires evidence that the individual is presently suffering adverse effects to their physical or mental health, or the individual has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that an individual has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the individual.

      ii) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court, the individual is a danger to others, in that the individual has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the individual had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the individual being taken into custody, and the individual presents, as a result of mental disorder or mental defect, a danger of inflicting substantial physical harm to others.

   b) If the court finds the conditions described above to be true, and has considered the requisite conditions as specified in 8) below, and if pursuant to the opinion offered to the court on the individual's competency, a psychiatrist or licensed psychologist has opined that treatment with antipsychotic medication may be appropriate for the individual, the court may issue an order authorizing the administration of antipsychotic medication as

needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

6) States that the fact that an individual has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the individual is able to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care, which shall be evaluated based upon the individual's ability to provide for those needs while not incarcerated.

7) Provides the following rights to an individual before an order authorizing involuntary medication:

   a) To receive written notice of the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication;

   b) To be represented by counsel at all stages of the proceedings;

   c) To receive timely access to their medical records and files;

   d) To be present at all stages of the proceedings; and,

   e) To present evidence and cross-examine witnesses.

8) States that after the hearing, a court may order involuntary medication to be administered if the court finds by clear and convincing evidence that all of the following conditions are met:

   a) A psychiatrist or psychologist has determined that the individual has a serious mental health disorder that can be treated with antipsychotic medication;

   b) A psychiatrist or psychologist has determined that, as a result of that mental health disorder, the individual is gravely disabled and lacks the capacity to consent to, or refuse treatment with, antipsychotic medications;

   c) That serious harm to the physical or mental health of the individual is likely to result absent treatment with antipsychotic medication;

   d) A psychiatrist has prescribed one or more antipsychotic medications for the treatment of the individual's disorder, has considered the risk, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the individual;

   e) The individual has been advised of the expected benefits of any potential side effects and risks to the individual, any alternatives to treatment with antipsychotic medication, and refuses, or is unable to consent to, the administration of the medication;

   f) The jail has made a documented attempt to locate an available bed for the individual in a community-based treatment facility in lieu of seeking to administer involuntary medication. If a community-based alternative is not available, medication shall only be

administered by noncustody, health care staff and individuals will be monitored at least every 15 minutes for at least one hour after administration of medication; and,

g) There is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best medical interest.

9) Prohibits the individual's confinement form being extended to provide treatment to the individual with antipsychotic medication.

10) States that an order authorizing administration of antipsychotic medication shall be valid until the first of the following events occurs:

a) 90 days from the date the individual is found IST;

b) 90 days after the date when the individual is referred to Community Assistance, Recovery, and Empowerment (CARE) court, assisted outpatient treatment or county conservatorship;

c) Upon order of any court with jurisdiction over the individual including the programs listed above; or,

d) The individual is released from custody.

11) Requires the court to review the order no more than 60 days after an involuntary medication order is issued to determine whether the grounds for the order remains.

12) States that a person who is subject to the court's order to involuntarily receive medication has the legal and civil rights set forth in the Lanterman-Petris-Short Act.

13) Specifies that an individual is not precluded from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing the administration of antipsychotic medication.

14) Provides that when a person in custody is transferred from a jail to a 72-hour facility for treatment and evaluation, the fact that the person has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the person is able to provide for their basic personal needs, which shall be evaluated based upon the person's ability to provide for those needs outside the jail setting.

15) Sunsets its provisions on January 1, 2030 unless a later enacted statute deletes or extends the date.

EXISTING LAW:

1) Prohibits a person from being tried or adjudged to punishment or have their probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a).)

2) Requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is incompetent to stand trial (IST). (Pen. Code § 1368, subd. (b).)

3) Provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code § 1368, subd. (c).)

4) Specifies how the trial on the issue of mental competency shall proceed. (Pen. Code § 1369.)

5) Authorizes the court to order involuntary medication for a felony IST defendant for a period not to exceed one year after the court has conducted a hearing to determine whether any of the following is true:

   a) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant lacks the capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to their physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant;

   b) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence; or,

   c) The people have charged the defendant with a serious crime against the person or property, and based upon the opinion of the psychiatrist offered to the court pursuant to subdivision (b) of Section 1369, the involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is medically necessary and

appropriate in light of their medical condition. (Pen. Code, § 1370, subd. (a)(2)(B)(i) & (iii).)

6) States that if the court finds the first or second condition described above to be true and a licensed psychiatrist or psychologist has opined that treatment with antipsychotic medication is appropriate, the court may issue an order authorizing the administration of medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist. (Pen. Code, § 1370, subd. (a)(2)(B)(i)(i).)

7) Authorizes, until January 1, 2030, the administration of psychotropic medication on an involuntary basis to county jail inmates who are awaiting arraignment, trial, or sentencing if a psychiatrist determines that the inmate should be treated with psychiatric medication and specified procedures are followed. (Pen. Code, § 2603, subd. (b).)

8) Authorizes, until January 1, 2030, the administration of medication without a defendant's consent on a nonemergency basis only if all of the following conditions have been met:

   a) A psychiatrist or psychologist determines that the inmate has a serious mental disorder;

   b) A psychiatrist or psychologist determines, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;

   c) A psychiatrist prescribes one or more psychiatric medications for the treatment of the inmate's disorder, considers the risks, benefits, and treatment alternatives to involuntary medication, and determines that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;

   d) Advises the inmate of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;

   e) The jail has made a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities. Submission of a declaration under penalty of perjury is sufficient for the county to demonstrate a documented attempt to locate an available bed;

   f) The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;

   g) The inmate is provided counsel at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive expedited access to counsel;

h) The inmate and counsel are provided with written notice of the hearing at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive an expedited hearing;

i) In the hearing described in paragraph (f), the superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness, the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest;

j) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder; and,

k) An inmate is entitled to file one motion for reconsideration following a determination that they may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. This paragraph does not prevent a court from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding. (Pen. Code, § 2603, subd. (c)(1-11).)

9) Provides, until January 1, 2030, that an order by the court authorizing involuntary medication of an inmate awaiting arraignment, trial or sentencing shall be valid for no more than 180 days and the court shall review the order at intervals of not more than 60 days to determine whether the ground for the order remains. At each review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the defendant and the defendant's attorney. (Pen Code, § 2603, subd. (e)(1)(B).)

10) States, until January 1, 2030, that in determining whether the criteria for involuntary medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order. (*Ibid.*)

11) States, until January 1, 2025, that in the case of an inmate awaiting arraignment, trial, or sentencing, the renewal order shall be valid for no more than 180 days and follows the same requirements in the initial order authorizing involuntary medication. (Pen Code, § 2603, subd. (h)(3)(B).)

12) Requires each county that administers involuntary medication to an inmate awaiting arraignment, trial, or sentencing between January 1, 2025 and July 1, 2018 to file, by January

1, 2029, a written report to the Senate Committee on Public Safety and the Assembly Committees on Public Safety summarizing the following:

a) The number of inmates who received involuntary medication while awaiting arraignment, trial, or sentencing between January 1, 2025 and July 1, 2028;

b) The crime for which those inmates were arrested, if it is practically feasible to obtain that information;

c) The total time those inmates were detained while awaiting arraignment, trial, or sentencing, if it is practically feasible to obtain that information;

d) The duration of the administration of involuntary medication;

e) The reason for termination of administration of involuntary medication;

f) The number of times, if any, that an existing order for the administration of involuntary medication was renewed; and,

g) The reason for termination of the administration of involuntary medication. (Pen. Code, §2603, subd. (l).)

13) Sunsets the provisions of law authorizing involuntary medication of inmates detained in county jail while awaiting arraignment, trial or sentencing on January 1, 2030. (Pen. Code, §2603, subd. (m).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California is facing mental health and homelessness crises, where vulnerable individuals are cycling in and out of our jails without getting adequate treatment. While the state has made massive investments in behavioral health infrastructure, it's going to take time for new beds to come online. In the meantime, demand is urgent and growing. Jails have become de facto treatment facilities, leaving vulnerable Californians who need treatment with minimal support and resources. The problem is acute for those declared incompetent to stand trial (IST) for a misdemeanor, who are experiencing severe mental health crises and have particularly high rates of recidivism. SB 820 builds on efforts to keep these individuals safe, out of the criminal justice system, and getting the help they need by granting doctors the discretion to use the medical treatment they deem most appropriate, including involuntary medication. By allowing involuntary medication orders during the crucial period between the IST hearing and the proffer of services, including mental health diversion and assisted outpatient treatment, this bill will prevent further deterioration while these individuals are in custody, bringing targeting resources to an already identified, impacted population to improve the likelihood that they are accepted into and consent to diversion options. SB 820 keeps existing protections while enabling these vulnerable individuals to access the treatment they need to stabilize, reintegrate into society, and achieve recovery."

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

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

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when a jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

For defendants charged with a felony, if after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code, §§ 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

The maximum term of commitment for an IST defendant charged with a felony is two years, however, no later than 90 days prior to the expiration of the defendant's term of commitment, if the defendant has not regained mental competence, they shall be returned to the committing court and the court shall not order the defendant returned to the custody of DSH. (Pen. Code, § 1370, subd. (c)(1).) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action may be dismissed in the interests of justice. (Pen. Code, § 1370, subd. (d).)

For defendants charged with a misdemeanor, if the defendant is found IST, the proceedings shall be suspended and the court may do either of the following: 1) conduct a hearing to determine whether the defendant is eligible for mental health diversion; or 2) dismiss the charges pursuant to Penal Code section 1385. If the charges are dismissed, the court shall transmit a copy of the order to county behavioral health director or the director's designee. (Pen. Code, § 1370.01, subd. (b).)

If a misdemeanor defendant is found eligible for diversion, the court may grant diversion for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter. (Pen. Code, § 1370.01, subd. (b)(1)(A).)

If the court finds that the defendant is not eligible for diversion, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following: 1) order modification of the treatment plan in accordance with a recommendation from the treatment provider; 2) refer the defendant to assisted outpatient treatment (AOT); if the defendant is accepted into AOT, the charges shall be dismissed; 3) refer the defendant to the county conservatorship investigator for possible conservatorship if the defendant appears to be gravely disabled, as defined; if a conservatorship is established, the charges shall be dismissed; or 4) refer the defendant to the CARE program; if the defendant is accepted into CARE the charges shall be dismissed. (Pen. Code, § 1370.01, subd. (b)(1)(D).) Existing law provides that a person shall not remain confined beyond specified timeframes after the finding of IST or filing of petition, between 14 and 45 days, based on delays of the hearings to determine which of the alternatives to diversion is appropriate. (Pen. Code, § 1370.01, subd. (b)(1)(D).)

3) **Due Process Considerations and Involuntary Medication of Inmates**: In *Washington v. Harper* (1990) 494 U.S. 210, the U.S. Supreme Court held that a mentally-ill prisoner who is a danger to themselves or others can be involuntarily medicated. Furthermore, the Court held in *Riggins v. Nevada* (1992) 504 U.S. 127, that forced medication in order to render a defendant competent to stand trial for murder was constitutionally permissible under certain circumstances. Read together, the Court has stated that these two cases "indicate that the Constitution permits the Government to involuntarily administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is significantly necessary to the further important governmental trial-related interests." (*Sell v. United States* (2003) 539 U.S. 166, 179.)

In *Sell*, the Court goes on to further specify the limited circumstances when the U.S. Constitution permits the government to administer drugs to a pretrial detainee against the mentally ill criminal detainee's will when seeking to render them competent for trial. Under those circumstances, all of the following conditions must apply:

a) A court must find that important governmental interests are at stake. While bringing to trial a person accused of a serious crime is an important government interest, and timely prosecution satisfies the literal aspect of this element, that alone does not satisfy the purpose as there may be special circumstances that lessen its importance in a particular case. Consequently, this analysis must be done on a case-by-case basis. (*Id.* at p. 180;

Carter v. Superior Court (2006) 141 Cal.App.4th 992, 1002.)

b) A "court must conclude that involuntary medication will *significantly further* those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial." (*Sell, supra,* 539 U.S. at p. 181.)

c) A court must find that the administration of the drugs is "substantially unlikely" to have side effects that interfere significantly with the person's ability to assist his or her counsel in conducting a defense. (*Id., citing Riggins v. Nevada* (1992) 504 U.S. 127, 142-145.)

d) A court must find that involuntary medication is necessary to further those interests and that alternative, less intrusive treatments are unlikely to achieve substantially the same results. (*Id.)*

e) A court must find that administering the medication is medically appropriate, that is to say, in the inmate's best medical interest in light of his or her condition. (*Id.)*

The 9th Circuit Court of Appeal, in *United States v. Loughner* (9th Cir. 2012) 672 F.3d 731, considered the following issue: what substantive due process standard must the government satisfy to medicate involuntarily a pretrial detainee on the ground that they are dangerous? The court differentiated between *Harper* and *Sell*, stating that the standard that applies depends on the purpose of the involuntary medication:

> If the government seeks to medicate involuntarily a pretrial detainee on trial competency grounds, that is a matter of trial administration and the heightened standard announced in *Sell* applies. *See Sell*, 539 U.S. at 183. When dangerousness is a basis for the involuntary medication, however . . . , the concerns are the orderly administration of the prison and the inmate's medical interests. *See Harper*, 494 U.S. at 222-25; citations omitted.

The *Loughner* court stated, ". . . , we now hold that when the government seeks to medicate a detainee—whether pretrial or post-conviction—on the grounds that he is a danger to himself or others, the government must satisfy the standard set forth in *Harper*. '[T]he Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against their will, if the inmate is dangerous to themselves or others and the treatment is in the inmate's medical interest." (*Loughner, supra,* 672 F.3d at p. 752 (citing *Harper, supra*, at p. 227.)

4) **Existing Procedures for Involuntarily Medicating County Jail Inmates:** Existing law authorizes involuntary medication for persons charged with committing a felony and determined to be IST. (Pen. Code, § 1370, subd. (a)(2)(B).)

Existing law, starting January 1, 2013, also authorizes county jails to administer involuntary medication to sentenced inmates. (Pen. Code, § 2603; AB 1907 (B. Lowenthal), Ch. 814, Stats. 2012.) In 2017, the Legislature extended the involuntary medication procedure to inmates confined in county jail but not yet sentenced, including, but not limited to, a person housed in a county jail during or awaiting trial proceedings, a person who has been booked into a county jail and is awaiting arraignment, transfer, or release. (AB 720 (Eggman), Ch. 347, Stats. 2017.) The law contained a sunset date of January 1, 2022 but was extended

through legislation until January 1, 2025, then again to January 1, 2030. (SB 1317 (Wahab), Ch. 326, Stats. 2024; SB 827 (Committee on Public Safety), Ch. 434, Stats. of 2021.)

Generally, an inmate confined in a county jail shall not be administered any psychiatric medication without their prior informed consent. (Pen. Code, § 2603, subd. (a).) However, if a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication, either on an emergency basis or nonemergency basis as specified in the law. (Pen. Code, § 2603, subd. (b).) Emergency medication requires a showing that there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. (Pen. Code, § 2603, subd. (d).) The initial authorization period for medication in an emergency is 72 hours. (*Ibid.*)

For nonemergency involuntary medication of a county jail inmate, if a psychiatrist determines that an inmate should be treated with psychiatric medication, involuntary psychiatric medication may be administered if the following conditions are met:

- A psychiatrist or psychologist has determined that the inmate has a serious mental disorder;
- A psychiatrist or psychologist has determined that, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;
- A psychiatrist has prescribed one or more psychiatric medications for the treatment of the inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;
- The inmate has been advised of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;
- The jail has made a documented attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities;
- The inmate is provided a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;
- The inmate is provided counsel at least 21 days prior to the hearing, unless emergency or interim medication is being administered, in which case the inmate is to

receive expedited access to counsel. If the inmate is awaiting arraignment, the inmate shall be provided counsel within 48 hours of the filing of the notice of the hearing with the superior court, unless counsel has previously been appointed, and the hearing shall be held no more than 30 days after the filing of the notice with the superior court, unless the date is extended;

- The inmate and counsel are provided with written notice, containing specified information, of the hearing at least 21 days prior to the hearing, unless it is an emergency basis, in which the inmate shall get an expedited hearing;

- At the hearing, the judge, court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder and due to the illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest, as specified;

- The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder; and,

- An inmate is entitled to file one motion for reconsideration following a determination that they may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown. A court is not prevented from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial, if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding. (Pen. Code, § 2603, subd. (c)(1)-(11).)

The law provides that in the case of an inmate awaiting arraignment, trial or sentencing, the involuntary medication order shall be valid for no more than 180 days. The court is required to review the order at intervals of not more than 60 days to determine whether grounds for the order remain. At each review, the psychiatrist is required to file an affidavit with the court affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. In making its decision, the court is required to consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order. (Pen. Code, § 2603, subd. (e)(1).)

The sunset date in existing law provides an opportunity for the Legislature to review the law and any reporting received from the counties that are using the involuntary medication law on inmates awaiting arraignment, trial or sentencing. With this population, as opposed to sentenced inmates, the Legislature was particularly concerned with interfering with the defendant's due process rights during criminal proceedings and included provisions allowing

for a motion for reconsideration and frequent reviews of the order, and prohibited extending an inmate's confinement.

5) **Effect of this Legislation:** This bill creates an alternative procedure to authorize a court to order administration of antipsychotic medication for persons charged with a misdemeanor and confined in jail based on an emergency, as defined, or if the person is gravely disabled, as defined, and lacks the capacity to make decisions regarding the administration of medication. According to supporters of this bill, existing Penal Code section 2603 does apply to misdemeanor IST defendants, however, this population is likely to be referred out to diversion or other outpatient programs before the process can be used.
For emergencies, the bill would allow administration of antipsychotic medication for a period of up to 72 hours, with the opportunity to go beyond the 72 hours upon petition to the superior court.

For persons deemed gravely disabled and unable to consent to or refuse treatment with antipsychotic medication, this bill requires the court, prior to issuing an order for involuntary medication, to find by clear and convincing evidence all of the following conditions:

a) A psychiatrist or psychologist has determined that the individual has a serious mental health disorder that can be treated with antipsychotic medication.

b) A psychiatrist or psychologist has determined that, as a result of that mental health disorder, the individual is gravely disabled and lacks the capacity to consent to, or refuse treatment with, antipsychotic medications.

c) That serious harm to the physical or mental health of the individual is likely to result absent treatment with antipsychotic medication.

d) A psychiatrist has prescribed one or more antipsychotic medications for the treatment of the individual's disorder, has considered the risk, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the individual.

e) The individual has been advised of the expected benefits of any potential side effects and risks to the individual, any alternatives to treatment with antipsychotic medication, and refuses, or is unable to consent to, the administration of the medication.

f) The jail has made a documented attempt to locate an available bed for the individual in a community-based treatment facility in lieu of seeking to administer involuntary medication. If a community-based alternative is not available, medication shall only be administered by noncustody, health care staff and individuals will be monitored at least every 15 minutes for at least one hour after administration of medication.

g) There is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best medical interest.

This hearing may occur at the same time as the hearing to determine the person's competency and may rely on some of the same information. The bill specifies that the person

has the right to be notified of the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication, as well as to be present at all proceedings, to be represented by counsel and to receive timely access to their medical records.

The bill would also provide that an individual's confinement may not be extended to provide treatment with antipsychotic medication and limit the duration of the order to the earliest of the following: 90 days from the date the individual is found IST, 90 days after the date when the individual is referred to CARE court, county conservatorship or assisted outpatient treatment. The court would be required to review the order no later than 60 days from the date it is issued to determine whether grounds for the order still remain and is authorized to continue the order, vacate the order, or make any other appropriate order. Additionally, the bill enumerates rights to individuals for which involuntary medication is sought, including specified notification requirements, representation by counsel, to be present at all stages of the proceeds and to receive timely access to their medical records and files.

Similar to existing Penal Code section 2603 authorizing involuntary medication of pretrial county jail inmates, this bill contains a sunset date of January 1, 2030. This sunset date will give the Legislature an opportunity to review the implementation of the law and make any changes, if needed.

6) **Argument in Support**: According to *California State Association of Psychiatrists*, the sponsor of this bill, "In the event of a defendant lacking mental competency to understand court proceedings, a judge may find them incompetent to stand trial (IST). In such cases, they are then offered alternatives, such as mental health diversion and assisted outpatient treatment (AOT). However, many defendants do not access these alternatives due to the severity of their symptoms and the fact that these programs remain voluntary. Should they be found ineligible or refuse to participate, their cases are typically dismissed with no further requirements of behavioral health services. This gap in care has severe consequences on recidivism rates and homelessness for this population despite them having been identified by the court as exceedingly vulnerable.

"SB 317 (Stern, 2021) made significant updates to the IST system for misdemeanor offenses. However, it inadvertently limited the ability of psychiatrists to utilize all available tools at their disposal, including involuntary medication. Regardless of medical necessity, there is currently no mechanism to compel these individuals to take prescribed medication – a crucial tool in stabilizing patients.

"California faces a significant and ongoing shortage of bed space. Because of this, these individuals often spend extended periods in jail while their mental health declines, ultimately making successful reintegration even more difficult. Until infrastructure catches up to demand, it is vital that the ability to provide involuntary medication during the crucial period between the IST hearing and the proffer of services be reinstated – exactly what SB 820 aims to do while retaining existing protections. Doing so will improve their chances of accepting and benefiting from treatment while reducing recidivism and homelessness."

7) **Argument in Opposition**: According to *Initiate Justice*, "SB 820 would create a new mechanism for issuing involuntary medication orders for incarcerated persons in county jail who face misdemeanor charges and have been deemed incompetent to stand trial. The author

states this is necessary because there are insufficient treatment facilities. We oppose SB 820 for the following reasons.

I. Administering involuntary medication without sufficient clinical oversight is dangerous.

"SB 820 would expand the authority of county jails to administer involuntary psychiatric medications in general population units rather than in clinical settings. Administering such medications without proper oversight can have fatal consequences. Antipsychotic medications, for example, carry a black box warning because they can be lethal for individuals with dementia-related psychosis. Determining the underlying cause of psychosis is particularly challenging in jail settings, where correctional officers often lack the necessary training to recognize medication side effects. Moreover, incarcerated individuals may have limited ability to report concerns to medical staff.

"Individuals administered involuntary medication are under close observation in clinical settings. Designated behavioral health treatment centers maintain 24-hour clinical staff who conduct regular rounds and closely monitor patients. Under existing law, many individuals subject to involuntary medication in county jails are taken to designated mental health Correctional Treatment Centers (CTCs). CTCs have similar requirements for staffing ratios, staff licensure, treatment planning, and discharge planning as designated behavioral health treatment centers in the community. SB 820 would allow jails to involuntary medicate individuals without transferring them to designated behavioral health treatment centers or CTC units. By expanding the ability of county jails to administer involuntary medications outside clinical settings, SB 820 undermines existing safeguards and increases the risk of serious harm or death.

II. SB 820 will incentivize counties to hold individuals in jail for treatment, backsliding efforts to divert people with serious mental illness from jail.

"Individuals with serious mental illness quickly deteriorate in jail and are at heightened risk of abuse and neglect. State and local efforts are underway to divert individuals with mental illness from jail and provide treatment in the community. By creating a new mechanism for involuntary medication orders, SB 820 risks incentivizing counties to rely on jails for mental health treatment rather than investing in community-based care."

8) **Related Legislation**: SB 27 (Umberg) would make various changes to the misdemeanor IST statute including authorizing CARE court to be considered at an earlier stage in proceedings. SB 27 is pending hearing in the Assembly Judiciary Committee.

9) **Prior Legislation**:

a) SB 1317 (Wahab), Chapter 326, Statutes of 2024, extended the sunset date until January 1, 2030 on provisions of law authorizing involuntary medication of county jail inmates who are awaiting arraignment, trial or sentencing and required counties implementing the law to report specified information to the Legislature.

b) SB 1400 (Stern), Chapter 647, Statutes of 2024, removes, for misdemeanor IST proceedings, the option for the court to dismiss the case and would instead require the court to hold a hearing to determine if the defendant is eligible for diversion.

c) SB 827 (Committee on Public Safety), Chapter 434, Statutes of 2021, as relevant to this bill, extended the sunset date on provisions of law authorizing involuntary medication of a person in county jail awaiting arraignment, trial, or sentencing until January 1, 2025, and required counties to report specified information regarding the law's implementation to the Legislature.

d) SB 317 (Stern), Chapter 599, Statutes of 2021, made various changes to the misdemeanor IST statute including removing court authorization for involuntary medication orders.

e) AB 720 (Eggman), Chapter 347, Statutes of 2017, authorized, until January 1, 2022, involuntary medication of a person in county jail awaiting arraignment, trial, or sentencing and required counties to report specified information regarding the law's implementation to the Legislature.

f) AB 1907 (B. Lowenthal), Chapter 814, Statutes of 2012, created the involuntary medication statute for sentenced county jail inmates.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Psychiatrists (CSAP) (Sponsor)
Alameda County Families Advocating for the Seriously Mentally Ill
California Big City Mayors Coalition
California Medical Association (CMA)
California State Sheriffs' Association
City of San Diego
Family Advocates for Individuals With Serious Mental Illness (FAISMI) of Sacramento
National Alliance on Mental Illness (NAMI-CA)
Steinberg Institute
Treatment Advocacy Center

Opposition

ACLU California Action (unless amended)
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association (unless amended)
Cal Voices
California Peer Watch
Courage California (unless amended)
Disability Rights California (unless amended)
Initiate Justice
Justice2jobs Coalition (unless amended)

LA Defensa

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

Amended Mock-up for 2025-2026 SB-820 (Stern (S))

Mock-up based on Version Number 98 - Amended Assembly 6/25/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 2603.5 is added to the Penal Code, to read:

2603.5. (a) Notwithstanding Section 2603, if an individual has been found incompetent to stand trial after having been charged with a misdemeanor offense, as described in Section 1370.01, and is confined in the county jail, antipsychotic medication may be administered without their prior informed consent only in the following circumstances:

(1) An emergency, as defined by either subdivision (m) of Section 5008 of the Welfare and Institutions Code or subdivision (d) of Section 2603 of the Penal Code.

(A) In the case of an emergency, antipsychotic medication may, despite the individual's objection, be administered before a capacity hearing if the medication is necessary to address the emergency condition and is administered in the least restrictive manner, only for the duration of the emergency, and in no case for more than 72 hours, except as provided by subparagraph (B).

(B) If a psychiatrist determines that continued administration of antipsychotic medication is necessary beyond the initial 72 hours and the individual does not consent to take the medication voluntarily, the psychiatrist may petition the superior court in the county where the individual is confined to order continued treatment with antipsychotic medication. The petition and a written notice, as described in paragraph (1) of subdivision (b), shall be filed within the initial 72-hour period that the antipsychotic medication is administered and served on the individual and their counsel.

(2) (A) Upon a court's determination that the individual is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, and that the individual does not have the capacity to consent to or refuse treatment with antipsychotic medication. The fact that an individual has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the individual is able to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care, which shall be evaluated based upon the individual's ability to provide for those needs while not incarcerated. The court shall consider opinions in the reports prepared pursuant to subdivision (b) of Section 1369, as applicable to the

issue of whether the individual lacks the capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall conduct a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified in subdivision (c) of Section 5334 of the Welfare and Institutions Code, to determine whether any of the following is true:

(I) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the individual lacks the capacity to make decisions regarding antipsychotic medication, the individual's mental disorder requires medical treatment with antipsychotic medication, and, if the individual's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the individual will result. Probability of serious harm to the physical or mental health of the individual requires evidence that the individual is presently suffering adverse effects to their physical or mental health, or the individual has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that an individual has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the individual.

(II) Based upon the opinion of the psychiatrist or licensed psychologist offered to the court pursuant to subdivision (b) of Section 1369, the individual is a danger to others, in that the individual has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the individual had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the individual being taken into custody, and the individual presents, as a result of mental disorder or mental defect, a danger of inflicting substantial physical harm to others.

(ii) (I) If the court finds the conditions described in subclause (I) or (II) of clause (i) to be true, and has considered the conditions in subdivision (c), and if, pursuant to the opinion offered to the court pursuant to subdivision (b) of Section 1369, a psychiatrist has opined that treatment with antipsychotic medication may be appropriate for the individual, the court may issue an order authorizing the administration of antipsychotic medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

(II) If the court finds the conditions described in subclause (I) or (II) of clause (i) to be true, ***and has considered the conditions in subdivision (c),*** and if, pursuant to the opinion offered to the court pursuant to subdivision (b) of Section 1369, a licensed psychologist has opined that treatment with antipsychotic medication may be appropriate for the individual, the court may issue an order authorizing treatment by a licensed psychiatrist on an involuntary basis. That treatment may include the administration of antipsychotic medication, as needed, to be administered under the direction and supervision of a licensed psychiatrist.

(B) A hearing pursuant to this section may occur at the same time as the competency hearing held pursuant to Section 1369.

(b) Before an order authorizing the administration of involuntary medication is issued pursuant to this section, the person shall have the following rights:

(1) To receive written notice of the diagnosis, the factual basis for the diagnosis, the expected benefits of the medication, any potential side effects and risks of the medication, and any alternatives to treatment with the medication.

(2) To be represented by counsel at all stages of the proceedings.

(3) To receive timely access to their medical records and files.

(4) To be present at all stages of the proceedings.

(5) To present evidence and cross-examine witnesses.

(c) After hearing, involuntary medication may be administered if the court finds by clear and convincing evidence that all of the following conditions are met:

(1) A psychiatrist or psychologist has determined that the individual has a ~~serious~~ mental ~~health~~ disorder that can be treated with antipsychotic medication.

(2) A psychiatrist or psychologist has determined that, as a result of that mental health disorder, the individual is gravely disabled and lacks the capacity to consent to, or refuse treatment with, antipsychotic medications.

(3) That serious harm to the physical or mental health of the individual is likely to result absent treatment with antipsychotic medication.

(4) A psychiatrist has prescribed one or more antipsychotic medications for the treatment of the individual's disorder, has considered the risk, benefits, and treatment alternatives to involuntary medication, and has determined that the treatment alternatives to involuntary medication are unlikely to meet the needs of the individual.

(5) The individual has been advised of the expected benefits of any potential side effects and risks to the individual, any alternatives to treatment with antipsychotic medication, and refuses, or is unable to consent to, the administration of the medication.

(6) The jail has made a documented attempt to locate an available bed for the individual in a community-based treatment facility in lieu of seeking to administer involuntary medication. If a community-based alternative is not available, medication shall only be administered by noncustody, health care staff and individuals will be monitored at least every 15 minutes for at least one hour after administration of medication.

(7) There is no less intrusive alternative to the involuntary administration of antipsychotic medication, and involuntary administration of the medication is in the individual's best medical interest.

(d) The individual's confinement shall not be extended to provide treatment to the individual with antipsychotic medication pursuant to this section. An order pursuant to this section shall be valid until the first of the following events occurs:

(1) Ninety days from the date the individual is found incompetent to stand trial pursuant to Section 1370.01.

(2) Ninety days after the date when the individual is referred to a program described in paragraph (4) of subdivision (b) of Section 1370.01.

(3) Upon order of any court with jurisdiction over the individual, including pursuant to a program described in paragraph (4) of subdivision (b) of Section 1370.01.

(4) The individual is released from custody in the county jail.

(e) The court shall review the order no more than 60 days after an order is issued pursuant to this section to determine whether the grounds for the order remain. At the review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the individual who is subject of the order and the individual's attorney. In determining whether the criteria for involuntary medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the individual's attorney. The court may also require the testimony from the psychiatrist, if necessary. At the review, the court may make any appropriate order or keep the existing order in place subject to (d).

~~(e)~~ (f) An individual who is subject to an order made pursuant to this subdivision has the legal and civil rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

~~(f)~~ (g) This section does not preclude an individual from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing the administration of antipsychotic medication.

(h) This section shall remain in effect only until January 1, 2030, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

SEC. 2. Section 4011.6 of the Penal Code is amended to read:

4011.6. (a) (1) If it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is

located, that a person in custody in that jail or juvenile detention facility may have a mental health disorder, that person or judge may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or the director's designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Upon transfer to a facility, Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code apply to the prisoner.

(2) If the court causes the prisoner to be transferred to a 72-hour facility, the court shall immediately notify the local mental health director or the director's designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about that transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72-hour facility, the person shall immediately notify the local mental health director or the director's designee and each court within the county where the prisoner has a pending proceeding about the transfer. Upon notification by the person in charge of the jail or juvenile detention facility, the court shall immediately notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about that transfer.

(3) When a person in custody is transferred from a jail to a 72-hour facility for treatment and evaluation pursuant to this subdivision, the fact that the person has temporary access to food, clothing, shelter, personal safety, and necessary medical care while incarcerated is not a basis to conclude that the person is able to provide for their basic personal needs, which shall be evaluated based upon the person's ability to provide for those needs outside the jail setting.

(b) If a prisoner is detained in, or remanded to, a facility pursuant to the articles of the Welfare and Institutions Code listed in subdivision (a), the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or the director's designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in those articles, upon conversion to voluntary status, and upon filing of temporary letters of conservatorship.

(c) A prisoner who has been transferred to an inpatient facility pursuant to this section may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director. At the beginning of that conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or the director's designee.

(d) If the prisoner is detained in, or remanded to, a facility pursuant to the articles of the Welfare and Institutions Code listed in subdivision (a), the time passed in the facility shall count as part of the prisoner's sentence. When the prisoner is detained in, or remanded to, the facility, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before the expiration date, the professional person in charge shall notify the local mental health director or the director's designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

(e) A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) If a prisoner is detained in a facility pursuant to the articles of the Welfare and Institutions Code listed in subdivision (a), and if the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, the time spent in the facility shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. This section shall not affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

(g) For purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 834 (Durazo) – As Amended March 26, 2025

SUMMARY: Makes various changes to existing law authorizing automatic criminal records relief conducted by the Department of Justice (DOJ). Specifically, **this bill**:

1) Specifies that for purposes of determining whether there are pending criminal charges, if at least three years have elapsed with no new activity related to that record, DOJ shall conclude that there is no indication of pending criminal charges.

2) Requires local summary criminal history information provided by the court to any recipient to include notes for any entries for which relief has been granted indicating that relief has been granted and listing the date the court received notice from DOJ.

3) Requires the above notice to be included in all local criminal databases maintained by the court.

4) Provides that upon request of the subject of a record granted relief, a court shall furnish a certificate of disposition confirming the court's receipt of notification and compliance with a grant of relief for a specified record granted relief.

EXISTING LAW:

1) Requires, commencing October 1, 2024 and subject to an appropriation in the annual Budget Act, the DOJ to review the records in the statewide criminal justice databases on a monthly basis, and based on information in the state criminal history repository and the Supervised Release File, identify persons with convictions that meet the specified criteria and are eligible for automatic conviction record relief. (Pen. Code, § 1203.425, subd. (a)(1)(A).)

2) Provides that a person is eligible for automatic conviction relief if they meet all of the following:

   a) The person is not required to register as a sex offender;

   b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

   c) Based upon the information available in DOJ's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges; and,

d) The conviction meets either of the following criteria:

i) The conviction occurred on or after January 1, 1973, and meets either one of the following criteria:

(1) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in DOJ's records, appears to have completed their term of probation without revocation; or,

(2) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in DOJ's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment; or,

ii) The conviction occurred on or after January 1, 1973 and the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based upon the disposition date and the sentence specified in the DOJ's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease community supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This does not apply to a conviction of a serious or violent felony, or a felony offense requiring sex offender registration. (Pen. Code § 1203.425, subd. (a)(1)(B).)

3) Requires, except as specified, DOJ to grant relief, including dismissal of a conviction, to identified persons without requiring a petition or motion for that relief if relevant information is present in DOJ's electronic records. (Pen. Code, § 1203.425, subd. (a)(2)(A).)

4) Provides, however, that the prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief, file a petition to prohibit DOJ from granting automatic record conviction relief, based on a showing that granting that relief would pose a substantial threat to the public safety. (Pen. Code, § 1203.425, subd. (b)(1).)

5) Requires the state summary criminal history information for a person who has been granted this relief to include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that DOJ granted, the relief, and the section authorizing relief. This note must be included in all statewide criminal databases with a record of the conviction. (Pen. Code, § 1203.425, subd. (a)(2)(B).)

6) Requires, commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, DOJ to electronically submit a notice to the superior court having jurisdiction over the criminal case and inform the court of all cases in which a complaint was filed and automatic conviction relief was granted. (Pen. Code, § 1203.425, subd. (a)(3)(A).)

7) Prohibits, commencing January 1, 2023, the court from disclosing information, for certain records obtained by the court, concerning a conviction granted relief pursuant to specified expungement provisions, including automatic record conviction relief, to any person or

entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency. (Pen. Code, § 1203.425, subd. (a)(3)(A).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California made historic progress with AB 1076 (2019) and SB 731 (2022), expanding automatic record clearance for millions of residents with eligible arrests and convictions. These reforms were designed to remove barriers to employment, housing, and opportunity. But gaps in implementation have left too many people behind — people who by law should already be moving forward.

   "For example, if an individual was arrested years ago but never charged, their record might still show as "pending" because no final outcome was reported to the Department of Justice (DOJ). Even though the legal system abandoned the case long ago, this unresolved label blocks them from the automatic relief they are entitled to.

   "Even for individuals who do receive relief, outdated local court records create ongoing harm. If a background check pulls from these local records — as many do — an old conviction may still appear, causing someone to lose out on a job, housing, or loan.

   "And when a person tries to correct the record, there's no straightforward way to prove their case: no court-issued certificate to confirm that their record has been cleared.

   "SB 834 addresses all three barriers by ensuring outdated pending charges don't block relief, requiring local courts to update their records to match state DOJ records, and creating a clear process for individuals to obtain written proof of their cleared record."

2) **Automatic Conviction Record Relief**: In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019 which established a procedure in which persons could have certain convictions dismissed and have such information withheld from disclosure without having to file a petition with the court. (Pen. Code, § 1203.425.) Generally, the new law required DOJ to review the records in the statewide criminal justice databases and identify persons with who are eligible for automatic conviction record relief as specified in the law. These conditions include that the person is not required to register as a sex offender, that it does not appear, based upon information available in DOJ's records, that the person is currently serving a sentence of an offense or that there is any indication of pending criminal charges. (*Ibid.*) The purpose of AB 1076 was to remove barriers to housing and employment for convicted and arrested individuals in order to foster their successful reintegration into the community.

   Records relief has limitations including having to disclose the prior record in an application as a peace officer or for public office or for in-home support services. Additionally, the record may be accessed by criminal justice agencies including for purposes of pleading and proving the existence of a prior criminal conviction. (Pen. Code, § 1203.425, subd. (a)(4).) The law authorizes the prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief, to file a petition to DOJ from

granting automatic relief based on a showing that granting that relief would pose a substantial threat to the public safety. (Pen. Code, § 1203.425, subd. (b)(1).)

Subsequent to the passage of AB 1076, AB 200 (Committee on Budget), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023. SB 731 (Durazo), Chapter 814, Statutes of 2022, expanded automatic conviction record relief to include additional felonies and delayed the effective date to July 1, 2023. AB 567 (Ting), Chapter 444, Statutes of 2023, expanded automatic conviction record relief to include misdemeanor convictions where the sentence has been successfully completed following revocation of probation and delayed implementation to July 1, 2024.

AB 134 (Comm. on Budget), Chapter 47, Statutes of 2023, delayed implementation to July 1, 2024. AB 168 (Comm. on Budget), Chapter 49, Statutes of 2024, delayed the implementation of automatic conviction record relief to October 1, 2024, and extended relief to eligible individuals with convictions on or after January 1, 1973.

According to DOJ's website:

> Automatic record relief is not a dismissal, sealing or expungement of a person's state summary criminal history information record. However, automatic record relief adds a notation in the record, which is then used by the Department to determine whether those records will be disseminated to employers and other agencies for employment, licensing, or certification purposes that are mandated and authorized by law to conduct fingerprint-based background checks in accordance with Penal Code section 11105, subdivisions (k)-(p).
>
> Additionally, when a notation indicating relief is made, the Department also communicates this information to superior courts. When the superior courts receive notice that an arrest or conviction record received relief, the courts will also limit public access to those records. For any case record still retained by the court, the court shall not disclose information concerning an arrest or conviction receiving automatic record relief under Penal Code sections 851.93 and 1203.425, except as provided in Penal Code sections 851.93, subdivision (d) or 1203.425, subdivision (a)(4).[1]

As relevant to this bill, under current law, one condition for eligibility for automatic conviction record relief is that, based upon information available in the DOJ record, there is no indication of pending criminal charges. (Pen. Code, § 1203.425, subd. (a)(1)(B)(iii).) The current law does not provide guidance on how DOJ should proceed on older records lacking disposition data. This bill specifies that in determining whether there is a pending criminal charge, DOJ must conclude there is no indication of pending criminal charges if at least three years have elapsed with no new activity related to that record.

---

[1] See https://oag.ca.gov/fingerprints/automatic-record-relief-penal-code-sections-851.93-and-1203.425 (accessed Jun. 25, 2025).

In determining whether there is any indication pending criminal charges, DOJ would likely have to review arrest records for the individual. The three year timeframe provided by this bill seems to align with the requirement in existing law on arrest record relief that provides that certain felony arrest records are eligible for relief if at least three years have elapsed since the date of the arrest and there is no indication that criminal proceedings have been initiated, among other things. (Pen. Code, § 851.93, subd. (a)(2)(C)(i).) The existing law specifies that misdemeanor arrest records are eligible for relief if at least one calendar year has elapsed and there is no indication of that criminal proceedings have been initiated. (Pen. Code, § 851.93, subd. (a)(2)(B).) However, the statute separately requires at least 6 years to have elapsed since the date of arrest with no indication that criminal proceedings have been initiated if the arrest was for a crime punishable by imprisonment of 8 years or more. (Pen. Code, § 851.93, subd. (a)(2)(C)(ii).) DOJ could also review information available through the California Law Enforcement Telecommunications System (CLETS), a statewide telecommunications system for the use of law enforcement agencies maintained by DOJ, which could contain information regarding charges filed against the individual if the prosecuting agency input this information into CLETS. If charges are anticipated or pending, the prosecuting agency may also file a petition with the court to prohibit DOJ from granting automatic relief prior to the person's eligibility for relief. (Pen. Code, § 1203.425, subd. (b)(1).)

Additionally, under current law as commenced July 1, 2022, and subject to an appropriation in the annual Budget Act, DOJ is required, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases in which a complaint was filed in that jurisdiction and in which relief was granted pursuant to this provision.

Commencing on January 1, 2023, for certain records retained by the court, the court is prohibited from disclosing information about a conviction granted automatic record conviction relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency. (Pen. Code, § 1203.425, subd. (a)(3).)

This bill would require local summary criminal history information provided by the court to any recipient to include notes indicating if automatic conviction record relief was granted and listing the date that the court received notice from DOJ. The bill requires this note to be included in all local criminal databases maintained by the court.

This bill would also require that upon the request of an individual granted relief, the court must furnish a certificate of disposition confirming the court's receipt of notification that relief was granted and the court's compliance with that relief under this provision. This provides individuals granted relief a reliable way to prove it.

3) **Record Relief Has a Positive Impact on Reducing Recidivism:** A recent study evaluated the benefits of expungement and any impacts on public safety.[2] The study found that people who get their records expunged tend to have lower recidivism rates than the general

---

[2] Prescott et al. *Expungement of Criminal Convictions: An Empirical Study* (2019) Harv. L. Rev. 133.

population.[3] The problem is that many people who are eligible do not apply for relief for a variety of reasons. According to the authors of the study:

> The good news is that people who get expungements tend to do very well. We found that within a year, on average, their wages go up by more than 20 percent, after controlling for their employment history and changes in the Michigan economy. This gain is mostly driven by unemployed people finding work and minimally employed people finding steadier positions.
>
> This finding is especially encouraging because some skeptics have argued that expungement can't work in the age of Google — that the criminal-record genie can't be put back in the bottle. We have no doubt that this is sometimes true: People with expunged records may sometimes be haunted by online mug shots, for instance. Even so, many others do benefit.
>
> In addition, contrary to the fears of critics, people with expunged records break the law again at very low rates. Indeed, we found that their crime rates are considerably lower than those of Michigan's general adult population. That may be in part because expungement reduces recidivism.
>
> But another likely reason is that expungement recipients aren't high risk to begin with. Like most states, Michigan requires a waiting period before expungement (five years after a person's last interaction with law enforcement). Research in criminology indicates that people with records who go several years without another conviction are unlikely to offend again.
>
> To be sure, if expanded laws cut down waiting periods or otherwise loosened eligibility requirements, the broader pools of recipients might have a higher baseline crime risk. But even then, there's simply no reason to believe that expungement would increase those baseline crime risks. Again, if anything, access to jobs, housing and other benefits should reduce overall levels of crime.
>
> So here's the bad news: Hardly anyone gets expungements. According to information Michigan State Police provided to us, Michigan grants about 2,500 a year — but that's a drop in the bucket compared to the number of criminal convictions there each year. Precise numbers are hard to come by, but we estimate that there are hundreds of thousands annually.
>
> Relatively few people with records meet the legal requirements — but that's not the only problem. Even among those who do qualify, we found that only 6.5 percent received expungements within five years of becoming eligible. Michigan judges have discretion to reject applications, but that's not the big reason for this low rate. Rather, over 90 percent of those eligible don't even apply.

---

[3] *Id.* at p. 2466.

> Given the large potential benefits of expungement, why wouldn't someone apply? We interviewed expungement lawyers and advocates for people with records, whose insights pointed to a clear set of explanations. Most people don't know they can get an expungement, or don't know how to do it, and don't have lawyers to advise them. The process is long and complicated, requiring visits to police stations and courthouses. The fees and costs (which in Michigan usually total close to $100, not including transportation and time away from work) are a barrier for people in poverty. And people with records have often had painful experiences with the criminal justice system, making the prospect of returning to it for any reason daunting.
>
> The low rate of applications for expungement is consistent with broader findings about the difficulties that poor and middle-class Americans face in dealing with the legal system. When the state makes it too hard or costly for citizens to exercise a right or opportunity, it's not that different from denying that right or opportunity. Most people won't be able to jump through all those hoops.[4]

4) **Argument in Support**: According to *Californians for Safety and Justice*, the sponsor of this bill: "Under AB 1076 and SB 731, individuals are eligible for automated record clearance if they meet certain criteria, including the absence of pending charges. Many old arrests lack complete disposition data in DOJ records and are labeled 'pending.' These include:

   - Arrests where charges were never filed.
   - Cases dismissed in court.
   - Cases resolved without proper reporting to DOJ.

   "Because these charges appear as "pending," individuals who would otherwise qualify for relief under AB 1076 and SB 731 are blocked from receiving it—even when no prosecution ever occurred.

   "Additionally, when relief is granted under AB 1076 and SB 731, the DOJ is required to update the person's state criminal record (commonly known as a RAP sheet) to show that relief has been granted. However, there is no requirement for local courts to update their own records to reflect this relief. As a result, background checks that pull from local court databases—rather than directly from DOJ—may incorrectly show old convictions, even after they have been cleared at the state level.

   "Without a process to resolve old, incomplete pending charges, individuals remain ineligible for relief under AB 1076 and SB 731—even when the legal system itself abandoned the charge years ago. At the same time, individuals who do receive relief under AB 1076 and SB 731 may have no reliable way to prove it because local records are outdated and there is no simple, court-issued proof of relief available for them to request.

---

[4] Prescott and Starr, *The Case for Expunging Criminal Records: A new study shows the benefits of giving people a clean slate*, New York Times (Mar. 20, 2019).

"SB 834 makes three critical fixes to strengthen California's record clearance process: 1) Ending the use of pending charges older than 3 years—if the DOJ has received no new information—that block eligibility for record clearance. 2) Requiring local courts to update their records to match state DOJ records when relief is granted. 3) Allowing individuals to request a certificate of disposition from the court."

5) **Argument in Opposition**: None received

6) **Related Legislation**: None

7) **Prior Legislation**:

a) AB 168 (Comm. on Budget), Chapter 49, Statutes of 2024, extended automatic record relief to persons convicted of crimes on or after January 1, 1973 and delayed implementation until October 1, 2024.

b) SB 763 (Durazo), of the 2023-2024 Legislative Session, would have extended automatic record relief to persons convicted of crimes on or after January 1, 1973. SB 763 failed in Senate Appropriations.

c) AB 134 (Comm. on Budget), Chapter 47, Statutes of 2023 delayed implementation of automatic records relief provisions to July 1, 2024.

d) AB 567 (Ting), Chapter 444, Statutes of 2023 required DOJ, commencing July 1, 2024, to provide confirmation that records relief was granted upon request from the subject of the record.

e) SB 731 (Durazo), Chapter 814, Statutes of 2022 expanded automatic conviction record relief to include additional felonies and delayed the effective date to July 1, 2023.

f) AB 200 (Comm. on Budget), Chapter 58, Statutes of 2022 delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023.

g) AB 1076 (Ting), Chapter 578, Statutes of 2019, established an automatic arrest and conviction record expungement process.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
A New Way of Life Re-entry Project
ACLU California Action
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)

Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Courage California
Debt Free Justice California
East Bay Community Law Center
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Justice2Jobs Coalition
LA Defensa
Rubicon Programs
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

Opposition

None received

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