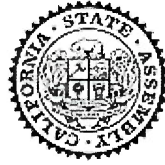


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California State Assembly

PUBLIC SAFETY



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AGENDA

Tuesday, July 15, 2025
8:30 a.m. -- State Capitol, Room 126

HEARD IN SIGN-IN ORDER

- | | | | |
|-----|--------|------------------|--|
| 1. | SB 27 | Umberg | Community Assistance, Recovery, and Empowerment (CARE) Court Program.(Urgency) |
| 2. | SB 36 | Umberg | Price gouging: state of emergency. |
| 3. | SB 75 | Smallwood-Cuevas | Employment: Preapprenticeship Pathways to Employment Pilot Program. |
| 4. | SB 221 | Ochoa Bogh | Crimes: stalking. |
| 5. | SB 245 | Reyes | Criminal procedure. |
| 6. | SB 258 | Wahab | Crimes: rape. |
| 7. | SB 276 | Wiener | City and County of San Francisco: merchandising sales.(Urgency) |
| 8. | SB 356 | Jones | Parole hearings: use of photographs. |
| 9. | SB 357 | Menjivar | Juveniles: delinquency. |
| 10. | SB 398 | Umberg | Election crimes: payment based on voting or voter registration. |
| 11. | SB 483 | Stern | Mental health diversion. |
| 12. | SB 485 | Reyes | County public defender: appointment. |
| 13. | SB 497 | Wiener | Legally protected health care activity.(Urgency) |
| 14. | SB 562 | Ashby | Bail. |
| 15. | SB 571 | Archuleta | Looting. |
| 16. | SB 627 | Wiener | Law enforcement: masks. |
| 17. | SB 635 | Durazo | Food vendors and facilities: enforcement activities. |
| 18. | SB 680 | Rubio | Sex offender registration: unlawful sexual intercourse with a minor. |
| 19. | SB 704 | Arreguín | Firearms: firearm barrels. |
| 20. | SB 733 | Wahab | Sexual assault forensic evidence: testing. |
| 21. | SB 763 | Hurtado | Conspiracy against trade: punishment. |
| 22. | SB 805 | Pérez | Crimes. |
| 23. | SB 841 | Rubio | Immigration enforcement. |
| 24. | SB 848 | Pérez | Pupil safety: school employee misconduct: child abuse prevention. |
| 25. | SB 857 | Public Safety | Public safety omnibus. |

Date of Hearing: July 15, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 27 (Umberg) – As Amended June 17, 2025

As Proposed to be Amended in Committee

SUMMARY: Makes changes to the recently implemented Community Assistance, Recovery, and Empowerment (CARE) Act including program eligibility and how respondents are referred, among other changes. Specifically, **this bill:**

- 1) Provides that if a defendant is found mentally incompetent to stand trial (IST) in a misdemeanor case, the trial, judgment, or hearing on the alleged violation shall be suspended and the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do one or more of the following:
 - a) Conduct a hearing to determine if the defendant is “eligible and suitable” for diversion and in that case, 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 misdemeanor complaint, whichever is shorter.
 - b) Refer the defendant to the CARE Act court, if the defendant or counsel for the defendant agrees to the referral and the court has reason to believe that the defendant may be eligible for the CARE program.
 - i) Requires the CARE Act court to hold a hearing to determine eligibility for the CARE program within 30 court days after the date of the referral.
 - ii) Provides that if the hearing is delayed beyond 30 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing.
 - iii) Provides that if the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed six months after the date of the referral to the CARE program, unless the defendant’s case has been referred back to the court prior to the expiration of that six-month time period.
 - iv) Provides that, except as provided in the proceedings related to an investigation of a defendant’s eligibility for CARE services or in proceedings related to Assisted Outpatient Treatment (AOT), the above provisions do not alter the confidential nature of CARE program proceedings.

- 2) States that if the defendant is not accepted into the CARE program or if the CARE Act court refers the defendant back to criminal court before the expiration of the six-month time period, the court shall proceed with consideration for mental health diversion.
- 3) Provides that if a defendant is found IST in a misdemeanor case but ineligible “or unsuitable” for diversion, the court may refer the defendant to CARE, in which case all of the following would apply:
 - a) The CARE Act court shall hold a hearing to determine eligibility for the CARE program within 14 court days after the date of the referral.
 - b) If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to the CARE program, unless the defendant’s case has been referred back to the court prior to the expiration of that time period.
 - c) Except as provided in the proceedings related to an investigation of a defendant’s eligibility for CARE services or in proceedings related to AOT, the above provisions do not alter the confidential nature of CARE program proceedings.
- 4) Allows the county behavioral health agency and jail medical providers to share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining likelihood of eligibility for behavioral health services and programs pursuant to this section; but clarifies that the disclosure of information is subject to applicable state and federal privacy laws.
- 5) Defines “clinically stabilized in ongoing voluntary treatment” (for purposes of the requirement that to qualify for CARE, a person must have a prerequisite mental condition and *not* be clinically stabilized in ongoing voluntary treatment) to mean all of the following:
 - a) The person’s condition is stable and not deteriorating.
 - b) The person is currently engaged in treatment and managing symptoms through medication or other therapeutic interventions. Enrollment in treatment alone shall not be considered clinically stabilized in ongoing voluntary treatment.
- 6) Modifies the criteria to qualify for CARE which is currently limited to schizophrenia spectrum and other psychotic disorders, to additionally include “bipolar I disorder with psychotic features, except psychosis related to current intoxication.”
- 7) Modifies “affidavit of a licensed behavioral health professional” to include, for purposes of existing law specifying the information required in the petition, nurse practitioners and physician assistants.
- 8) Clarifies that the court may make a prima facie determination without conducting a hearing.

- 9) Allows a CARE court in its discretion, to call additional progress hearings beyond the hearing set at 60 days, for the duration of the CARE agreement.
- 10) Requires that in order to be “graduated” from the CARE program, the court must approve the eligible participant’s request.
- 11) Allows a court to refer an individual from AOT or LPS or in a proceeding finding them to be IST for a misdemeanor, or IST for a felony, to CARE Act court.
- 12) In considering appropriateness of the referral pursuant to 11), provides that the CARE Act court may consider a referral made pursuant to this section to be a petition satisfying the requirements of the CARE Act if both of the following conditions are met:
 - a) The referral contains information sufficient to otherwise satisfy the petition requirements of the CARE Act.
 - b) The information included in the referral makes a prima facie showing that the respondent is, or may be, a person described as qualifying for CARE.
- 13) Requires, if the CARE Act court elects to consider a referral to be a petition pursuant to 11), the CARE Act court to notify the referring court that the referral has been accepted as a petition for CARE Act proceedings.
- 14) Requires, if the CARE Act court does not elect to consider a referral, the CARE Act court to order the appropriate petitioner candidate to do the following within 14 court days:
 - a) Complete an investigation to determine whether to file a petition on behalf of the referred individual.
 - b) Notify the referring court whether it intends to file a CARE Act petition on behalf of the referred individual.
- 15) Provides that if the appropriate petitioner candidate notifies the CARE Act court that it requires additional time to complete its investigation, the CARE Act court may grant an extension of up to 30 court days.
- 16) Defines, for purposes of 11) -15), “appropriate petitioner candidate” to mean:
 - a) For referrals from assisted outpatient treatment or from misdemeanor IST proceedings: the county behavioral health director or their designee.
 - b) For referrals from conservatorship proceedings: the conservator or proposed conservator.
- 17) Makes the bill an urgency statute that is necessitated by the following findings: “The CARE Act took effect in October 2023, and therefore important changes to the act must take effect immediately to ensure the CARE Act’s success in providing timely assistance to respondents.”

EXISTING LAW:

- 1) Authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets the following eligibility and suitability requirements:
 - a) The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a diagnosis by a qualified mental health expert within the last five years;
 - b) The defendant's mental disorder was a significant factor in the commission of the charged offense, as provided;
 - c) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;
 - d) The defendant consents to diversion and waives their right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment due to their mental incompetence and cannot consent to diversion or give a knowing and intelligent waiver of their right to a speedy trial;
 - e) The defendant agrees to comply with treatment as a condition of diversion; and,
 - f) The defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. In making this determination, the court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, violence and criminal history, the current charged offense, and any other factors that the court deems appropriate. (Pen. Code, § 1001.36, subds. (a)-(c).)
- 2) Contains a presumption that the defendant's mental disorder was a significant factor in the commission of the offense, which can be rebutted with clear and convincing evidence. (Pen. Code § 1001.36, subd. (b)(2).)
- 3) Excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, an offense requiring sex-offender registration (except for indecent exposure), or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (d).)
- 4) States that at any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)

- 5) Provides that the hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. (*Ibid.*)
- 6) Defines “pretrial diversion” for purposes of mental health diversion as the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to the following conditions:
 - a) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant;
 - b) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services;
 - c) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant’s progress in treatment. (Pen. Code, § 1001.36, subd. (f).)
- 7) Establishes the CARE Act, which must be implemented by Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne Counties by October 1, 2023, and the remaining counties by December 1, 2024, subject to delays based on a state or local emergency, or discretionary approval by the Department of Health Care Services (DHCS), up until December 1, 2025. Provides that the CARE Act only becomes operative upon DHCS, in consultation with county stakeholders, developing a CARE Act allocation to provide state financial assistance to counties to implement the CARE process. (Welf. & Inst. Code, § 5970 et seq.)
- 8) Defines, for purposes of the CARE Act, certain terms, including:
 - a) "CARE agreement" is a voluntary settlement agreement, which includes the same elements as a CARE plan.
 - b) "CARE plan" is an individualized, appropriate range of services and supports consisting of behavioral health care, stabilization medications, housing, and other supportive services, as provided.
 - c) "Graduation plan" is a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing services and

supports. A graduation plan may not place additional requirements on the local government entities and is not enforceable by the court.

- d) "Licensed behavioral health professional" means either of the following:
 - i) A licensed mental health professional, as defined in subdivision (j) of Section 4096.
 - ii) A person who has been granted a waiver of licensure requirements by the department pursuant to Section 5751.2.
 - e) "Parties" are the person who file the petition, the respondent and the county behavioral health agency, along with other parties that the court may add if they are providing services to the respondent.
 - f) "Petitioner" is the entity who files the CARE Act petition, but if other than the county behavioral health agency, the court is required, at the initial hearing, to substitute the director of county behavioral health agency or their designee as the petitioner, limiting the initial petitioner's rights to potentially receiving ongoing notice of the proceedings, and the right to make a statement at the hearing on the merits of the petition, with broader participation rights only if the respondent consents.
 - g) "Respondent" is the person who is subject to the petition for the CARE process.
 - h) "Supporter" is an adult who assists the respondent, which may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. (Welf. & Inst. Code, § 5971.)
- 9) Provides that a respondent may qualify for the CARE process only if all of the following criteria are met:
- a) The person is 18 years of age or older.
 - b) The person is currently experiencing a severe mental illness, as defined, and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. Specifically exempts specified other conditions or disorders.
 - c) The person is not clinically stabilized in on-going voluntary treatment.
 - d) At least one of the following is true:
 - i) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
 - ii) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others.
 - e) Participation in a CARE plan or agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

- f) It is likely that the person will benefit from participation in a CARE plan or agreement. (Welf. & Inst. Code, § 5972.)
- 10) Allows a petition to initiate a CARE proceeding to be brought by one of the following adults:
- a) A person with whom the respondent resides or a spouse, parent, sibling, child, or grandparent of the respondent, or another individual who stands in loco parentis to the respondent.
 - b) The director of a hospital, or their designee, in which the respondent is hospitalized, or the director of a public or charitable organization, agency, or home, or their designee, that is currently, or within the previous 30 days, providing behavioral health services to the respondent or in whose institution the respondent resides.
 - c) A licensed behavioral health professional, or their designee, who is treating, or has been treating within the last 30 days, the respondent for a mental illness.
 - d) A first responder, including a peace officer, firefighter, paramedic, emergency medical technician, mobile crisis response worker, or homeless outreach worker who has had repeated interactions with the respondent in the form of multiple arrests, multiple detentions, as provided, multiple attempts to engage the respondent in voluntary treatment or other repeated efforts to aid the respondent in obtaining professional assistance.
 - e) The public guardian or public conservator, or their designee (and a respondent may be referred from conservatorship proceedings).
 - f) The director of a county behavioral health agency of the county in which the respondent resides or is present (and a respondent may be referred from assisted outpatient treatment proceedings).
 - g) The director of the county Adult Protective Services or their designee.
 - h) The director of a California Indian health services program, California tribal behavioral health department, or their designee.
 - i) The judge of a tribal court that is located in California, or their designee.
 - j) The respondent. (Welf. & Inst. Code, § 5974.)
- 11) Requires the Judicial Council to develop a mandatory form for use to file a CARE process petition with the court and any other forms necessary for the CARE process; and request the petition to be signed under the penalty of perjury and contain specified information, including one of the following:
- a) An affidavit of a licensed behavioral health professional, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of the petition, and that the licensed behavioral health

professional had determined that the respondent meets, or has reason to believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

- b) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days. Evidence may include, but is not limited to, documentary evidence from the facility where the respondent was detained, or a signed declaration from the petitioner if the petitioner had personal knowledge of the detentions. (Welf. & Inst. Code, § 5975.)
- 12) Allows a court, if a criminal defendant is found to be IST and ineligible for a diversion, to refer the defendant to the CARE program, as provided. (Pen. Code, § 1370.1, subd. (b)(1)(D)(iv).)
- 13) Sets out the respondent's rights, including the right to be represented by counsel at all stages of a CARE proceeding, and requires the court to appoint specified counsel if the respondent does not have their own attorney. (Welf. & Inst. Code, § 5976.)
- 14) Provides that all CARE Act hearings are presumptively closed to the public. Allows the respondent to demand that the hearings be public or request the presence of a family member or friend without waiving their right to keep the hearing closed to the general public. A request by another party to make a hearing public may be granted if the court finds that the public interest clearly outweighs the respondent's privacy interest. (Welf. & Inst. Code, § 5976.5.)
- 15) Requires, for all CARE Act proceedings, that the judge control all hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the respondent. Except where there is a contested issue of fact or law, requires the proceedings to be conducted in an informal, non-adversarial atmosphere with a view to obtaining the maximum cooperation of the respondent, all persons interested in the respondent's welfare, and all other parties, with any provisions that the court may make for the disposition and care of the respondent. (Welf. & Inst. Code, § 5977.4, subd. (a).)
- 16) Upon receipt of a CARE Act petition, requires the court to promptly review the petition to see if it makes a prima facie showing that the respondent is or may be a person eligible for services under the CARE Act. (Welf. & Inst. Code, § 5977, subd. (a)(1).)
- a) If the court finds the petitioner has not made a prima facie showing that the respondent is or may be a person who is eligible for services under the CARE Act, the court shall dismiss without prejudice, except if the court finds that the petition is without merit, or intended to harass the respondent. Allows a petition to be refiled with new information. (Welf. & Inst. Code, § 5977, subd. (a)(2).)
 - b) If the court finds the petitioner has made a prima facie showing that the respondent is or may be a person who is eligible for services under the CARE Act, and the petitioner is the county behavioral health agency, the court shall do all of the following: (i) set the matter for an initial appearance; (ii) appoint counsel; (iii) determine if the petition includes all the required information and, if not, order the county to submit a report with

the information; and (iv) require notice be provided. (Welf. & Inst. Code, § 5977, subd. (a)(3)(A).)

- c) If the court finds the petitioner has made a prima facie showing that the respondent is or may be a person who is eligible for services under the CARE Act, and the petitioner is not the county behavioral health agency, the court shall order the county agency to investigate whether the respondent meets the eligibility criteria of the CARE Act and is willing to engage voluntarily with the county, file a written report with the court, and provide notice, as required by the Act. (Welf. & Inst. Code, § 5977, subd. (a)(3)(B).)

17) Provides that if the county agency is making progress to engage the respondent, the agency may request up to an additional 30 days to continue to engage and enroll the individual in treatment and services. (Welf. & Inst. Code, § 5977, subd. (a)(4).)

18) Requires, within five days of the receipt of the investigative report described above, the court to review the report and do one of the following:

- a) If the court determines that voluntary engagement with the respondent is effective, as provided, requires the court to dismiss the matter.
- b) If the court determines that the county's report supports the petition's prima facie showing that the respondent meets the CARE criteria, and engagement is not effective, requires the court to: (i) set an initial hearing within 14 days; (ii) appoint counsel, unless the respondent has their own counsel; and (iii) provide notice of the hearing, as provided.
- c) If the court determines that the county's report does not support the petition's prima facie showing that the respondent meets the CARE criteria, requires the court to dismiss the matter. (Welf. & Inst. Code, § 5977, subd. (a)(5).)

19) Provides at the initial hearing:

- a) If the petitioner is not present, allows the court to dismiss the matter.
- b) If the respondent elects not to waive their appearance and is not present, allows the court to conduct the hearing in the respondent's absence if the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, and conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.
- c) Requires a county behavioral health agency representative to be present, allows a supporter to be appointed, and allows a tribal representative to attend for a respondent who is a tribal member, as provided, and subject to the respondent's consent.
- d) If the court finds that there is no reason to believe that the facts stated in the petition are true, requires the court to dismiss the case without prejudice, unless the court makes a finding on the record that the petitioner's filing was not in good faith.
- e) If the court finds that there is reason to believe that the facts stated in the petition appear to be true, requires the court to order the county behavioral health agency to work with

the respondent and the respondent's counsel and CARE supporter to engage in behavioral health treatment. Requires the court to set a case management hearing within 14 days.

- f) If the petitioner is other than the county behavioral health director, substitutes the county behavioral health director or their designee for the petitioner, as specified.
- g) Requires the court to set a hearing on the merits of the petition, which may be conducted concurrently with the initial appearance on the petition upon stipulation of the petitioner and respondent and agreement by the court. (Welf. & Inst. Code, § 5977, subd. (b).)

20) Provides at the hearing on the merits:

- a) If the court finds that the petitioner has not shown, by clear and convincing evidence, that the respondent meets the CARE criteria, requires the court to dismiss the case without prejudice, unless the court makes a finding, on the record, that the petitioner's filing was not in good faith.
- b) If the court finds that the petitioner has shown by clear and convincing evidence that the respondent meets the CARE criteria, requires the court to order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement. Requires the court to set a case management hearing. Requires notice to the tribe, if applicable. (Welf. & Inst. Code, § 5977, subd. (c).)

21) Provides at the case management hearing:

- a) If the parties have entered, or are likely to enter, a CARE agreement, requires the court to approve or modify and approve the CARE agreement, stay the matter, and set a progress hearing for 60 days.
- b) If the court finds that the parties have not entered, and are not likely to enter, into a CARE agreement, requires the court to order a clinical evaluation of the respondent, as provided. Requires the evaluation to address, at a minimum, a clinical diagnosis, whether the respondent has capacity to give informed consent regarding psychotropic medication, other information, as provided, and an analysis of recommended services, programs, housing, medications, and interventions that support the respondent's recovery and stability.
- c) Requires the court to set a clinical evaluation hearing. (Welf. & Inst. Code, § 5977.1.)

22) Provides at the clinical evaluation review hearing:

- a) The court shall consider the evaluation, and other evidence, including calling witnesses, but only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.
- b) If the court finds, by clear and convincing evidence, after review of the evaluation and other evidence, that the respondent meets the CARE criteria, requires the court to order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan.

- c) If the court finds, in reviewing the evaluation, that clear and convincing evidence does not support that the respondent meets the CARE criteria, requires the court to dismiss the petition. (Welf. & Inst. Code, § 5977.1, subd. (c).)

23) Provides at the hearing to review the proposed CARE plan:

- a) The parties shall present their plan or plans to the court. (Welf. & Inst. Code, § 5977.1, subd. (d)(1).)
- b) The court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. Allows the court to issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding, as provided. These orders are the CARE plan. (*Id.* at (d)(2).)
- c) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent that the court orders medically necessary stabilization medications, prohibits the medication from being forcibly administered and the respondent's failure to comply with a medication order may not result in a penalty, including but not limited to a court order of contempt or imposition of accountability measures. (*Id.* at (d)(3).)
- d) Specifies that the above provisions do not prohibit the parties from agreeing to, and the court from approving, amendments to the CARE plan. The court may also approve amendments to the CARE plan upon the finding that those amendments are necessary to support the respondent in accessing appropriate services and supports, following a hearing on the issue. (Welf. & Inst. Code, § 5977.1, subd. (d)(7).)

24) Requires that a status review hearing occur at least every 60 days during the CARE plan implementation. (Welf. & Inst. Code, § 5977.2, subd. (a)(1).)

- a) Requires the petitioner to file with the court, and serve on the respondent and the respondent's counsel and supporter, a report not less than five court days prior to the hearing, with specified information, including progress the respondent has made on the CARE plan, what services and supports in the CARE plan were provided, and what services and supports were not provided, and any recommendations for changes to the services and supports to make the CARE plan more successful.
- b) Allows the respondent to respond to the report and introduce their own information and recommendations.
- c) Allows the petitioner, the respondent, or the court to request more frequent reviews as necessary to address changed circumstances. (Welf. & Inst. Code, § 5977.2, subd. (a)(1)(A) – (b).)

25) Requires the court, in the 11th month, to hold a one-year status hearing, which is an evidentiary hearing, to determine if the respondent graduates from the CARE plan or should be reappointed for another year.

- a) Requires a report by the petitioner before the status conference, as provided. Allows the respondent to call witnesses and present evidence.
 - b) Provides that the respondent may be graduated from the CARE program and may be allowed to enter into a voluntary graduation plan with the county. However, such plan may not place additional requirements on the county and is not enforceable, other than a psychiatric advance directive if included.
 - c) If the respondent elects to accept voluntary reappointment to the program, the respondent may request to be re-appointed to the CARE program for up to one additional year, subject to meeting certain criteria and court approval.
 - d) Allows the court to involuntarily reappoint the respondent to the CARE program for up to one year if the court finds, by clear and convincing evidence, that (i) the respondent did not successfully complete the CARE process; (ii) all of the required services and supports were provided to the respondent; (ii) the respondent would benefit from continuation of the CARE process; and (iv) the respondent currently meets the requirements for initial enrollment in the CARE program.
 - e) Provides that a respondent may only be reappointed to the CARE program for up to one additional year. (Welf. & Inst. Code, § 5977.3.)
- 26) Provides mandatory timeframes, as well as continuances for good cause, throughout the CARE court proceedings. (Welf. & Inst. Code, § 5977.1.)
- 27) Allows the court, at any point in the proceedings, if it determines, by clear and convincing evidence, that the respondent, after receiving notice, is not participating in the CARE proceedings, to terminate respondent's participation in the CARE process. Allows the court to make a referral under the LPS Act, as provided. (Welf. & Inst. Code, § 5979, subd. (a).)
- 28) Provides that all CARE plan services and supports ordered by the court are subject to available funding and all applicable federal and state statutes, regulations, contractual provisions and policy guidance governing program eligibility, as provided. (Welf. & Inst. Code, § 5982, subd. (d).)
- 29) Sets forth rules by which a county is responsible for the costs of providing services to CARE participants. (Welf. & Inst. Code, § 5982, subds. (d) – (f).)
- 30) Requires the Health and Human Services Agency, as provided, to (1) engage an independent, research-based entity to advise on the development of data-driven process and outcome measures to guide the planning, collaboration, reporting, and evaluation of the CARE Act; and (2) convene a working group to provide coordination and on-going engagement with, and support collaboration among, relevant state and local partners and other stakeholders throughout the phases of county implementation to support the successful implementation of the CARE Act, including during implementation. (Welf. & Inst. Code, § 5983, subd. (a).)
- 31) Provides immunity to a county, or an employee or agent of a county, for any action by a respondent in the CARE process, except when the act or omission of a county, or the employee or agent of a county, constitutes gross negligence, recklessness, or willful misconduct. (Welf. & Inst. Code, § 5987.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "This is a cleanup bill that makes several important reforms to the Community Assistance, Recovery and Empowerment (CARE) Act. Firstly, this bill requires courts to consider CARE referral as an option for the Misdemeanor Incompetent to Stand Trial (MIST) defendants. Secondly, the bill combines specified hearings and sharing of data between CARE partners and allowing additional licensed medical professionals to participate. This bill would also revise CARE Act eligibility criteria and definitions. Additionally, this proposal would clarify that courts have ongoing oversight and flexibility of CARE plans. Finally, this bill expands CARE eligibility to mood disorders with psychotic features, in addition to those with schizophrenia spectrum and other psychotic disorders."
- 2) **CARE Act:** In 2022, the Governor signed SB 1338 (Umberg) Chapter 319, known as the CARE Act. The CARE Act established a new civil court process to provide clinically appropriate, community-based services and supports that are culturally and linguistically competent, to Californians with schizophrenia spectrum disorders and other psychotic disorders, while also preserving these individuals' self-determination to the greatest extent possible. To be eligible under the CARE Act, a person must meet all of the following:
 - a) 18 years of age or older;
 - b) Have a serious mental illness and a diagnosis of a schizophrenia spectrum or other psychotic disorder;
 - c) They are not clinically stabilized in ongoing voluntary treatment;
 - d) They are unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating or they are in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as used in the LPS Act in 1) of Existing Law;
 - e) CARE would be the least restrictive alternative necessary to ensure the person's recovery and stability; and,
 - f) It is likely that the person will benefit from participation in CARE.

The first seven pilot counties implemented the CARE Act in October 2023, Los Angeles implemented in December 2023, and all counties were required to begin accepting CARE petitions as of December 1, 2024, unless they received an implementation extension from DHCS.

Under the CARE Act, a county behavioral health agency, spouse, parent, sibling, child, or grandparent of the respondent, a treating behavioral health professional, the county public guardian or public conservator, and others, as specified, may petition to begin the CARE process. If the original petitioner is not the county behavioral health agency, the county behavioral health agency replaces the original petitioner as the CARE petition proceeds.

There are two paths to court-ordered services: if the respondent and the behavioral health agency are able to agree on a plan, it is known as a “CARE Agreement” and if they are unable to reach an agreement, one or both parties may present a proposed “CARE Plan” to the court and the court may accept a proposed plan or adopt a modified plan, which becomes a court order that lasts for up to one year. The CARE Plan or Agreement may provide for behavioral health services and housing supports, as well as other services, and counties may face financial penalties for failure to provide the required services. The court may allow the original petitioner to participate in the respondent’s CARE proceedings, to the extent that the respondent consents.

This bill makes several changes to the CARE Act. The bill amends Penal Code Section 1370.01, regarding misdemeanor defendants who are found IST and allowing them to be referred to a CARE Act court in lieu of mental health diversion from the criminal proceedings. This will be discussed in further detail in Note 3 below.

The bill would also expand eligibility for CARE which is currently limited to schizophrenia spectrum and other psychotic disorders, to additionally include bipolar I disorder with psychotic features, except psychosis related to current intoxication.

The bill would clarify that no hearing is necessary to determine prima facie evidence of eligibility.

Additionally, the bill clarifies that the court may, in its discretion, call additional progress hearings beyond the hearing set at 60 days, for the duration of the CARE agreement and amends existing procedures for graduation from CARE proceedings to require court approval of the respondent’s request to graduate from the program.

The bill also clarifies that a court may refer an individual who has been found IST from both misdemeanor proceedings or from felony proceedings to the CARE Act court and that in either case, the CARE Act court may consider a referral made pursuant to this section to be a petition under the CARE Act if both of the specified conditions are met. Existing law provides the authority of a criminal court to refer a felony IST or misdemeanor IST defendant to CARE court but this authority is not specified in the CARE Act, thus this bill would clarify that the court has the authority to do this.

Lastly, grants the CARE Court the authority, if information in the referral does not provide all of the information necessary for a petition, to direct that an investigation be conducted.

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

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) in

the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment; 4) the defendant must consent to diversion and waive the right to a speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subds. (b)-(c).) The law also states that a defendant is not eligible if they are charged with specified crimes, including murder, voluntary manslaughter, specified sex crimes and any crime requiring sex offender registration. (Pen. Code, § 1001.36, subd. (d).)

In 2022, the Legislature amended the mental health diversion law to, among other things restate that granting diversion is in the trial court's discretion in subdivision (a) (the original law provided the court's discretion in subdivision (h)) and to require the court to find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not.¹ The cited reason for this change was a recommendation from the Committee on the Revision of the Penal Code.² One of the Committee's recommendations, after staff's exhaustive research and receiving public testimony from expert witnesses including crime victims, law enforcement leaders, judges, and criminal defense experts and advocates, was to strengthen the mental health diversion law by increasing its use in appropriate cases, with include consideration of risk to public safety. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.³

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

The diversion program cannot last more than two years for a felony and cannot last for more than a year on a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).) If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is

¹ SB 1223 (Becker), Ch. 735, Stats. 2022.

² The Committee on the Revision of the Penal Code was established within the Law Review Commission through SB 94, Ch. 25, Stats. 2019 to study the Penal Code and recommend statutory reforms.

³ *Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf, p. 17 (accessed July 3, 2025).

owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

The stated purpose of the diversion program is “to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings.” (Pen. Code, § 1001.35, subd. (b).)

Mental health diversion can be granted to persons charged with either a misdemeanor or felony. Within this group, persons who are found IST can also be granted diversion. This bill specifically deals with the population of defendants who would be considered for mental health diversion who is charged with a misdemeanor after a finding that the person is IST which will be discussed in more detail in note 4 below.

- 4) **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, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant’s alleged mental disorder and the defendant’s ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) 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, subs. (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 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).)

This bill authorizes the criminal court to consider referral of the defendant to a CARE Act court at an earlier stage in the process instead of waiting to determine whether the person is unsuitable for diversion. This bill specifies that the person can be referred to CARE court in lieu of mental health diversion if the defendant or counsel for the defendant agrees to the referral and the court has reason to believe that the defendant may be eligible for the program. Additionally, this bill provides that if the person is not accepted into the CARE program or if the CARE Act court refers the defendant back to criminal court before the expiration of the six-month time period, the court shall proceed as it normally would have with considering the defendant for diversion.

Supporters of this bill state that a subset of misdemeanor IST defendant who are likely to be eligible for CARE and are also likely to be found not suitable for mental health diversion would benefit from an earlier referral to CARE instead of considering mental health

diversion first, and then moving into other options including CARE. They argue that oftentimes the defendant is waiting up to 30 days for a hearing on whether they will be granted diversion and then released on their own recognizance. Locating these individuals can be difficult for the behavioral health agency if they have been released.

However, opponents of this bill, which include the Behavioral Health Directors, argue that this does not give them enough time to work up the petition or collaborate with the court and defense counsel and prosecutors to determine whether a person would be a good candidate for CARE court which could also lead to delays once a person is referred. This bill states that the referral is contingent on both the defense agreeing to the referral as well as the court having reason to believe the person is eligible. It is unclear if the court would have enough information at this early of a stage to believe that a person may be eligible for CARE court, however requiring the referral to be voluntary perhaps helps to narrow this category of people to those who ultimately want to receive CARE services. Additionally, they are concerned that the urgency clause in this bill would not give county agencies enough time to prepare for the changes made by this bill.

- 5) **CARE Act Annual Report:** AB 102 (Ting) Chapter 102, Statutes of 2023, required DHCS to issue an early implementation report on the CARE Act. In the first nine months of implementation (October 2023 through June 2024), 557 total petitions were filed and 217 of those were dismissed at the discretion of a judge. Preliminary data from July through September 2024 indicates an additional 231 petitions were filed. The report further indicates that dismissals will require further research, since the reasons for their dismissal are not available for the preliminary report, and could include people who are receiving care, those whose cases were dismissed for successful voluntarily engagement, people not being eligible for CARE who receive needed treatment another way, or people who are still not receiving care. The report also states that the CARE process can take time, like all mental health and SUD care, to build the trust and develop the self-directed plans needed for long-term recovery and stability.

The first CARE Act annual report was released in June 2025 and covered the same reporting period as the early implementation report. The annual report clarified that 556 petitions were filed and 101 (18%) resulted in CARE agreements or court-ordered CARE plans. Thirty-nine percent of petitions were dismissed and 229 were still pending at the end of the reporting period (over one year ago). Fifty-five respondents were found ineligible for CARE but received services from a county behavioral health agency, while an additional 90 found ineligible did not receive any county behavioral health services. Most respondents were male (64%) and aged 26–45 (64%), and 37% of respondents were White, 21% Hispanic, 18% Black, and 7% Asian, with 11.6% unknown. The most common petitioner type is personal contacts (such as family and household members) who filed 68% of petitions. County behavioral health agencies and public guardians are unlikely to refer because they may prefer to engage in services without court involvement, as some indicated in the early implementation report.

CARE respondents largely access mental health treatment (93%) and three-quarters of respondents accessed specialized mental health programs like Assertive Community Treatment (ACT) or Full-Service Partnership (FSP). Many respondents received stabilizing medications (72%) with 40% of those individuals receiving long-acting injectable medications. Long-acting injectable antipsychotic medications can be given as a shot in the

muscle or under the skin and they usually are given every 2 to 4 weeks, according to the Mayo Clinic. Sixty-three percent received all three foundational services (medication, treatment, and housing supports) though unmet needs remain.

The report notes that housing remains a challenge, though the share of respondents in permanent housing increased from 46% at time of petition to 56% in the most current reporting period. The most common unmet need for CARE participants was securing and maintaining permanent housing. Over half of CARE participants did not receive at least one ordered mental health service during their active service period (the most common was peer supports). Twenty-five percent had criminal justice involvement during their service period, 21% had emergency visits, and 20% were hospitalized or placed on psychiatric holds. The report notes that only 15 individuals became "elective clients," those who voluntarily engaged with services outside court oversight. These clients generally accessed fewer services, especially medications and housing supports, suggesting disparities in care quality.

Along with the first annual report, the California Health and Human Services Agency (HHSA) released a companion document to provide an update on implementation. As of May 31, 2025, 2,008 petitions have been filed across California since October 2023. Since the CARE Act took effect in all counties in December 2024, 1,063 petitions were filed, which is more total petitions than had been filed in the previous 14 months. The update also states that, through 2024, counties "diverted" 1,358 individuals to other services through CARE outreach.

- 6) **Triple-Referral:** The contents of this bill propose changes that are in the jurisdiction of the Judiciary Committee, Health Committee and Public Safety Committee. Assembly Judiciary Committee heard the bill on July 1, 2025 and Assembly Health Committee head the bill on July 8, 2025. Issues within the jurisdiction of Judiciary and Health Committees have been analyzed by those Committees.
- 7) **Argument in Support:** According to *Big City Mayors*, "Our cities remain deeply committed to connecting vulnerable individuals with the behavioral health services they need. SB 27 strengthens the CARE Court process by speeding up initial proceedings, expanding eligibility, and providing greater clarity—ensuring individuals with serious mental health challenges receive timely and effective care. We appreciate Senator Umberg's leadership in advancing these critical improvements.

"Through the passage of SB 1338 (Umberg, 2022), the State of California took an important step in connecting individuals struggling with serious, untreated mental illness with court-ordered treatment plans through the CARE Court Program. CARE Court has been successful in getting some individuals into a CARE program, but further work to ensure proper implementation is necessary.

"Under current law, when a defendant is found mentally incompetent to stand trial for a misdemeanor (MIST), the court may hold a hearing to determine their eligibility for diversion. Only if the individual is ineligible for diversion may they be referred to CARE Court—despite being part of a population that could benefit significantly from CARE services."

- 8) **Argument in Opposition:** According to *Mental Health America of California*, “CARE Court is a legal mechanism to force individuals into court-ordered, and thus involuntary, behavioral healthcare. Approximately 4.4% of U.S. adults experience bipolar disorder in their lifetime.¹ Currently, CARE Court eligibility is limited to individuals with schizophrenia spectrum disorders with a prevalence in the U.S. ranging between 0.25% and 0.64%.² Expanding eligibility to include Bipolar 1 Disorder with psychotic features would increase the number of individuals being stripped of their right to choose the mental health supports and services that best meet their needs. An individual's mental health challenges are not better addressed when the government tells them what to do.

“Senate Bill 27 also makes sweeping changes to California’s mental health diversion process. Under current law, when a person is found incompetent to stand trial, the court is required to hold a diversion hearing. If, at this hearing, a person is deemed ineligible for diversion, another hearing is conducted to determine alternatives to diversion including Assisted Outpatient Treatment, CARE Court, or conservatorship. This bill instead mandates a new initial hearing to determine if: a) the court wants to hold an additional diversion hearing; or b) the court wants to refer an individual directly to CARE Court. At this point, no other alternatives are offered, and the court would be able to *bypass the entire diversion process* by sending an individual directly to CARE Court. If the court chooses option (a) under SB 27, the diversion process would proceed in a similar manner to current law, with the option to refer individuals to a range of alternative programs if they are deemed ineligible for diversion.

“CARE Court is a new, unproven mental health program. In its Early Implementation Report released in November 2024, the Department of Health Care Services reported only a total of 100 Care Court participants, yet state officials estimated 7,000 to 12,000 people would be eligible.³⁴ With only 100 people enrolled in CARE Court, it costs an estimated \$713,000 per person a year. These costs are for court personnel and other court costs, and do not include any costs for treatment. For comparison, Full-Service Partnerships (FSP) are designed to provide treatment for, and services to, adults with serious mental illness. This costs taxpayers approximately \$16,666 per person and, as of 2021, services more than 60,000 people statewide.”

9) **Related Legislation:**

- a) SB 331 (Menjivar) would permit an original petitioner to be assigned ongoing rights by the court throughout the CARE process. SB 331 is pending hearing in the Assembly Health Committee.
- b) SB 823 (Stern) would include bipolar I disorder in the criteria for a person to receive services under the CARE Act. SB 823 was held in the Senate Appropriations Committee’s suspense file.

10) **Prior Legislation:**

- a) SB 42 (Umberg), Chapter 640, Statutes of 2024 made various changes to the CARE Act, with an urgency clause so that the bill took effect in advance of the second cohort of counties’ implementation of the CARE Act on or before December 1, 2024.
- b) SB 1400 (Stern), Chapter 647, Statutes of 2024, relevant to this bill, modified CARE Act reporting requirements including requiring trial courts to report to Judicial Council on the

number of CARE plans ordered, CARE agreements approved, and CARE petitions dismissed.

- c) SB 35 (Umberg), Chapter 283, Statutes of 2023, made various modifications to the CARE Act in advance of the first cohort's implementation of the CARE Act in 2023.
- d) SB 26 (Umberg), of the 2023-2024 Legislative Session, would have created the CARE Scholarship Program. SB 26 was vetoed by the Governor.
- e) SB 1338 (Umberg), Chapter 319, Statutes of 2022, enacted the CARE Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Families Advocating for the Seriously Mentally Ill
Bakersfield, City of
Calchamber
California Advocates for Smi
California Big City Mayors Coalition
California Retailers Association
California State Association of Psychiatrists (CSAP)
City of Bakersfield
City of San Diego
Orange County Business Council
Treatment Advocacy Center

Oppose

Cal Voices
California Association of Mental Health Peer Run Organizations
California Foundation for Independent Living Centers
California Peer Watch
California State Association of Public Administrators, Public Guardians, and Public Conservators
California Youth Empowerment Network
County Behavioral Health Directors Association, (CBHDA)
County of Fresno
County of San Joaquin
Disability Rights California
Disability Rights Education & Defense Fund (DREDF)
Drug Policy Alliance
Hand in Hand
Homeless Union for Friendship and Freedom
Kelechi Ubozoh Consulting
Law Project for Psychiatric Rights (PSYCHRIGHTS)
Mental Health America of California

National Health Law Program
Racial and Ethnic Mental Health Disparities Coalition
The Coelho Center for Disability Law Policy and Innovation
Venice Justice Committee
Western Center on Law & Poverty
Western Regional Advocacy Project

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

Amended Mock-up for 2025-2026 SB-27 (Umburg (S))

Mock-up based on Version Number 98 - Amended Assembly 6/17/25

Submitted by: Staff Name, Office Name

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

SECTION 1. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do one or more of the following:

(1) (A) (i) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible and suitable, grant diversion pursuant to Section 1001.36 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 misdemeanor complaint, whichever is shorter.

(ii) Notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a mental health diversion program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of a person arrested for a violation of Section 23152 or 23153 of the Vehicle Code.

(B) Any hearing to determine eligibility and suitability for diversion shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(2) Refer the defendant to the CARE Act court pursuant to Section 5978 of the Welfare and Institutions Code, if the defendant or counsel for the defendant agrees to the referral and the

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court has reason to believe that the defendant may be eligible for the CARE program. The CARE Act court shall hold a hearing to determine eligibility for the CARE program within 30 court days after the date of the referral. If the hearing is delayed beyond 30 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to the CARE program, unless the defendant's case has been referred back to the court prior to the expiration of that six-month time period. **If the defendant is not accepted into the CARE program or if the CARE Act court refers the defendant back to criminal court before the expiration of the six-month time period, the court shall proceed as provided in subparagraph (1).** Except as provided in this section and Sections 5978 and 5978.2 of the Welfare and Institutions Code, this paragraph does not alter the confidential nature of CARE program proceedings.

(c) If the court finds the defendant ineligible or unsuitable for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine which one of the following actions the court will take:

(1) Order modification of an existing mental health diversion treatment plan in accordance with a recommendation from the treatment provider.

(2) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the finding of incompetency. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to assisted outpatient treatment, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of assisted outpatient treatment.

(3) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available

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alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 30 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the filing of a petition for the establishment of a temporary or permanent conservatorship, the charges shall be dismissed pursuant to Section 1385 90 days after the date of the filing of the petition, unless the defendant's case has been referred back to the court prior to the expiration of that time period. This section does not alter the confidential nature of conservatorship proceedings.

(4) Refer the defendant to the CARE Act court pursuant to Section 5978 of the Welfare and Institutions Code. The CARE Act court shall hold a hearing to determine eligibility for the CARE program within 14 court days after the date of the referral. If the hearing is delayed beyond 14 court days, the court shall order the defendant, if confined in a county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into the CARE program, the CARE Act court shall notify the criminal court of the acceptance, and the charges shall be dismissed pursuant to Section 1385 six months after the date of the referral to the CARE program, unless the defendant's case has been referred back to the court prior to the expiration of that time period. Except as provided in this section and Sections 5978 and 5978.2 of the Welfare and Institutions Code, this paragraph does not alter the confidential nature of CARE program proceedings.

(5) If the defendant does not qualify for services pursuant to paragraphs (1) to (4), inclusive, dismiss the charges.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum period of treatment pursuant to paragraphs (2) and (4) of subdivision (c) and paragraphs (1) and (2) of subdivision (b), if applicable. A defendant not in actual custody shall otherwise receive day for day credit against the term of treatment from the date the defendant is accepted into treatment in the event that the criminal charges have not previously been dismissed. "Actual custody" has the same meaning as in Section 4019.

(e) The county behavioral health agency and jail medical providers may share confidential medical records and other relevant information with the court, including, but not limited to, prior interactions with and treatment of the defendant, for the purpose of determining likelihood of eligibility for behavioral health services and programs pursuant to this section. The disclosure of information pursuant to this subdivision is subject to applicable state and federal privacy laws.

(f) This section shall apply only as provided in subdivision (b) of Section 1367.

(g) It is the intent of the Legislature that the court shall consider all treatment options as provided in this section prior to dismissing criminal charges. However, nothing in this section limits a court's discretion pursuant to Section 1385.

SEC. 2. Section 5971 of the Welfare and Institutions Code is amended to read:

5971. Unless the context otherwise requires, the following definitions shall govern the construction of this part.

(a) “CARE agreement” means a voluntary settlement agreement entered into by the parties. A CARE agreement includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports.

(b) “CARE plan” means an individualized, appropriate range of community-based services and supports, as set forth in this part, which include clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services, as appropriate, pursuant to Section 5982.

(c) “CARE process” means the court and related proceedings to implement the CARE Act.

(d) “Clinically stabilized in ongoing voluntary treatment” means all of the following:

(1) The person’s condition is stable and not deteriorating.

~~(2) The person is likely to survive safely in the community without supervision.~~

~~(3)~~ **(2)** The person is currently engaged in treatment and managing symptoms through medication or other therapeutic interventions. **Enrollment in treatment alone shall not be considered clinically stabilized in ongoing voluntary treatment.**

~~(4) The person’s mental health condition is not negatively impacting their ability to live safely within the community or current housing situation.~~

(e) “Counsel” means the attorney representing the respondent, appointed pursuant to Section 5977, or chosen by the respondent, in CARE Act proceedings and matters related to CARE agreements and CARE plans. Representation of a respondent in these matters does not alter counsel’s obligations under the State Bar Act and the Rules of Professional Conduct, including subdivision (e) of Section 6068 of the Business and Professions Code and rule 1.6 of the Rules of Professional Conduct.

(f) “County behavioral health agency” means the local director of mental health services described in Section 5607, the local behavioral health director, or both as applicable, or their designee.

(g) “Court-ordered evaluation” means an evaluation ordered by a superior court pursuant to Section 5977.1.

(h) “Department” means the State Department of Health Care Services.

(i) “Graduation plan” means a voluntary agreement entered into by the parties at the end of the CARE program that includes a strategy to support a successful transition out of court jurisdiction and that may include a psychiatric advance directive. A graduation plan includes the same elements as a CARE plan to support the respondent in accessing community-based services and supports. The graduation plan shall not place additional requirements on the local government entities and is not enforceable by the court.

(j) “Homeless outreach worker” means a person who engages people experiencing homelessness to assess for unmet needs, offer information, services, or other assistance, or provide care coordination.

(k) “Indian health care provider” means a health care program operated by the Indian Health Service, an Indian tribe, a tribal organization, or urban Indian organization (I/T/U) as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. Sec. 1603).

(l) “Legal proceeding” means any administrative, civil, or criminal proceeding, including, but not limited to, juvenile court proceedings and family court proceedings and services, and any form of alternative dispute resolution, including arbitration and mediation, except for the following:

(1) A proceeding under this part.

(2) A proceeding under the Lanterman-Petris-Short Act described in paragraph (2) or (3) of subdivision (a) of Section 5979.

(3) A proceeding from which the respondent was referred to CARE Act proceedings as described in Section 5978.

(4) A disciplinary proceeding under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(5) An appeal from any of the proceedings identified in paragraphs (1) through (4), inclusive.

(m) “Licensed behavioral health professional” means any of the following:

(1) A licensed mental health professional, as defined in subdivision (j) of Section 4096.

(2) A person who has been granted a waiver of licensure requirements by the department pursuant to Section 5751.2.

~~(3) A nurse practitioner, as defined in Section 2835 of the Business and Professions Code.~~

~~(4) A physician assistant, as defined in subdivision (d) of Section 3501 of the Business and Professions Code.~~

(n) “Parties” means the petitioner, the respondent, the county behavioral health agency in the county where proceedings under this part are pending, and any local governmental entity added by the court pursuant to paragraph (4) of subdivision (d) of Section 5977.1.

(o) “Petitioner” means the person who files the CARE Act petition with the court. Additionally, if the petitioner is a person listed in Section 5974 other than the director of a county behavioral health agency, or their designee, the petitioner shall have the right to file a petition with the court, but at the initial hearing the court shall substitute the director of a county behavioral health agency, or their designee, of the county in which the proceedings are filed as petitioner. The original petitioner may, at the court’s discretion and in furtherance of the interests of the respondent, retain rights as described in subparagraph (A) of paragraph (6) of subdivision (b) of Section 5977.

(p) “Psychiatric advance directive” means a legal document, executed on a voluntary basis in accordance with the requirements for advance health care directives in Division 4.7 (commencing with Section 4600) of the Probate Code, by a person who has the capacity to make medical decisions, that allows a person with mental illness to protect their autonomy and ability to direct their own care by documenting their preferences for treatment in advance of a mental health crisis.

(q) “Respondent” means the person who is the subject of the petition for the CARE process.

(r) “Stabilization medications” means medications included in the CARE plan that primarily consist of antipsychotic medications to reduce symptoms of hallucinations, delusions, and disorganized thinking. Stabilization medications may be administered as long-acting injections if clinically indicated. Stabilization medications shall not be forcibly administered.

(s) “Supporter” means an adult designated by the respondent who assists the person who is the subject of the petition, which assistance may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process, including a CARE agreement, a CARE plan, and developing a graduation plan. A supporter shall not act independently.

SEC. 3. Section 5972 of the Welfare and Institutions Code is amended to read:

5972. An individual shall qualify for the CARE process only if all of the following criteria are met:

(a) The person is 18 years of age or older.

(b) The person is currently experiencing a serious mental disorder, as defined in paragraph (2) of subdivision (b) of Section 5600.3 and has a diagnosis identified in the disorder class: schizophrenia spectrum and other psychotic disorders, or bipolar I disorder with psychotic features, ~~mood disorders with psychotic features~~, except psychosis related to current intoxication, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders. This section does not establish respondent eligibility based upon a psychotic disorder that is due to a medical condition or is not primarily psychiatric in nature, including, but not limited to, physical health

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conditions such as traumatic brain injury, autism, dementia, or neurologic conditions. A person who has a current diagnosis of substance use disorder as defined in paragraph (2) of subdivision (a) of Section 1374.72 of the Health and Safety Code but who does not also meet the required criteria in this section shall not qualify for the CARE process.

(c) The person is not clinically stabilized in ongoing voluntary treatment.

(d) At least one of the following is true:

(1) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.

(2) The person is in need of services and supports in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or others, as used in Section 5150.

(e) Participation in a CARE plan or CARE agreement would be the least restrictive alternative necessary to ensure the person's recovery and stability.

(f) It is likely that the person will benefit from participation in a CARE plan or CARE agreement.

SEC. 4. Section 5975 of the Welfare and Institutions Code is amended to read:

5975. The Judicial Council shall develop a mandatory form for use to file a CARE process petition with the court and any other forms necessary for the CARE process. The petition shall be signed under the penalty of perjury and contain all of the following:

(a) The name of the respondent and, if known, the respondent's address.

(b) The petitioner's relationship to the respondent.

(c) Facts that support the petitioner's assertion that the respondent meets the CARE criteria in Section 5972.

(d) Either of the following:

(1) An affidavit of a licensed behavioral health professional, **including, for purposes of this Section only, nurse practitioners as defined in Section 2835 of the Business and Professions Code and physician assistants as defined in subdivision (d) of Section 3501 of the Business and Professions Code**, stating that the licensed behavioral health professional or their designee has examined the respondent within 60 days of the submission of the petition, or has made multiple attempts to examine, but has not been successful in eliciting the cooperation of the respondent to submit to an examination, within 60 days of the petition, and that the licensed behavioral health professional had determined that the respondent meets, or has reason to

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believe, explained with specificity in the affidavit, that the respondent meets the diagnostic criteria for CARE proceedings.

(2) Evidence that the respondent was detained for a minimum of two intensive treatments pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Part 1, the most recent one within the previous 60 days. Evidence may include, but is not limited to, documentary evidence from the facility where the respondent was detained, or a signed declaration from the petitioner if the petitioner had personal knowledge of the detentions.

SEC. 4. SEC. 5. Section 5977 of the Welfare and Institutions Code is amended to read:

5977. (a) (1) The court shall promptly review the petition to determine if the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972. **The court may make a prima facie determination without conducting a hearing.**

(2) If the court finds that the petitioner has not made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court may dismiss the case and, if the court does so, it shall order that the dismissal is without prejudice, unless Section 5975.1 applies. Nothing other than Section 5975.1 prevents a petitioner whose petition was dismissed without prejudice from refileing the petition with amended information.

(3) If the court finds that the petitioner has made a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall do one of the following:

(A) If the petitioner is the director of a county behavioral health agency, or their designee, the court shall do the following:

(i) Set the matter for an initial appearance on the petition within 14 court days, ~~or concurrently conduct the initial appearance with the prima facie determination pursuant to clause (v) of this paragraph.~~

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code, to represent the respondent. If no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity shall be appointed to represent the respondent.

(iii) Determine whether the petition includes all of the following information and, if it does not, order the county behavioral health agency to submit a written report with the court within 14 court days that includes all of the following:

(I) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(II) The outcome of efforts made to voluntarily engage the respondent prior to the filing of the petition.

(III) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) Order the county behavioral health agency to provide notice to the respondent, the appointed counsel, and the county behavioral health agency in the county where the respondent resides, if different from the county where the CARE process has commenced.

~~(v) If the requirements set forth in clauses (ii) to (iv), inclusive, of this subparagraph and all of the requirements of subdivision (b) are satisfied at the time of the prima facie determination, and the petitioner and respondent are both present and consent, the court may conduct the initial appearance concurrently with the prima facie determination.~~

(B) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall order a county agency, or their designee, as determined by the court, to investigate, as necessary, file a written report with the court as soon as practicable, but within 30 court days, and provide notice to the respondent and petitioner that a report has been ordered. Parties shall complete the investigation with appropriate urgency. The written report shall include all of the following:

(i) A determination as to whether the respondent meets, or is likely to meet, the criteria for the CARE process.

(ii) The outcome of efforts made to voluntarily engage the respondent during the report period.

(iii) Conclusions and recommendations about the respondent's ability to voluntarily engage in services.

(iv) The information, including protected health information, necessary to support the determinations, conclusions, and recommendations in the report.

(4) If, upon a request by the county agency ordered to investigate and file a report under subparagraph (B) of paragraph (3), the court finds that the county agency is making progress to engage the respondent, the court may, in its discretion, grant the county agency no more than 30 additional days to continue to work with, engage, and enroll the individual in voluntary treatment and services. The county agency shall provide notice to the respondent and petitioner that an extension for filing a report has been granted.

(5) Upon receipt of the report described in subparagraph (B) of paragraph (3), the court shall, within five days, take one of the following actions:

(A) If the court determines that voluntary engagement with the respondent is effective, and that the individual has enrolled or is likely to enroll in voluntary behavioral health treatment, the court shall dismiss the matter.

(B) If the court determines, based on the county agency's report, that the evidence does not support a prima facie showing that the respondent is, or may be, a person described in Section 5972, the court shall dismiss the matter. This section shall not prevent a county behavioral health agency from continuing to voluntarily engage with a person not described in Section 5972 but who is in need of services and supports.

(C) If the court determines, based on the county agency's report, that the evidence does support a prima facie showing that the respondent is, or may be, a person described in Section 5972, and engagement with the county agency was not effective, the court shall do all of the following:

(i) Set an initial appearance on the petition within 14 court days.

(ii) Appoint a qualified legal services project, as defined in Sections 6213 to 6214.5, inclusive, of the Business and Professions Code or, if no legal services project has agreed to accept these appointments, a public defender or other counsel working in that capacity to represent the respondent.

(iii) Order the county agency to provide notice of the initial appearance to the petitioner, the respondent, the appointed counsel, the county behavioral health agency in the county where the respondent resides, and, if different, the county where the CARE court proceedings have commenced.

(b) At the initial appearance on the petition, all of the following shall apply:

(1) The court shall permit the respondent to substitute their own counsel.

(2) Petitioner shall be present. If the petitioner is not present, the matter may be dismissed.

(3) Respondent may waive personal appearance and appear through counsel. If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding in open court that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence if the court makes a finding in open court that conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest.

(4) A representative from the county behavioral health agency shall be present.

(5) If the respondent asserts that they are enrolled in a federally recognized Indian tribe or are receiving services from an Indian health care provider, a tribal court, or a tribal organization, a representative from the program, the tribe, or the tribal court shall be allowed to be present, subject to the consent of the respondent. The tribal representative shall be entitled to notice by the county of the initial appearance.

(6) (A) If the petitioner is a person other than the director of a county behavioral health agency, or their designee, the court shall issue an order relieving the original petitioner and appointing the director of the county behavioral health agency or their designee as the successor petitioner.

(B) If the original petitioner is described in subdivision (a) or (b) of Section 5974, all of the following apply:

(i) The original petitioner shall have the right to be present and make a statement at the initial hearing on the merits of the petition held pursuant to paragraph (7).

(ii) (I) Until July 1, 2025, the court may, in its discretion, assign ongoing rights of notice to the original petitioner.

(II) Commencing July 1, 2025, unless the court determines, either upon its own motion or upon the motion of the respondent, at any point in the proceedings, that it likely would be detrimental to the treatment or well-being of the respondent, the court shall provide ongoing notice of proceedings to the original petitioner throughout the CARE proceedings, including notice of when a continuance is granted or when a case is dismissed. If a continuance is granted, the notice shall provide a general reason for the continuance, including the absence of the respondent or one of the grounds pursuant to Rule 3.1332 of the California Rules of Court. If a case is dismissed, the notice shall specify the statutory basis for the dismissal. A notice pursuant to this clause shall not disclose any patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or this act, without the respondent's consent.

(iii) To the extent that the respondent consents, the court may allow the original petitioner to participate in the respondent's CARE proceedings.

(iv) The original petitioner may file a new petition with the court, pursuant to Section 5974, if the matter is dismissed and there is a change in circumstances.

(C) If the original petitioner is not described in subdivision (a) or (b) of Section 5974, the court shall not assign ongoing rights to the original petitioner, other than the right to be present and make a statement at the hearing on the merits of the petition held pursuant to paragraph (7).

(7) (A) The court shall set a hearing on the merits of the petition within 10 days, at which time the court shall determine whether, by clear and convincing evidence, the respondent meets the CARE criteria in Section 5972. In making this determination, the court shall consider all evidence properly before it, including any report from the county behavioral health agency ordered pursuant to paragraph (3) of subdivision (a) and any additional admissible evidence presented by the parties, including the petition submitted and any statement given by the original petitioner. A licensed behavioral health professional may testify as an expert concerning whether the respondent meets the CARE criteria in Section 5972 provided that the court finds that the professional has special

knowledge, skill, experience, training, or education sufficient to qualify as an expert under Section 720 of the Evidence Code.

(B) The hearing on the merits of the petition may be conducted concurrently with the initial appearance upon stipulation of the successor petitioner and the respondent, subject to the approval by the court.

(c) (1) If, at the hearing on the merits of the petition, the court finds there is not clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall dismiss the case without prejudice, unless the court makes a finding, in open court, that the original petitioner's filing was not in good faith, in which case the dismissal shall be with prejudice.

(2) If, at the hearing on the merits of the petition, the court finds by clear and convincing evidence that the respondent meets the CARE criteria in Section 5972, the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to engage the respondent in behavioral health treatment and attempt to enter into a CARE agreement. The court shall set a case management hearing within 14 days.

(3) If the respondent is enrolled in a federally recognized Indian tribe, the county shall provide notice of the case management hearing to the tribe, subject to the consent of the respondent.

(d) The following shall apply to any written report submitted by a county behavioral health agency to the court pursuant to this section:

(1) The report is confidential and not subject to disclosure or inspection under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(2) The report is inadmissible in any subsequent legal proceeding, except upon motion of the respondent in that subsequent legal proceeding.

(3) The report shall be confidential pursuant to subdivision (e) of Section 5976.5.

(4) This subdivision shall not affect the applicability of paragraph (2) of subdivision (c) of Section 5977.1, make admissible any evidence that is not otherwise admissible, or permit a witness to base an opinion on any matter that is not a proper basis for such an opinion. The admission or exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code, including, but not limited to, Section 352 of the Evidence Code, and by judicial decision.

~~SEC. 5.~~ **SEC. 6.** Section 5977.1 of the Welfare and Institutions Code is amended to read:

5977.1. (a) (1) At the case management hearing, the court shall hear evidence as to whether the parties have entered, or are likely to enter, into a CARE agreement.

(2) If the court finds that the parties have entered, or are likely to enter, into a CARE agreement, the court shall do one of the following:

(A) Approve the terms of the CARE agreement or modify the terms of the CARE agreement and approve the agreement as modified by the court, and continue the matter and set a progress hearing for 60 days.

(B) Continue the matter for 14 days to allow the parties additional time to enter into a CARE agreement, upon stipulation of the parties.

(3) Nothing in this subdivision shall prohibit the parties from agreeing to, and the court from approving, amendments to the CARE agreement.

(4) The court may, in its discretion, call additional progress hearings beyond the hearing set at 60 days, for the duration of the CARE agreement.

(b) If the court finds that the parties have not entered into a CARE agreement, and are not likely to enter into a CARE agreement, the court shall order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, unless there is an existing clinical evaluation of the respondent completed within the last 30 days and the parties stipulate to the use of that evaluation. The evaluation shall address, at a minimum, the following:

(1) A clinical diagnosis of the respondent.

(2) Whether the respondent has the legal capacity to give informed consent regarding psychotropic medication.

(3) Any other information as ordered by the court or that the licensed behavioral health professional conducting the evaluation determines would help the court make future informed decisions about the appropriate care and services the respondent should receive.

(4) An analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent.

(c) (1) The court shall set a clinical evaluation hearing to review the evaluation within 21 days. The court shall order the county to file the evaluation with the court and provide the evaluation to the respondent's counsel no later than five days prior to the scheduled clinical evaluation hearing. The clinical evaluation hearing may be continued for a maximum of 14 days upon stipulation of the respondent and the county behavioral health agency, unless there is good cause for a longer extension.

(2) At the clinical evaluation review hearing, the court shall review the evaluation and other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person

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who conducted the evaluation. Only relevant and admissible evidence that fully complies with the rules of evidence may be considered by the court.

(3) At the conclusion of the hearing, the court shall determine whether the respondent, by clear and convincing evidence, meets the CARE criteria in Section 5972 and make orders as follows:

(A) If the court finds that the respondent meets the CARE criteria, the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days.

(B) If the court does not find that clear and convincing evidence establishes that the respondent meets the CARE criteria, the court shall dismiss the petition.

(4) If the respondent is a self-identified American Indian or Alaska Native individual, as defined in Sections 1603(13), 1603(28), and 1679(a) of Title 25 of the United States Code, has been determined eligible as an Indian under Section 136.12 of Title 42 of the Code of Federal Regulations, or is currently receiving services from an Indian health care provider or tribal court, the county behavioral health agency shall use its best efforts to meaningfully consult with and incorporate the Indian health care provider or tribal court available to the respondent to develop the CARE plan.

(5) The evaluation and all reports, documents, and filings submitted to the court shall be confidential.

(6) The date for the hearing to review and consider approval of the proposed CARE plan shall be set not more than 14 days from the date of the order to develop a CARE plan, unless the court finds good cause for an extension. The party requesting an extension of time for the CARE plan review hearing shall provide notice to the opposing party and their counsel of the request for extension of time, and the court's order if the request is granted.

(d) (1) At the CARE plan review hearing, the parties shall present their plan or plans to the court. The county behavioral health agency or the respondent, or both, may present a proposed CARE plan.

(2) After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding pursuant to Section 5982. These orders shall constitute the CARE plan and may be amended.

(3) A court may order medication if it finds, upon review of the court-ordered evaluation and hearing from the parties, that, by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication. To the extent the court orders medically necessary stabilization medication, the medication shall not

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be forcibly administered and the respondent's failure to comply with a medication order shall not result in a penalty, including, but not limited to, contempt or termination of the CARE plan pursuant to Section 5979.

(4) If the proposed CARE plan includes services and supports, such as housing, provided directly or indirectly through another local governmental entity, that local entity may agree to provide the service or support, or the court may consider a motion by either of the parties to add the local entity as a party to the CARE proceeding. If the local entity agrees to provide the service or support, it may request to be added as a party by the court.

(5) If, after presentation of the CARE plan or plans, the court determines that additional information is needed, including from a licensed behavioral health professional, the court shall order a supplemental report to be filed by the county behavioral health agency for which the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(6) If there is no CARE plan because the parties have not had sufficient time to complete it, the court may grant a continuance of no more than 14 days, unless there is good cause for a longer extension.

(7) This subdivision does not prohibit the parties from agreeing to, and the court from approving, amendments to the CARE plan. The court may also approve amendments to the CARE plan upon the finding that those amendments are necessary to support the respondent in accessing appropriate services and supports, following a hearing on the issue.

(e) The issuance of an order approving a CARE plan pursuant to paragraph (2) of subdivision (d) begins the CARE process timeline, which shall not exceed one year.

~~SEC. 6.~~ SEC. 7. Section 5977.3 of the Welfare and Institutions Code is amended to read:

5977.3. (a) (1) In the 11th month of the process timeline, the court shall hold a one-year status hearing. Not fewer than five court days prior to the one-year status hearing, the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter. The report shall include the following information:

(A) The progress that the respondent has made on the CARE plan, including a final assessment of the respondent's stability.

(B) What services and supports in the CARE plan were provided, and what services and supports were not provided, over the life of the program.

(C) Any issues the respondent expressed or exhibited in adhering to the CARE plan.

(D) Recommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide.

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(2) At an evidentiary hearing, the respondent shall be permitted to respond to the report submitted by the county behavioral health agency and to the county behavioral health agency's testimony. Respondent shall be permitted to introduce their own information and recommendations. The respondent shall have the right at the hearing to call witnesses and to present evidence as to whether the respondent agrees with the report. The respondent may request either to be graduated from the program or to remain in the program.

(3) The court shall issue an order as follows:

(A) If the respondent requests to be graduated from the program, and the court approves this request, the court shall order the county behavioral health agency and the respondent to work jointly on a voluntary graduation plan and the court shall schedule a hearing in the 12th month after adoption of the CARE plan for presentation of the graduation plan. The court shall review the graduation plan and recite the terms in open court. The graduation plan shall not place additional requirements on local governmental entities and is not enforceable by the court, except that the graduation plan may, at the respondent's election, include a psychiatric advance directive, which shall have the force of law. Upon completion of the hearing, the respondent shall be officially graduated from the program.

(B) If the respondent requests to remain in the CARE process, the respondent may request any amount of time, up to and including one additional year. The court may approve the request and thereby permit the ongoing voluntary participation of the respondent if the court finds both of the following:

(i) The respondent did not successfully complete the CARE plan.

(ii) The respondent would benefit from continuation of the CARE plan.

(C) The court shall issue an order permitting the respondent to continue in the CARE plan or denying respondent's request to remain in the CARE plan, and state its reasons in open court.

(b) The respondent may be involuntarily reappointed to the program only if the court finds, by clear and convincing evidence, that all of the following conditions apply:

(1) The respondent did not successfully complete the CARE process.

(2) All services and supports required through the CARE process were provided to the respondent.

(3) The respondent would benefit from continuation in the CARE process.

(4) The respondent currently meets the requirements in Section 5972.

(c) A respondent may only be reappointed to the CARE process once, for up to one additional year.

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~~SEC. 7.~~ **SEC. 8.** Section 5978 of the Welfare and Institutions Code is amended to read:

5978. (a) A court may refer an individual from assisted outpatient treatment, from conservatorship proceedings pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 (LPS conservatorship), from misdemeanor proceedings pursuant to Section 1370.01 of the Penal Code, or from felony proceedings pursuant to Section 1370 of the Penal Code to the CARE Act court.

(b) The CARE Act court may consider a referral made pursuant to this section to be a petition satisfying the requirements of paragraph (3) of subdivision (a) of Section 5977 if both of the following conditions are met:

(1) The referral contains information sufficient to otherwise satisfy the petition requirements in Section 5975.

(2) The information included in the referral makes a prima facie showing that the respondent is, or may be, a person described in Section 5972.

(c) If the CARE Act court elects to consider a referral to be a petition pursuant to subdivision (b), the CARE Act court shall notify the referring court that the referral has been accepted as a petition for CARE Act proceedings.

(d) If the CARE Act court does not elect to consider a referral to be a petition pursuant to subdivision (b), the CARE Act court shall order the appropriate petitioner candidate to do the following within 14 court days:

(1) Complete an investigation to determine whether to file a petition on behalf of the referred individual.

(2) Notify the referring court whether it intends to file a CARE Act petition on behalf of the referred individual.

(e) If the appropriate petitioner candidate notifies the CARE Act court that it requires additional time to complete its investigation pursuant to paragraph (1) of subdivision (d), the CARE Act court may grant an extension of up to 30 court days.

(f) For purposes of this section, “appropriate petitioner candidate” means:

(1) For referrals from assisted outpatient treatment or from misdemeanor **or felony** proceedings, the county behavioral health director or their designee.

(2) For referrals from conservatorship proceedings, the conservator or proposed conservator.

~~SEC. 8.~~ **SEC. 9.** Section 5985 of the Welfare and Institutions Code is amended to read:

5985. (a) (1) The department shall develop, in consultation with county behavioral health agencies, other relevant state or local government entities, disability rights groups, individuals with lived experience, families, counsel, racial justice experts, and other appropriate stakeholders, an annual CARE Act report. The department shall post the annual report on its internet website.

(2) The department, in consultation with county behavioral health agencies and courts, shall specify the length of time that data on former participants shall be reported pursuant to subdivision (e), which shall be a minimum of 12 months after completion of and a maximum of 36 months following engagement in CARE Act elective services, a CARE agreement, or CARE plan.

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

(A) “Former participant” means an individual who enters into CARE Act elective services, a CARE agreement, or a CARE plan, but who has either graduated from CARE, or for whom CARE Act proceedings were dismissed or terminated. Counties shall not be responsible for reporting on any individual who is privately insured or who no longer resides in California.

(B) “Active participants” means an individual who is an elective client, or who has a CARE plan or CARE agreement.

(b) County behavioral health agencies and any other state or local governmental entity, as identified by the department, shall provide data related to the CARE Act participants, services, and supports to the department. The department shall determine the data measures and specifications, and shall publish them via guidance issues pursuant to subdivision (b) of Section 5984.

(c) Each county behavioral health department and any other state and local governmental entity, as identified by the department, shall provide the required data to the department, in a format and frequency as directed by the department.

(d) (1) In consultation with the Judicial Council, the department shall develop an annual reporting schedule for the submission of CARE Act data from the trial courts.

(2) Data from the trial courts shall be submitted to the Judicial Council, which shall aggregate the data and submit it to the department consistent with the reporting schedule developed pursuant to paragraph (1).

(3) On an annual basis to be determined by the Judicial Council and consistent with the annual reporting schedule developed pursuant to paragraph (1), the trial courts shall report to the Judicial Council the following data related to CARE Act petitions:

(A) The number of petitions submitted pursuant to Section 5975.

(B) The number of initial appearance hearings on the petition held pursuant to paragraph (3) of subdivision (a) of Section 5977.

(C) The total number of hearings held pursuant to this part.

(D) The total number of CARE plans ordered and CARE agreements approved.

(E) The total number of court petitions dismissed, as reported by the Judicial Council.

(e) The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation. The measures and reporting requirements shall be developed by the department in consultation with county behavioral health agencies. The report shall include trial court petition data pursuant to paragraph (3) of subdivision (d) and, to the extent administrative data is available, all of the following information compiled from county behavioral health departments and courts:

(1) The demographics of all participants, including, but not limited to, the age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence.

(2) The petitioner's relationship to the CARE Act respondent as defined in Section 5974.

(3) The services and supports ordered, the services and supports provided, and the services and supports ordered but not provided to all active and former participants.

(4) The housing placements of all active and former participants. Placements include, but are not limited to, transition to a higher level of care, independent living in the person's own house or apartment, community-based housing, community-based housing with services, shelter, and no housing.

(5) Treatments continued and terminated of all active and former participants.

(6) Substance use disorder rates and rates of treatment among all active and former participants.

(7) Detentions and other Lanterman-Petris-Short Act involvement for all active and former participants.

(8) Criminal justice involvement of all active and former participants.

(9) Deaths among all active and former participants, along with the cause of death.

(10) Type, format, and frequency of outreach and engagement activities provided by a county behavioral health agency to engage an individual who is the subject of a referral or petition, including interactions about the individuals eligible or likely to be eligible and outcomes of these efforts.

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(11) In consultation with the department and county behavioral health departments, the number, rates, and trends of contacts made to the county behavioral health agency about individuals eligible or likely to be eligible for the CARE process, including outcomes of those contacts.

(12) The number, rates, and source of referrals to county behavioral health departments, including, but not limited to, referrals resulting in a petition or reason for not filing a petition, length of time from referral to outcome, and services provided for those engaged voluntarily without a petition.

(13) The number, rates, and trends of petitions resulting in dismissal and hearings.

(14) Information on petition dispositions, including, but not limited to, disposition recommendations and the number of days from petition to disposition.

(15) The number, rates, and trends of supporters.

(16) The number, rates, and trends of approved CARE agreements.

(17) The number, rates, and trends of ordered and completed CARE plans.

(18) Statistics on the services and supports, including court orders for stabilizing medications.

(19) The rates of adherence to medication.

(20) The number, rates, and trends of psychiatric advance directives created for active participants.

(21) The number, rates, and trends of developed graduation plans.

(22) Outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing, reductions in emergency department visits and inpatient hospitalizations, reductions in law enforcement encounters and incarceration, reductions in involuntary treatment and conservatorship, and reductions in substance use.

(23) A health equity assessment of the CARE Act to identify demographic disparities based on demographic data in paragraph (1), and to inform disparity reduction efforts.

(24) Data regarding referrals made pursuant to Section 5978.1, as part of the CARE Act.

(f) (1) The report shall include, at a minimum, information on the effectiveness of the CARE Act model in improving outcomes and reducing disparities, homelessness, criminal justice involvement, conservatorships, and hospitalization of participants. The annual report shall include process measures to examine the scope of impact and monitor the performance of CARE Act model implementation, such as the number and source of petitions filed for CARE Court; the number, rates, and trends of petitions resulting in dismissal and hearings; the number, rates, and trends of supporters; the number, rates, and trends of voluntary CARE agreements; the number, rates, and trends of ordered and completed CARE plans; the services and supports included in

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CARE plans, including court orders for stabilizing medications; the rates of adherence to medication; the number, rates, and trends of psychiatric advance directives; and the number, rates, and trends of developed graduation plans. The report shall include outcome measures to assess the effectiveness of the CARE Act model, such as improvement in housing status, including gaining and maintaining housing; reductions in emergency department visits and inpatient hospitalizations; reductions in law enforcement encounters and incarceration; reductions in involuntary treatment and conservatorship; and reductions in substance use. The annual report shall examine these data through the lens of health equity to identify racial, ethnic, and other demographic disparities and inform disparity reduction efforts.

(2) Data shall be stratified by age, sex, race, ethnicity, languages spoken, disability, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage source, and county, to the extent statistically relevant data is available.

(g) The outcomes shall be presented to relevant state oversight bodies, including, but not limited to, the California Interagency Council on Homelessness.

(h) (1) Beginning in 2026, the department shall include in its annual CARE Act report quantitative, deidentified information concerning the operation of this part.

(2) Based on information provided to the department in a form and manner specified by the department, in consultation with the Judicial Council and county behavioral health departments, in accordance with subdivision (b) of Section 5984, the report shall include all of the following information, aggregated by county, compiled from county behavioral health departments, courts, and the department, depending on the source:

(A) The number of contacts to the county behavioral health department about individuals eligible or likely to be eligible for the CARE process, including outcome of contacts.

(B) The number of CARE petitions filed with the superior court.

(C) The petitioner type for each petition filed with the superior court.

(D) Disposition of each petition filed with the superior court.

(E) The number of days between filing each petition and the petition's disposition.

(F) Demographic information of each CARE Act participant or potentially eligible CARE Act participant, including, but not limited to, age, sex, race, ethnicity, disability, languages spoken, sexual orientation, gender identity, housing status, veteran status, immigration status, health coverage status, including Medi-Cal enrollment status, information related to CARE criteria outlined in Section 5972, and county of residence, to the extent administrative data is available and statistically relevant.

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(G) The number of referrals of individuals in conservatorship proceedings made pursuant to subdivision (a) of Section 5978, including the disposition of each referral.

(H) The number of referrals made pursuant to Section 5978.1, including the disposition of each referral.

(i) Information publicly released or published pursuant to this part shall not contain data that may lead to the identification of participants or petitioners or information that would otherwise allow an individual to link the published information to a specific person. Data published by the department shall be deidentified in compliance with Section 164.514(a) and (b) of Title 45 of the Code of Federal Regulations.

~~SEC. 9.~~ SEC. 10. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SEC. 10.~~ SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

The CARE Act took effect in October 2023, and therefore important changes to the act must take effect immediately to ensure the CARE Act's success in providing timely assistance to respondents.

Date of Hearing: July 15, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 36 (Umberg) – As Amended June 25, 2025

As Proposed to be Amended in Committee

SUMMARY: Extends the criminal prohibitions against price gouging to counties adjacent to, and within a 50-mile radius of, any county in a proclamation or declaration of emergency; and expands the statutory basis to issue a search warrant to include specified misdemeanor price gouging crimes. Specifically, **this bill:**

- 1) Modifies the criminal prohibitions against price gouging during a state of emergency as follows:
 - a) Expands the criminal prohibitions against price gouging that apply to all counties in the proclamation or declaration of emergency to also include any county adjacent to, or within a 50-mile radius of, a county in the proclamation or declaration of emergency.
 - b) Clarifies that an extension of the price gouging protections authorized by the Governor may be terminated by a concurrent resolution of the Legislature declaring it at an end.
 - c) Removes the Legislature from the list of entities that may extend price gouging protections, as specified.
 - d) Defines “price gouging,” for purposes of California’s price gouging statute, as “the unlawful conduct of charging higher or greater prices,” as specified.
- 2) Expands the statutory authority for the issuance of a search warrant to include when the property or things to be seized consists of evidence that tends to show that specified misdemeanor price gouging violations pertaining to hotel and motel price increases, rental price increases, and evictions of tenants of residential housing, occurred or are occurring.
- 3) Provides that in addition to any liability for a civil penalty imposed for violating the Unfair Competition Law (UCL), a person who violates the UCL, if the act or acts of unfair competition are perpetrated against one or more persons displaced due to a state of emergency or local emergency at the time the violation occurred, shall be liable for a civil penalty not to exceed \$2,500 for each violation, which may be assessed and recovered in a civil action, as specified.
- 4) Requires a housing listing platform, during the period of 30 days following the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body

vested with authority to make that declaration in any county, city, or city and county, to do all of the following:

- a) Remove a listing when notified by local, regional, or state law enforcement agencies that the price for the listing made available on the housing listing platform violates specified price gouging crimes.
 - b) Establish and maintain a policy informing housing providers that listings are prohibited from engaging in specified price gouging during a state of emergency, and that failure to comply may include consequences including, but not limited to, suspension or termination of the housing provider's account.
 - c) Establish and maintain a policy informing persons searching for rental housing that listings are prohibited from violating specified price gouging crimes, and how to report listings that they believe are in violation of the law to the appropriate law enforcement agencies.
 - d) Provide a mechanism on the housing listing platform that allows any individual to notify the housing listing platform that a person may have violated specified price gouging crimes.
 - e) Provide a means, including a link to a dedicated web page, online portal, or email address on the housing listing platform, by which law enforcement can submit law enforcement requests, including warrants, subpoenas, and other legal processes, and related timelines for response.
 - f) Maintain internal written policies and systems to comply with the requirements of this section and to respond to law enforcement requests related to price gouging.
 - g) Requires such policies, and mechanism to allow an individual to notify a platform that a person engaged in price gouging to be publicly posted and readily accessible to users.
- 5) Establishes that violating specified criminal prohibitions against price gouging, including, but not limited to, price gouging during a state of emergency or local emergency, is unlawful under the Consumer Legal Remedies Act (CLRA).
 - 6) Enables persons displaced due to a state of emergency or a local emergency at the time the violation occurred to collect enhanced penalties when redressing unfair or deceptive acts or practices or unfair methods of competition.
 - 7) Defines "housing listing platform" as an internet website, application, or other similar centralized platform that acts as an intermediary between a consumer and another person which allows another person to list the availability of housing, lodging, or units for sale or for rent to a consumer.

EXISTING LAW:

- 1) Contains legislative findings that during a state of emergency or local emergency, including, resulting from natural or manmade disasters, some merchants have taken unfair advantage of

consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. (Pen. Code, § 396, subd. (a).)

- 2) Prohibits, for 30 days following a proclamation or declaration of emergency, the sale, or offer to sell, any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10% greater than the price charged immediately prior to the proclamation or declaration of emergency, subject to certain exemptions. (Pen. Code, § 396, subd. (b).)
- 3) Prohibits, for 180 days following a proclamation or declaration of emergency, a contractor from selling or offering to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10% greater than the price charged immediately prior to the proclamation or declaration of emergency, subject to certain exemptions. (Pen. Code, § 396, subd. (c).)
- 4) Prohibits, for 30 days following a proclamation or declaration of emergency, an owner or operator of a hotel or motel from increasing the hotel or motel's regular rates more than 10% than the price charged immediately prior to the proclamation or declaration of emergency. (Pen. Code, § 396, subd. (d).)
- 5) Prohibits, for 30 days following an official proclamation or declaration of emergency, the increase of rental price advertised, offered, or charged for housing, to an existing or prospective tenant for more than 10% than the price charged before the proclamation or declaration of emergency. (Pen. Code, § 396, subd. (e).)
- 6) Prohibits, for 30 days following an official proclamation or declaration of emergency, a landlord from evicting a tenant and renting or offering to rent to another person at a rental price greater than the evicted tenant could be charged, unless the eviction process began prior to the emergency proclamation or declaration. (Pen. Code, § 396, subd. (f).)
- 7) Allows extension of price gouging prohibitions for additional periods beyond the initial 30 days or 180 days of a proclamation or declaration of emergency if deemed necessary to protect the lives, property, or welfare of citizens, although an extension by a local body cannot exceed 30 days (Pen. Code, § 396, subd. (g).)
- 8) Punishes price gouging as a misdemeanor with imprisonment in a county jail for a period not exceeding one year, by a fine of not more than \$10,000, or by both. (Pen. Code, § 396, subd. (h).)
- 9) Provides that violations of the price gouging restrictions constitute unlawful business practices and potentially subject violators to injunctions and other remedies, as defined. (Pen. Code, § 396, subd. (i).)

- 10) Defines “state of emergency” as a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor. (Pen. Code, § 396, subd. (j)(1).)
- 11) Defines “local emergency” as a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county in California. (Pen. Code, § 396, subd. (j)(2).)
- 12) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (U.S. Const., Amend. IV; Cal. Const., art. I, § 13.)
- 13) Defines a “search warrant” as a written order in the name of the people, signed by a magistrate, directed to a peace officer, commanding them to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 14) Authorizes a search warrant to be issued upon any of the following grounds:
 - a) When the property was stolen or embezzled;
 - b) When the property or things were used as the means of committing a felony;
 - c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom they may have delivered them for the purpose of concealing them or preventing them from being discovered;
 - d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
 - e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under the age of 18 years, has occurred or is occurring;
 - f) When there is a warrant to arrest a person;
 - g) When a provider of electronic communication service or remote computing service has records or evidence, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the

possession of another to whom they may have delivered them for the purpose of concealing them or preventing their discovery;

- h) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified;
- i) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault;
- j) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a specified person that has been detained or apprehended for examination of their mental condition;
- k) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to specified firearm prohibitions;
- l) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;
- m) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test;
- n) When the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order;
- o) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to specified firearm prohibitions, and that the person has failed to relinquish the firearm as required by law;
- p) When the property or things to be seized are controlled substances or a device, contrivance, instrument or paraphernalia used for unlawfully administering a controlled substance as provided;
- q) When the warrant is for a blood sample of a person that tends to show a violations related to the operation of a vessel, or manipulating water skis, an aquaplane, or a similar device, while under the influence of alcohol or drugs;
- r) When the property or things to be seized consist of evidence that tends to show that a violation of the crime of disorderly conduct related to invasion of privacy has occurred or is occurring;

- s) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury to any person;
 - t) When the property or things to be seized consists of evidence that tends to show unlawful photographing of a deceased person by a first responder has occurred or is occurring; or,
 - u) When the property to be seized includes ammunition owned by a person subject to firearm prohibitions due to a specified mental illness (Pen. Code, § 1524, subd. (a).)
- 15) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)
- 16) Requires a magistrate to issue a search warrant if they are satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In times of crisis, Californians should be able to focus on recovery and rebuilding, not on predatory financial exploitation. Unfortunately, recent disasters—such as the devastating January 2025 firestorms—have shown that gaps in our current laws allow opportunist to take advantage of vulnerable, displaced residents.

"SB 36 closes these loopholes and strengthens protections against rental price gouging during declared emergencies. Under existing law, price gouging protections apply broadly to goods and services but do not explicitly cover rental housing. As we saw in the aftermath of the Southern California fires, bad actors took advantage of this oversight by listing properties in neighboring counties that were not subject to the emergency declaration, evading accountability while still targeting displaced residents.

"Sb 36 ensures that disaster victims are not further victimized by financial exploitation. It enhances civil penalties for price gouging, empowers public prosecutors with greater enforcement tools, and extends protections to counties within a 50-mile radius of the affected area to prevent circumvention of the law. Additionally, SB 36 brings accountability to online housing platforms by requiring them to monitor and report instances of price gouging and enforce fair pricing policies.

"California has long led the way in protecting consumers, and SB 36 builds on that commitment by closing critical gaps in our price gouging laws. When disaster strikes, Californians deserve stability, fairness, and the assurance that the law will hold those who seek to profit from tragedy accountable. I urge my colleagues to support SB 36 to protect our most vulnerable residents when they need it most."

- 2) **Expanding the Territory Covered by Price Gouging Prohibitions:** Price gouging occurs when a person or business selling specified goods or services increases their prices significantly after a natural disaster or other state of emergency. Existing law prohibits selling or offering to sell certain goods or services for a price more than 10% greater than the price charged immediately prior to a declared state of emergency. (Pen. Code, § 396, subds. (b)-(e).) Specifically, this prohibition applies when the President of the United States or the Governor proclaims a state of emergency or when an authorized official, board, or other governing body in a county or city declares a local emergency. (*Ibid.*) Currently, price gouging is prohibited for 30 or 180 days after an emergency is declared, depending on the goods or services at issue. (*Ibid.*) A violation of the prohibition is punishable as a misdemeanor by up to one year in county jail or a fine of \$10,000, or by both. Price gouging is also an unlawful business practice that can be civilly enforced by specified public prosecutors or through a private right of action. (Pen. Code, § 396, subd. (i).)

This bill would make several changes to California's price gouging statute. First, and most notably, it would apply any price gouging restrictions that enter into effect not only to all counties in the proclamation or declaration of emergency, but also to all counties adjacent to, and counties within a 50-mile radius of, the counties in the proclamation or declaration of emergency. Depending on the county affected, the geographic area proposed by this bill may be significant. For example, Los Angeles County is one of the nation's largest counties, encompassing 4,084 square miles.¹ Adjacent counties include Ventura County (2,208 square miles),² Kern County (8,161 square miles),³ San Bernardino County (20,160 square miles),⁴ and Orange County (948 square miles).⁵ The total area covered here is 35,561 square miles—roughly a fifth of the geographic size of California.⁶ By comparison, the states of West Virginia, Maryland, Hawaii, Massachusetts, Vermont, New Hampshire, New Jersey, Connecticut, Delaware, and Rhode Island are all smaller in size than the area which would be covered under this example.⁷ As drafted, an emergency declaration in one county would mandate price gouging prohibitions in any neighboring county. This may create confusion for businesses operating in another county, perhaps hundreds of miles away from the county experiencing a state of emergency, who may not be aware that they are subject to the price gouging restrictions associated with their neighboring county

Further, the duration of a state of emergency or a local emergency can often be lengthy, and may last years. The Governor's Office of Emergency Services (CalOES) website contains a list of states of emergency proclaimed by the Governor. As of June 18, 2025, there are over 50 open state of emergency proclamations, covering not only fires and storms, but also bird

¹ County of Los Angeles, *About LA County* (accessed July 6, 2025), available at: <https://lacounty.gov/government/about-la-county/about/>

² County of Ventura, *Ventura County Executive Office* (accessed July 6, 2025), available at: <https://www.ventura.org/county-executive-office/about-us/>

³ Apple Maps, *Kern County* (accessed July 6, 2025), available at: <https://maps.apple.com/place?aid=5609905159221694280&address=Kern+County%2C+CA%2C+United+States&coordinate=35.3466288%2C-118.7295064&name=Kern+County&lsp=7618>

⁴ San Bernardino County, *County Snapshot* (accessed July 6, 2025), available at: <https://selectsbcounty.com/county-snapshot>

⁵ Apple Maps, *Orange County* (accessed July 6, 2025), available at: <https://maps.apple.com/place?aid=16450146479720451860&address=Orange+County%2C+CA%2C+United+States&coordinate=33.6756872%2C-117.7772068&name=Orange+County&lsp=7618>

⁶ World Atlas, *US States by Size* (accessed July 6, 2025), available at: <https://www.worldatlas.com/geography/us-states-by-size.html>

⁷ *Ibid.*

flu, extreme heat events, and tree mortality.⁸ Some of these proclamations of states of emergency have been in effect for years. The vast majority of counties in the state have some state of emergency in effect.⁹ Given the number of emergency proclamations in effect, and the expansive application of this bill, effectively this may impose price gouging restrictions and penalties across the vast majority of the state. The author may wish to consider limiting the scope of this expansion.

Second, this bill would clarify that an extension of the price gouging protections authorized by the Governor may be terminated by a concurrent resolution of the Legislature declaring it at an end. As referenced above, price gouging protections usually last for a specified period of days, depending on the goods or services sold. Additionally, price gouging prohibitions may be extended by a local legislative body, local official, the Governor or the Legislature beyond the initial 30 or 180 days where necessary to protect the lives, property, or welfare of citizens, although an extension by a local body cannot exceed 30 days. (Pen. Code, § 396, subd. (g).) For example, on March 7, 2025, Governor Newsom extended price gouging protections in response to the fires in Los Angeles.¹⁰ The Los Angeles County Board of Supervisors recently voted to extend rental price gouging protections, which were set to expire on July 1, 2025.¹¹

- 3) Expanding the Search Warrant Statute to Include Misdemeanor Price Gouging:** Both the United States and the California Constitutions guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant is a written order, signed by a magistrate, directed to a peace officer, commanding them to search for a person, thing, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.) A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591.) Probable cause supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

⁸ Governor's Office of Emergency Services, *Open State of Emergency Proclamations* (accessed June 18, 2025), available at: <https://www.caloes.ca.gov/office-of-the-director/policy-administration/legal-affairs/emergency-proclamations/>

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¹⁰ Governor Gavin Newsom, *Governor Newsom extends protections for LA firestorm survivors* (March 7, 2025), available at: <https://www.gov.ca.gov/2025/03/07/governor-newsom-extends-protections-for-la-firestorm-survivors/>

¹¹ Julie Sharp, *LA County Board of Supervisors votes to extend rent protections for wildfire victims* (June 25, 2025), available at: <https://www.cbsnews.com/losangeles/news/la-county-board-of-supervisors-votes-to-extend-rent-protections-for-wildfire-victims/>

The search warrant statute has significantly expanded over the last two decades and currently includes 21 different bases for issuing a search warrant. Under Penal Code section 1524, a search warrant may be issued “[w]hen property or things were used as the means of committing a felony.” (Pen. Code, § 1524, subd. (a)(2).) Other provisions authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as “[w]hen the property was stolen or embezzled.” (Pen. Code, § 1524, subd. (a)(1).) Additionally, Penal Code section 1524 provides that a search warrant may be issued “[w]hen the property or things are in the possession of any person with the intent to use them as a means of committing a public offense,” which includes misdemeanors and infractions (Pen. Code, §§ 1524, subd. (a)(3) & 16.) This bill creates another statutory basis to issue a search warrant. Specifically, it authorizes a search warrant “when the property or things to be seized consists of evidence that tends to show that [price gouging] has occurred or is occurring.” This search warrant authorization is specific to price gouging violations pertaining to hotel and motel price increases, rental price increases, and evictions of tenants of residential housing.

The need to expand the search warrant statute to include a class of misdemeanor crimes is unclear. In the aftermath of the January 2025 fires, there were thousands of complaints of price gouging in Los Angeles County.¹² In March 2025, the Attorney General announced that, “[i]n addition to sending over 700 warning letters to hotels and landlords, the California Department of Justice has several active investigations into price gouging.”¹³ The Attorney General’s Office subsequently announced the filing of charges against individuals suspected to have engaged in price gouging.¹⁴ In June 2025, The Los Angeles Times reported that the Attorney General filed his fourth price gouging charge against a real estate agent that allegedly increased the price of a Beverly Hills rental by more than 30 percent.¹⁵ Similarly, the Los Angeles City Attorney recently filed both a criminal and civil actions against a global rental corporation who is alleged to have engaged in price gouging after the fires.¹⁶ However, such charges may only be targeting a small fraction of the received complaints.¹⁷

The author’s background information and statement does not discuss the need for this expansion. Moreover, this committee has not received any letters from prosecutors or law

¹² Jack Flemming, *Price-gouging charges slowly mount after the fires, but some say it's not enough* (June 20, 2025), available at: <https://www.latimes.com/california/story/2025-06-20/here-are-the-people-and-companies-charged-with-price-gouging-in-the-wake-of-the-l-a-fires#:~:text=California%20Atty.,Gen.,10%25%20after%20a%20natural%20disaster>.

¹³ State of California Department of Justice, *Attorney General Bonta Issues Consumer Alert Following Extension of Price Gouging Protections Until July 1, 2025* (March 7, 2025), available at: <https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-consumer-alert-following-extension-price-gouging>

¹⁴ State of California Department of Justice, *Attorney General Bonta Files Charges Against a Southern California Real Estate Agent for Price Gouging Eaton Fire Victims* (January 22, 2025), available at: <https://oag.ca.gov/news/press-releases/attorney-general-bonta-files-charges-against-southern-california-real-estate#:~:text=As%20part%20of%20Attorney%20General,been%20accused%20of%20price%20gouging>; State of California Department of Justice, *Attorney General Bonta Charges Second Los Angeles Realtor for Price Gouging Victims of Eaton Fire* (January 28, 2025), available at: <https://oag.ca.gov/news/press-releases/attorney-general-bonta-charges-second-los-angeles-realtor-price-gouging-victims>; State of California Department of Justice, *Attorney General Bonta Files Charges Against Los Angeles Real Estate Agent, Landlord for Price Gouging in Wake of Eaton Fire* (February 18, 2025), available at: <https://oag.ca.gov/news/press-releases/attorney-general-bonta-files-charges-against-los-angeles-real-estate-agent>.

¹⁵ Jack Flemming, *Price-gouging charges slowly mount after the fires, but some say it's not enough* (June 20, 2025), available at: <https://www.latimes.com/california/story/2025-06-20/here-are-the-people-and-companies-charged-with-price-gouging-in-the-wake-of-the-l-a-fires#:~:text=California%20Atty.,Gen.,10%25%20after%20a%20natural%20disaster>.

¹⁶ Los Angeles City Attorney’s Office, *LA City Attorney Hydee Feldstein Soto Files Civil Suit and Criminal Charges to Fight Price Gouging in Wake of LA Wildfires* (February 4, 2025), available at: <https://cityattorney.lacity.gov/updates/la-city-attorney-hydee-feldstein-soto-files-civil-suit-and-criminal-charges-fight-price>.

¹⁷ See *supra* note 13.

enforcement organizations citing the need for this expanded warrant authority. Absent evidence that expanding the search warrant statute to include misdemeanor price gouging is necessary to prosecute price gouging violators, the author may wish to remove this provision of the bill.

Additionally, this bill would require housing listing platforms, during the 30 days following the proclamation or declaration of a state of emergency, to take specific actions including, among other things, providing a means, including a link to a dedicated web page, online portal, or email address on the housing listing platform, by which law enforcement can submit law enforcement requests, including warrants, subpoenas, and other legal processes, and related timelines for response. The author may wish to clarify that the means “to submit law enforcement requests, including warrants” must still comply with existing statutory procedures that apply to serving and administering warrants. (See Pen. Code, § 1524 et. seq.)

- 4) **Argument in Support:** According to *Consumer Attorneys of California*, “[SB 36] strengthens California’s price gouging laws during a state or local emergency.

“The recent fires in Southern California have underscored a serious problem—unscrupulous actors exploiting vulnerable residents by drastically inflating the cost of housing and lodging. Victims already displaced by disasters are being further harmed by price gouging that often amounts to thousands of dollars above standard rental rates.

“SB 36 addresses this urgent issue by improving enforcement tools and expanding consumer protections. Specifically, the bill:

- Increases civil penalties for those who take advantage of displaced victims;
- Allows victims to bring their own legal actions and seek additional damages;
- Requires online housing platforms to alert law enforcement, adopt user policies, and offer reporting mechanisms for price gouging violations;
- Grants public prosecutors warrant authority to investigate housing-related price gouging;
- Expands price gouging protections to include counties within a 50-mile radius of the affected area.

“These measures represent a comprehensive and necessary response to ensure that Californians are not exploited during their most vulnerable moments. SB 36 will empower both law enforcement and individual consumers to hold bad actors accountable, while setting a higher standard of corporate responsibility during emergencies.”

- 5) **Argument in Opposition:** According to the *California Public Defenders Association*, “Under existing law price gouging may be punished with a civil fine or, pursuant to Penal Code section 396, a misdemeanor.

“The portion of the bill we object to is new subdivision (23) of Penal Code section 1524, which covers the issuance of search warrants. Subdivision 23 would be added to allow the issuance of a search warrant ‘*When the property or things to be seized consists of evidence that tends to show that a price gouging violation, as specified in subdivision (d), (e), or (f) of Section 396, has occurred or is occurring.*’

“As of 1991, Penal Code section 1524 was a relatively focused section authorizing the issuance of search warrant in only 5 instances. Those five instances, however, were very broad, covering all stolen or embezzled property, all felonies, child pornography, as well as a provision broadly allowing warrants to issue for evidence of property that is the means of committing a ‘public offense.’

“Penal Code section 1524 has wildly expanded and now has 21 subdivisions describing when search warrants may issue. This bill adds yet one more. This continued expansion is concerning.

“The current bill may prove to be unnecessary. Although price gouging is a misdemeanor, it may well be that a bad actor does not limit this type of theft to misdemeanor values, but instead ventures into felony grand theft territory. Under current law, a search warrant may issue for evidence relating to a felony.”

6) Related Legislation:

- a) AB 380 (Gonzalez), would expand price gouging and eviction prohibitions to include commercial real property and would extend the period of protection during a state of emergency to either 180 days or 365 days following the emergency declaration or proclamation. AB 380 is pending a hearing in Senate Public Safety Committee.
- a) AB 299 (Gabriel), would provide, until January 1, 2031, that a guest of a lodging shall not have their continued occupancy constitute a new tenancy and shall not be considered a person who hires for purposes of existing law governing tenancy and unlawful detainer proceedings if the guest is living in the lodging as a result of their prior housing being damaged, destroyed, or otherwise made uninhabitable by a disaster. AB 299 is pending a hearing in Senate Judiciary Committee.
- b) SB 368 (Smallwood-Cuevas), would have required the Department of Justice and local prosecutors to establish partnerships to enforce the provisions the criminal price gouging statute. SB 368 was held in suspense Senate Appropriations Committee.

7) Prior Legislation:

- a) SB 1133 (Archuleta), of the 2021-22 Legislative Session, would have required an extension of price gouging protections, as defined, if they would apply to rental housing and the state of emergency has been in effect for over a year or more. SB 1133 bill was held in suspense in the Senate Appropriations Committee.
- b) SB 1212 (Caballero), of the 2021-22 Legislative Session, would have made it a misdemeanor, upon the proclamation or declaration of a state of emergency for any temporary services employer to increase its non-labor costs, as defined, for health care personnel by more than 10%, except as specified. SB 1212 was held in the Senate Judiciary Committee.
- c) AB 1936 (Rodriguez), of the 2019-20 Legislative Session, would have specified that, for a proclamation or declaration of emergency made because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur, the

restrictions on increased pricing apply for a period lasting until 72 hours after the restoration of power. AB 1936 was held in the Assembly Appropriations Committee.

- d) AB 3023 (Gabriel), of the 2019-20 Legislative Session, would have made price gouging protections applicable to a short-term lodging establishment, defined as any hotel, motel, bed and breakfast inn, or other similar lodging establishment. AB 3023 was referred to but did not receive a hearing in the Assembly Public Safety Committee.
- e) SB 1196 (Umberg), Chapter 339, Statutes of 2020, provided that, if a contractor or business did not offer an item or service prior to the state of emergency, they are not allowed to charge more than 50% more of the total cost of the item to consumers.
- f) AB 1919 (Wood), Chapter 631, Statutes of 2018, expanded the scope of the crime of price gouging by including rental housing that was not on the market at the time of the proclamation or declaration of emergency.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation, INC.
Consumer Attorneys of California
Consumer Federation of California
Consumer Protection Policy Center/usd School of Law
Consumer Watchdog
Los Angeles County District Attorney's Office
Techequity Action

Oppose

California Business Roundtable
California Public Defenders Association

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

**Amended Mock-up for 2025-2026 SB-36 (Umberg (S) , Smallwood-Cuevas
(S))**

**Mock-up based on Version Number 96 - 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 17206.3 is added to the Business and Professions Code, to read:

17206.3. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, a person who violates this chapter, if the act or acts of unfair competition are perpetrated against one or more persons displaced due to a state of emergency or local emergency at the time the violation occurred, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, “state of emergency” and “local emergency” have the same meaning as in Section 396 of the Penal Code.

SEC. 2. Title 1.4E (commencing with Section 1749.9) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.4E. HOUSING LISTING PLATFORMS

1749.9. (a) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, a housing listing platform shall, during the period of 30 days following the proclamation or declaration, do all of the following:

(1) Remove a listing when notified by local, regional, or state law enforcement agencies that the price for the listing made available on the housing listing platform violates Section 396 of the Penal Code.

(2) Establish and maintain a policy informing housing providers that listings are prohibited from violating Section 396 of the Penal Code, and that failure to comply may include consequences including, but not limited to, suspension or termination of the housing provider's account.

(3) Establish and maintain a policy informing persons searching for rental housing that listings are prohibited from violating Section 396 of the Penal Code, and how to report listings that they believe are in violation of the law to the appropriate law enforcement agencies.

(4) Provide a mechanism on the housing listing platform that allows any individual to notify the housing listing platform that a person may have violated Section 396 of the Penal Code.

(5) Provide means, including a link to a dedicated web page, online portal, or email address on the housing listing platform, by which law enforcement can submit law enforcement requests, including warrants, subpoenas, and other legal processes, and related timelines for response.

(6) Maintain internal written policies and systems to comply with the requirements of this section and to respond to law enforcement requests related to price gouging.

(b) The policies required by paragraphs (2) and (3), and the mechanism required by paragraph (4), of subdivision (a) shall be publicly posted and readily accessible to users.

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

(1) "Housing listing platform" means an internet website, application, or other similar centralized platform that acts as an intermediary between a consumer and another person which allows another person to list the availability of housing, lodging, or units for sale or for rent to a consumer.

(2) "State of emergency" and "local emergency" have the same meaning as in Section 396 of the Penal Code.

SEC. 3. Section 1770 of the Civil Code is amended to read:

1770. (a) The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

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- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have.
- (6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact.
- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.
- (11) Advertising furniture without clearly indicating that it is unassembled if that is the case.
- (12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.
- (13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions.
- (14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law.
- (15) Representing that a part, replacement, or repair service is needed when it is not.
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.
- (17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.
- (19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses that are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code if more than 50 percent of purchases are made at the specific price set forth in the advertisement.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) (A) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan or assessment is made encumbering the primary residence of that consumer for purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of any of the following:

(i) Subsection (h) or (i) of Section 1639 of Title 15 of the United States Code.

(ii) Paragraph (1), (2), or (4) of subdivision (a) of Section 226.34 of Title 12 of the Code of Federal Regulations.

(iii) Section 22684, 22685, 22686, or 22687 of the Financial Code.

(iv) Section 5898.16, 5898.17, 5913, 5922, 5923, 5924, 5925, 5926, or 5940 of the Streets and Highways Code.

(B) A third party shall not be liable under this subdivision unless (i) there was an agency relationship between the party who engaged in home solicitation and the third party, or (ii) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(24) (A) Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services.

(B) For purposes of this paragraph:

(i) “Public social services” means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services, and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) “Public social services” also includes activities and functions administered or supervised by the United States Department of Veterans Affairs or the California Department of Veterans Affairs involved in providing aid or services, or both, to veterans, including pension benefits.

(iii) “Unreasonable fee” means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, if appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

(IV) The nature and length of the professional relationship.

(V) The experience, reputation, and ability of the person providing the services.

(C) This paragraph shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) (A) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements that does not include the following statement in the same type size and font as the term “veteran” or any variation of that term:

(i) “I am not authorized to file an initial application for Veterans’ Aid and Attendance benefits on your behalf, or to represent you before the Board of Veterans’ Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, including an application for those benefits. It would be illegal for me to accept a fee for preparing that application on your behalf.” The requirements of this clause do not apply to a person licensed to act as an agent or attorney in proceedings before the Agency of Original Jurisdiction and the Board of Veterans’ Appeals within the United States Department of Veterans Affairs when that person is offering those services at the advertised event.

(ii) The statement in clause (i) shall also be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans’ benefits or entitlements.

(B) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements that is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries that does not include the following statement, in the same type size and font as the term “veteran” or the variation of that term:

“This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries. None of the insurance products promoted at this sales event are endorsed by those organizations, all of which offer free advice to veterans about how to qualify and apply for benefits.”

(i) The statement in this subparagraph shall be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans’ benefits or entitlements.

(ii) The requirements of this subparagraph shall not apply in a case where the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries have granted written permission to the advertiser or promoter for the use of its name, symbol, or insignia to advertise or promote the event, presentation, seminar, workshop, or other public gathering.

(26) Advertising, offering for sale, or selling a financial product that is illegal under state or federal law, including any cash payment for the assignment to a third party of the consumer’s right to receive future pension or veteran’s benefits.

(27) Representing that a product is made in California by using a Made in California label created pursuant to Section 12098.10 of the Government Code, unless the product complies with Section 12098.10 of the Government Code.

(28) (A) Failing to include either of the following in a solicitation by a covered person, or an entity acting on behalf of a covered person, to a consumer for a consumer financial product or service:

(i) The name of the covered person, and, if applicable, the entity acting on behalf of the covered person, and relevant contact information, including a mailing address and telephone number.

(ii) (I) The following disclosure statement in at least 18-point bold type and in the language in which a solicitation described by this paragraph is drafted: "THIS IS AN ADVERTISEMENT. YOU ARE NOT REQUIRED TO MAKE ANY PAYMENT OR TAKE ANY OTHER ACTION IN RESPONSE TO THIS OFFER."

(II) (ia) The disclosure statement described in subclause (I) shall appear in at least 16-point bold type on the front of an envelope that contains a solicitation described by this paragraph.

(ib) This subclause applies only to solicitations made by physical mail.

(B) For purposes of this paragraph:

(i) "Consumer financial product or service" has the same meaning as defined in Section 90005 of the Financial Code.

(ii) (I) "Covered person" has the same meaning as defined in Section 90005 of the Financial Code.

(II) "Covered person" does not mean an entity exempt from Division 24 (commencing with Section 90000) of the Financial Code pursuant to Section 90002 of the Financial Code.

(iii) "Solicitation" means an advertisement or marketing communication through writing or graphics that is directed to, or likely to give the impression of being directed to, an individually identified person, residence, or business location. "Solicitation" does not include any of the following:

(I) Communication through a mass advertisement, including in a catalog, on a radio or television broadcast, or on a publicly accessible internet website, if that communication is not directed to, or is not likely to give the impression of being directed to, an individually identified person, residence, or business location.

(II) Communication via a telephone, mail, or electronic communication that was initiated by a consumer.

(III) A written credit or insurance solicitation that is subject to the disclosure requirements of subsection (d) of Section 1681m of Title 15 of the United States Code.

(29) (A) Advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than either of the following:

(i) Taxes or fees imposed by a government on the transaction.

(ii) Postage or carriage charges that will be reasonably and actually incurred to ship the physical good to the consumer.

(B) Compliance by a person providing broadband internet access service on its own or as part of a bundle, as defined in Section 8.1(b) of Title 47 of the Code of Federal Regulations, with the broadband consumer label requirements adopted by the Federal Communications Commission in FCC 22-86 on November 14, 2022, codified in Section 8.1(a) of Title 47 of the Code of Federal Regulations, shall be deemed in compliance with this paragraph.

(C) (i) For purposes of this subparagraph, “financial entity” means an entity that is exempt from Division 24 (commencing with Section 90000) of the Financial Code pursuant to Section 90002 of the Financial Code.

(ii) A financial entity that is required to provide disclosures in compliance with any of the following federal or state acts or regulations with respect to a financial transaction is exempt from this paragraph for purposes of that financial transaction:

(I) The federal Truth in Savings Act, as amended (12 U.S.C. Sec. 4301 et seq.).

(II) The federal Electronic Fund Transfer Act, as amended (15 U.S.C. Sec. 1693 et seq.).

(III) Section 19 of the Federal Reserve Act, as amended (12 U.S.C. Sec. 461 et seq.).

(IV) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(V) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.).

(VI) The federal Home Ownership and Equity Protection Act (15 U.S.C. Sec. 1639).

(VII) Any regulation adopted pursuant to any of the federal acts in subclauses (I) to (VI), inclusive.

(VIII) The California Financing Law (Division 9 (commencing with Section 22000) of the Financial Code).

(IX) The California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code).

(X) The Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code).

(XI) Any regulation adopted pursuant to any of the state acts in subclauses (VIII) to (X), inclusive.

(D) (i) Subject to clause (ii), this paragraph does not apply to a mandatory fee or charge for individual food or beverage items sold directly to a customer by a restaurant, bar, food concession, grocery store, or grocery delivery service, or by means of a menu or contract for banquet or catering services that fully discloses the terms of service.

(ii) A mandatory fee or charge under clause (i) shall be clearly and conspicuously displayed, with an explanation of its purpose, on any advertisement, menu, or other display that contains the price of the food or beverage item.

(iii) "Grocery delivery service" means a company owned by, or under contract with, a grocery store or distributor that delivers food, primarily fresh produce, meat, poultry, fish, deli products, dairy products, perishable beverages, baked foods, and prepared foods, from the grocery store or distributor to a consumer.

(iv) The exemption in this subparagraph does not apply to a "third-party food delivery platform," as defined in Section 113930.5 of the Health and Safety Code, or any other food delivery platform.

(30) Violating Section 396 of the Penal Code, including, but not limited to, price gouging during a state of emergency or local emergency.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and that is used to finance a home improvement contract or any portion of a home improvement contract. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed pursuant to the California Financing Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other

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law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing of a home improvement transaction.

(c) As of July 1, 2025, any disclosure, advertisement, or notice that is required to be “clearly” or “clearly and conspicuously” made must have text that is “clear and conspicuous,” as defined in subdivision (u) of Section 1791.

(d) This section shall become operative on July 1, 2024.

SEC. 4. Section 3345 of the Civil Code is amended to read:

3345. (a) This section shall apply only in actions brought by, on behalf of, or for the benefit of those individuals specified in paragraphs (1) to (3), inclusive, to redress unfair or deceptive acts or practices or unfair methods of competition.

(1) Senior citizens, as defined in subdivision (f) of Section 1761.

(2) Disabled persons, as defined in subdivision (g) of Section 1761.

(3) Veterans, as defined in Section 18540.4 of the Government Code.

(4) Persons displaced due to a state of emergency or a local emergency at the time the violation occurred. As used in this paragraph, “state of emergency” and “local emergency” have the same meaning as in Section 396 of the Penal Code.

(b) Whenever a trier of fact is authorized by a statute to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact’s discretion, the trier of fact shall consider the factors set forth in paragraphs (1) to (4), inclusive, in addition to other appropriate factors, in determining the amount of fine, civil penalty or other penalty, or other remedy to impose. Whenever the trier of fact makes an affirmative finding in regard to one or more of the factors set forth in paragraphs (1) to (4), inclusive, it may impose a fine, civil penalty or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, where the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding.

(1) Whether the defendant knew or should have known that their conduct was directed to one or more senior citizens, disabled persons, veterans, or persons displaced due to a state of emergency or a local emergency at the time the violation occurred.

(2) Whether the defendant’s conduct caused one or more senior citizens, disabled persons, veterans, or persons displaced due to a state of emergency or local emergency at the time the

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violation occurred to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen, disabled person, veteran, or person displaced due to a state of emergency or local emergency at the time the violation occurred.

(3) Whether one or more senior citizens, disabled persons, veterans, or persons displaced due to a state of emergency or local emergency at the time the violation occurred are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

SEC. 5. Section 396 of the Penal Code is amended to read:

396. (a) The Legislature hereby finds that during a state of emergency or local emergency, including, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, or other natural or manmade disaster, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or local emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers, whether those goods and services are offered or sold in person, in stores, or online. Further, it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served, including, but not limited to, curbing price gouging.

(b) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency, or prior to a date set in the proclamation or declaration. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of

emergency or local emergency, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by that seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. If the person, contractor, business, or other entity did not charge a price for the goods or services immediately prior to the proclamation or declaration of emergency, it may not charge a price that is more than 50 percent greater than the cost thereof to the vendor as “cost” is defined in Section 17026 of the Business and Professions Code.

(c) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price represents no more than 10 percent greater than the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(d) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel’s regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

(e) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the

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proclamation or declaration. It shall not be a defense to a prosecution under this subdivision that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as provided in paragraph (11) of subdivision (j) with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.

(f) It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

(g) (1) The prohibitions of this section may be extended for additional periods, as needed, by a local legislative body, local official, or the Governor, if deemed necessary to protect the lives, property, or welfare of the citizens. Each extension by a local legislative body or local official shall not exceed 30 days. An extension may also authorize specified price increases that exceed the amount that would be permissible under this section during the initial 30 or 180 days after a proclamation or declaration of emergency.

(2) An extension authorized by the Governor may be terminated by a concurrent resolution of the Legislature declaring it at an end, consistent with Section 8629 of the Government Code.

(h) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(i) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

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

(1) "State of emergency" means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor.

(2) “Local emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county in California.

(3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) “Repair or reconstruction services” means services performed by any person who is required to be licensed under the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(6) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(7) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(8) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(9) “Transportation, freight, and storage services” means any service that is performed by any company that contracts to move, store, or transport personal or business property or that rents equipment for those purposes, including towing services.

(10) “Housing” means any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobilehome park or campground.

(11) “Rental price” for housing means any of the following:

(A) For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent rental price offered before the proclamation or declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the actual rental price paid by the previous tenant or the amount specified in subparagraph (B), whichever is greater. This amount may be increased by 5

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percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

(B) For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.

(C) Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price described in subparagraph (A), if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price in subparagraph (B), if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.

(D) For mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to a local rent control ordinance, the amount authorized under the local rent control ordinance. For new tenants who enter into a rental agreement for a mobilehome space that is subject to rent control but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobilehome park. For mobilehome spaces not subject to a local rent control ordinance and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

(12) “Goods” has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

(13) “Price gouging” is the unlawful conduct of charging higher or greater prices as specified in subdivisions (b) to (f), inclusive.

(k) This section does not preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

(l) A business offering an item for sale, or a service, at a reduced price immediately prior to the proclamation or declaration of the emergency may use the price it normally charges for the item or service to calculate the price pursuant to subdivision (b) or (c).

(m) This section does not prohibit an owner from evicting a tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure.

(n) This section applies to all counties in the proclamation or declaration of emergency as well as all ~~adjacent counties and~~ counties within a 25 ~~50~~-mile radius of the counties in the proclamation or declaration of emergency.

SEC. 6. Section 1524 of the Penal Code, as added by Section 11.5 of Chapter 544 of the Statutes of 2024, is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of a person with the intent to use them as a means of committing a public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing them from being discovered.
- (4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.
- (6) When there is a warrant to arrest a person.
- (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of a person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery.
- (8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code or tends to show that a particular person has violated Section 3700.5 of the Labor Code.
- (9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

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(10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms or ammunition or both pursuant to Section 6389 of the Family Code, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm or ammunition or both as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800, 29805, 29815, or 29825, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

(16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

(17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(18) When the property or things to be seized consists of evidence that tends to show that a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is occurring.

(19) (A) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury to a person. The data accessed by a warrant pursuant to this paragraph shall not exceed the scope of the data that is directly related to the offense for which the warrant is issued.

(B) For the purposes of this paragraph, "recording device" has the same meaning as defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of the data accessible by a warrant issued pursuant to this paragraph shall be limited to the information described in subdivision (b) of Section 9951 of the Vehicle Code.

(C) For the purposes of this paragraph, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243.

(20) When the property or things to be seized consists of evidence that tends to show that a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

(21) If the property to be seized includes ammunition and all of the following criteria are satisfied:

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(A) The property is owned by, in the possession of, or in the custody or control of a person who is subject to the prohibition set forth in Section 8103 of the Welfare and Institutions Code.

(B) The person has been lawfully served with the order required by Section 8103 of the Welfare and Institutions Code.

(C) The person has failed to relinquish the ammunition as required by law.

(22) When the property or things to be seized include a firearm or ammunition or both that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 527.9 of the Code of Civil Procedure, the person has been lawfully served with that order, and the person has failed to relinquish the firearm or ammunition or both as required by law.

(23) When the property or things to be seized consists of evidence that tends to show that a price gouging violation, as specified in subdivision (d), (e), or (f) of Section 396, has occurred or is occurring.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from a place or from a person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), a search warrant shall not be issued for documentary evidence in the possession or under the control of a person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise an issue that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held

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within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, a limitation of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 shall be tolled from the time of the seizure until the final conclusion of the hearing, including an associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, an item that appears to be privileged as provided by law.

(d) (1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In a case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) A search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or that party’s designee to accompany the special master as the special master conducts the search. However, that party or that party’s designee may not participate in the search nor shall they examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, x-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for an item or items described in Section 1070 of the Evidence Code.

(h) No warrant shall issue for an item or items that pertain to an investigation into a prohibited violation, as defined in Section 629.51.

(i) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(j) Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(k) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(l) This section does not create a cause of action against a foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

(m) This section shall become operative on January 1, 2026.

Date of Hearing: July 15, 2025
Counsel: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 75 (Smallwood-Cuevas) – As Amended June 17, 2025

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR), in partnership with the Department of Industrial Relations (DIR), to establish the Preapprenticeship Pathways to Employment Pilot Program (program) by January 1, 2028. Specifically, **this bill:**

- 1) Requires, no later than January 1, 2028, CDCR, in partnership with the DIR and recognized building and construction trades councils, to establish the program.
- 2) States that the purpose of this program is to provide incarcerated individuals with access to high-quality preapprenticeship training aligned with state-registered apprenticeships in the skilled construction and building trades.
- 3) Requires CDCR to ensure equitable access to the program across each facility under its jurisdiction, including facilities housing women and gender-responsive institutions.
- 4) Requires CDCR to implement the program in at least one men's and one women's facility.
- 5) States that the program shall include all of the following:
 - a) Instruction based on the Multi-Craft Core Curriculum (MC3), recognized by the State Building and Construction Trades Council of California. The instruction shall prepare participants for entry into a wide range of union-affiliated skilled trades, including, but not limited to, each of the following:
 - i) Carpentry.
 - ii) Ironwork.
 - iii) Sheet metal.
 - iv) Laborers.
 - v) Operating engineers.
 - b) Availability to incarcerated individuals who are within 24 months of release and express interest in careers in the trades.
 - c) Career readiness and case management services that are designed to facilitate direct transition into union apprenticeships following release. These services may be provided by existing workforce and community-based programs and shall include, but are not

limited to, each of the following:

- i) Employment and training services, including job readiness workshops, occupational skills training, preapprenticeship placement, and paid transitional work opportunities.
 - ii) Behavioral health and substance use services, including mental health counseling, cognitive behavioral therapy, substance use disorder treatment, and peer recovery support.
 - iii) Housing support services, including emergency shelter, transitional housing, housing navigation, and rapid rehousing assistance.
 - iv) Transportation assistance, including public transit passes, rideshare vouchers, and driver's license reinstatement support.
 - v) Family and childcare support, including parenting classes, childcare subsidies, and family reunification services.
 - vi) Legal services, including expungement and record sealing clinics, support with fines and fees, and reentry-related legal navigation.
 - vii) Digital and financial literacy services, including digital skills training, budgeting support, credit repair, and access to communication tools.
 - viii) Basic needs support, including access to work clothing, hygiene items, food assistance, and mobile phone access.
- d) Classroom and hands-on instruction in construction safety, trade mathematics, blueprint reading, industry orientation, and other foundational skills aligned with state-registered apprenticeship standards. Content shall be taught by certified instructors and coordinated with local joint apprenticeship training committees.
- 6) States that the facilities who implement the program shall not grant preferential treatment based on race, sex, color, ethnicity, or national origin, in accordance with Section 31 of Article I of the California Constitution. Access shall be based on facility needs, proximity to release, and participant interest in skilled trades careers.
- 7) States that participants who complete the program shall receive an MC3 certification from a certified training provider.
- 8) Requires CDCR to submit a report to the Legislature, beginning January 1, 2029, and each year thereafter, that includes the following information:
- a) The number of individuals who have enrolled in the Preapprenticeship Pathways to Employment Program;
 - b) The number of individuals who have completed the Preapprenticeship Pathways to Employment Program;

- c) The number of individuals placed in registered apprenticeships or related employment;
 - d) The number of individuals from each participating facility and program site who fit the criteria in paragraphs (1) to (3), inclusive; and,
 - e) Identified barriers to access and participation.
- 9) Requires that the report submitted pursuant to this section to be submitted in compliance with Section 9795 of the Government Code.
- 10) Provides that the program remain in effect only until January 1, 2032, and as of that date is repealed.

EXISTING LAW:

- 1) Establishes the California Workforce Development Board (CWDB) to assist the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce. (Unemp. § 14010 et seq.)
- 2) Establishes the Breaking Barriers to Employment Initiative to provide individuals with barriers to employment the services they need to enter, participate in, and complete broader workforce preparation, training, and education programs aligned with regional labor market needs. Those who complete these programs should have the skills and competencies necessary to successfully enter the labor market, retain employment, and earn wages that lead to self-sufficiency, and eventually, economic mobility and security. (Unemp. Ins. Code, §14031.)
- 3) States Populations eligible to receive grants under Breaking Barriers Initiative include persons who are incarcerated and soon to be released or formerly incarcerated. (Unemp. Ins. Code, §14034, subd. (h).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is an urgent need to create meaningful preapprenticeship and reentry pathways for incarcerated individuals who are ready to rebuild their lives, because too many people, especially women and people of color, are released without the skills, credentials, and support they need to succeed. SB 75 ensures that incarcerated individuals can access high-quality MC3-certified training and wraparound services so they can transition directly into union-affiliated skilled trades careers, achieve economic stability, and avoid the cycles of poverty and recidivism that harm families and communities."

- 2) **Preapprenticeship Training and the Multicraft Core Curriculum (MC3):** The National Research Council's publication exploring the causes and consequences of the growth of incarceration in the United States explains the importance of employment after incarceration:

"Policy research on released prisoners emphasizes the importance of employment, housing, and health services. Employment programs provide a variety of services, from job readiness training to subsidized work. Although evaluation research provides uneven evidence that labor market programs can boost employment and reduce recidivism, such programs often are intrinsically valuable when they provide income support and structure the time of program clients. ...Evaluation research also indicates that recidivism can be significantly reduced when social opportunity programs, such as those providing employment, are combined with programs that address criminogenic behaviors."

(National Research Council, (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, at p. 352.)

This bill requires CDCR to develop guidelines for the participation of inmates in preapprenticeship training programs for the building and trade industries. Preapprenticeship programs are stepping-stone training courses that allow participants to obtain employment in a trade industry. In most cases, individuals undergo preapprenticeship training before completing an apprenticeship in order to prepare them for the working environment in their selected industry.

An apprenticeship is a program that trains a worker to become skilled in a particular trade. Apprenticeships combine hands-on work with classroom learning to train the apprentice. Apprenticeships are considered full-time employment and apprentices earn a living wage. Preapprenticeship programs will allow incarcerated individuals to effectively complete the first stage of apprenticeship study during their incarceration, which will prepare them for an apprenticeship upon release. This would give incarcerated individuals a head start in becoming employed upon release from incarceration.

In 2007, the Building Trades National Standing Committee on Apprenticeship and Training identified courses in all building trades' apprenticeship programs that are offered in common without regard to a particular craft, and created the MC3 curriculum. The MC3 course syllabi and educational objectives were systematically developed from these common core courses, and curriculum materials were identified and integrated into a multi-craft core curriculum. The total core includes 120 hours of class room training.¹

The MC3 course includes classes in Construction Industry Orientation, Tools and Materials, Construction Health and Safety, Blueprint Reading, Basic Math for Construction, Heritage of the American Worker, Diversity in the Construction Industry, Green Construction, and Financial Responsibility. The purpose of the MC3 curriculum is to empower participants to make informed decisions about which craft they would pursue. The MC3 training programs are sponsored by state and local building trades councils in cooperation with local community groups, government agencies and schools.² The MC3 Curriculum is only offered in cooperation with state and local Building Trades Councils, and is not otherwise available

¹ MC3 course Syllabi (https://www.efficiencycities.org/wp-content/uploads/062309/BCTD%20TriFold_v6.pdf)

² (https://cwdb.ca.gov/wp-content/uploads/sites/43/2016/08/building.trades.mc3_9.1.2015.pdf.)

to private entities.

This bill aims to reduce recidivism and increase rehabilitation and public safety by requiring CDCR to develop guidelines for the participation of inmates in preapprenticeship training programs and ensure that programs in the building and construction trades follow the MC3 curriculum. This bill would also require CDCR to coordinate with local state-approved preapprenticeship programs and local building trade councils so inmates who complete a preapprenticeship program to receive an MC3 certification from a certified training provider.

- 3) **Argument in Support:** According to the *Ella Baker Center for Human Rights*, “EBC supports SB 75 it affirms the humanity and potential of people who have been pushed to the margins. It promotes a vision of reentry that is grounded in equity, care, and opportunity. This bill is not just about workforce development; it’s about affirming the humanity of people who have been cast aside, and building infrastructure that supports healing, stability, and long-term success.

...

“The ... Pre Apprenticeship Pilot Program inside one men’s and one women’s prison. It would offer high-quality training based on the Multi-Craft Core Curriculum to people within 24 months of release who are interested in careers in the trades. The program would also include support like mental health care, substance use treatment, job readiness, and help reconnecting with family and community.

“These initiatives are not just about developing workforce skills. They are about creating the conditions for transformation, healing, and success. They recognize that people returning home need more than good intentions. They need real resources, structured support, and access to opportunity.

“Too often, individuals leaving prison face overwhelming obstacles such as limited transportation, digital exclusion, housing insecurity, and systemic discrimination in the labor market. These challenges are especially severe for Black and Brown community members who are disproportionately incarcerated and excluded from economic opportunity. SB 75 addresses these issues directly and offers a model that can grow and be used across the state. With evaluation measures focused on employment outcomes, reduced recidivism, and long-term cost savings, this bill lays the foundation for a more just and effective reentry system.

“By passing SB 75 (Smallwood Cuevas), California can take a meaningful step toward a more just and inclusive reentry system. We urge the Legislature to advance this critical measure and appreciate your continued leadership in supporting the rights, dignity, and opportunity of justice-impacted individuals.”

4) **Prior Legislation:**

- a) SB 825 (Beall) of 2017-2018 Legislative Session, would have required CDCR to develop guidelines for inmate participation in preapprenticeship training programs, as specified. The bill would have also required the department to coordinate with local state-approved

apprenticeship programs and local building trade councils so that inmates who complete an inmate preapprenticeship program have a pathway to employment upon release. SB 825 was referred to, but never heard, in this committee.

- b) SB 866 (Committee on Budget and Fiscal Review) Chapter 53, Statutes of 2018, required the CWDB to administer a prison-to-employment program and award grants for purposes that include the development of regional partnerships and regional plans to provide and coordinate the necessary workforce, education, supportive, and related services that formerly incarcerated and other justice-involved individuals need to secure and retain employment and reduce the chances of recidivism.
- c) AB 2129 (Jones-Sawyer) of the 2013-2014 Legislative Session, would have required CDCR to establish a voluntary prerelease reentry program for inmates in prison, to commence no later than 6 months prior to the inmate's release from prison. The program would include, among other things, education programs, transition programs including employment services and skills, and cognitive behavior therapy, including substance abuse treatment and anger management. The bill was held on the Assembly Appropriations suspense file.
- d) AB 2060 (V. Manuel Perez), Chapter 383, Statutes of 2014, established until January 1, 2021, the Supervised Population Workforce Training Grant Program to be administered, as provided, by the California Workforce Investment Board and funded, upon appropriation by the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
ACLU California Action
California Legislative Women's Caucus
California Public Defenders Association
Ella Baker Center for Human Rights
Redf

Opposition

None submitted.

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

Date of Hearing: July 15, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 221 (Ochoa Bogh) – As Introduced January 23, 2025

As Proposed to be Amended in Committee

SUMMARY: Expands the definition of “credible threats” in the crime of stalking to include threats to the safety of a victim’s pet, service animal, emotional support animal, or horse.

EXISTING LAW:

- 1) States that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of their immediate family is guilty of stalking. (Pen. Code, § 646.9, subd. (a).)
- 2) Punishes stalking by imprisonment in county jail for not more than one year, or by imprisonment in the state prison. (Pen. Code, § 646.9, subd. (a).)
- 3) Provides that a person who commits stalking while there is a temporary restraining order, injunction, or any other court order in effect prohibiting stalking behavior against the same party shall be punished by imprisonment in the state prison for 2, 3, or 4 years. (Pen. Code, § 646.9, subd. (b).)
- 4) Provides that a person who commits stalking after having been convicted of domestic violence, violation of a protective order, or of criminal threats shall be punished by imprisonment in the state prison for 2, 3 or 5 years. (Pen. Code, § 646.9, subd. (c)(1).)
- 5) Provides that a person who commits stalking after previously having been convicted of felony stalking shall be punished by imprisonment in the state prison for 2, 3, or 5 years. (Pen. Code, § 646.9, subd. (c)(2).)
- 6) Authorizes the sentencing court to order a person convicted of felony stalking to register as a sex offender. (Pen. Code, § 646.9, subd. (d).)
- 7) Requires the sentencing court to consider issuing a restraining order valid for up to 10 years when a defendant is convicted of stalking, regardless of whether the defendant is placed on probation or sentenced to state prison or county jail. (Pen. Code, § 646.9, subd. (k).)
- 8) Defines the following terms as it relates to the elements of the crime of stalking:
 - a) “Harass” means “engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that

serves no legitimate purpose.” (Pen. Code, § 646.9, subd. (e).)

- b) “Course of conduct” means “two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.” Constitutionally protected activity is not included within the meaning of “course of conduct.” (Pen. Code, § 646.9, subd. (f).)
 - c) “Credible threat” means “a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.” Constitutionally protected activity is not included within the meaning of “credible threat.” (Pen. Code, § 646.9, subd. (g).)
 - d) “Immediate family” means “any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.” (Pen. Code, § 646.9, subd. (l).)
- 9) Provides that a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of animal cruelty. (Pen. Code, § 597, subd. (a).)
- 10) Punishes a violation of animal cruelty as a felony with imprisonment in the county jail under realignment, or by a fine of not more than \$20,000, or by both; or alternatively, as a misdemeanor with imprisonment in a county jail for not more than one year, or by a fine of not more than \$20,000, or by both. (Pen. Code, § 597, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author’s Statement:** According to the author, "Senate Bill 221 would amend Penal Code section 646.9 to conform to the federal stalking statute by including threats to a victim’s pet as a component of threatening behavior. According to the Bureau of Justice Statistics Special Report, Stalking Victimization in the US, about four in 10 stalkers threaten a “victim or the victim’s family, friends, co-workers, or family pet,” with 87,020 threats to harm a pet being reported. Women are stalked at a higher rate than men.

“Victims of stalking have an increased risk of experiencing depression and anxiety, with some studies indicating nearly 75% report mental health effects. This can be further exacerbated by the injury to or death of a pet. Not updating state statute to conform to federal anti-stalking law leaves victims and their pets vulnerable to threats and attacks by a stalker. Because humans and animals form strong bonds that induce strong feelings of affection and connection, this can make a pet an easy target for threats and physical harm. California’s law

ignores how powerful a threat or injury to a beloved pet can be. It is critical that California's anti-stalking law is updated in order to better protect victims and their pets.

- 2) **Stalking**: This bill expands the definition of credible threats in the stalking statute to include threats to a pet, service animal, emotional support animal, or horse as part of a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family. Stalking requires a person to engage in **willful, malicious¹**, and **repeated** harassment or credible threats with the specific intent to place someone in fear **for their safety or the safety of their family**. (See CALCRIM No. 1301; see also *People v. Falck* (1997) 52 Cal.App.4th 287, 297-298.) Stalking is an alternate misdemeanor-felony with a maximum penalty of three years in state prison. If a person violates a restraining order to engage in stalking, the maximum penalty is four years in state prison. The penalty for stalking is understandably very serious since in some instances, stalking escalates to violence and even homicide. According to the Stalking Prevention Awareness Resource Center, approximately 25 percent of stalking cases result in violence, including homicides.²

Stalking requires either repeated following or harassment which necessarily includes multiple acts. (*People v. Jantz* (2006) 137 Cal.App.4th 1283, 1292-1293; *People v. Heilman* (1994) 25 Cal.App.4th 391, 400) "Repeated . . . simply means the perpetrator must follow the victim more than one time. The word adds to the restraint police officers must exercise, since it is not until a perpetrator follows a victim more than once that the conduct rises to a criminal level." (*People v. Heilman, supra*, 25 Cal.App.4th at 400.) It is arguable under California's statute that if a person threatens a pet with harm, it may still constitute stalking because there is a credible reason to think the harm will escalate to a person. For instance, if someone threatens to shoot a person's service dog, with the intent to cause fear, it seems reasonable to fear the perpetrator will shoot them. Additionally, stalking, specifically federal stalking, may be taken cumulatively. (*United States v. Shrader* (4th Cir. 2012) 675 F.3d 300, 311.)

Multiple instances of threats to a pet and one threat to a family member or the victim, would constitute federal stalking. The federal statute was amended to include pets in 2018 and, following an exhaustive review of federal case law, there does not appear to be any judicial application or interpretation on point. (See also *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1198; *Jantz, supra*, 1292-1293.)

In California, a prosecutor would likely argue that any person would reasonably fear for their own safety (as opposed to that of just of their pet) if the perpetrator was threatening a person's pet in addition to committing other harassing or threatening behavior against that person. The definition of "credible threats" in the stalking statute means "a verbal or written threat, including that performed through the use of an electronic communication device, or a **threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct**, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family..." This bill just inserts "pet, service animal, emotional support animal, or horse" as part of the

¹ Webster Merriam defines "malicious" as a "desire to cause harm to someone."

² www.stalkingawareness.org

pattern of conduct or combination of statements and conduct that may form the basis of a credible threat.

- 3) **Counterman v. Colorado:** In *Counterman v. Colorado*, in 2023, the U.S. Supreme Court required criminal threats to include some subjective intent to threaten in order to avoid running afoul of the First Amendment. The Court held the state must show the defendant's subjective intent to threaten in order to impose criminal penalties, however, a showing of a mental state of recklessness is sufficient. (See *Counterman v. Colorado* (2023) 143 S.Ct. 2106, 2112.)

“Again, guided by our precedent, we hold recklessness standard is enough. Given that a subjective standard here shields speech not independently entitled to protection – and indeed posing real dangers – we do not require that the State prove the defendant had any more specific intent to threaten the victim.” (*Counterman, supra*, at 143 S.Ct. at 2113.)

The Court considered whether the defendant was aware of the threatening nature of the comments he made online to a local musician or whether his conduct was sufficiently reckless. (See *Counterman*, 143 S.Ct. at 2113.)

“...Recklessness offers the right path forward. We have so far mostly focused on the constitutional interest in free expression, and on the correlative need to take into account threat prosecutions' chilling effect. But the precedent we have relied on has always recognized and insisted on accommodating the competing value in regularly historically unprotected speech. ... [The] standard again, is recklessness. It offers enough breathing space for protected speech without sacrificing too many of the benefits of enforcing laws against true threats. (*Counterman, supra*, at 2116.)

The defendant in *Counterman*, was convicted under Colorado's stalking statute and was based on hundreds of messages sent to the victim over Facebook. Counterman never met the victim and she never responded to any of his messages. While some of the messages were benign, others suggested Counterman might be surveilling the victim, and others expressed anger and threats of harm. The conviction was based solely on the repeated Facebook communications. (*Counterman, supra*, at 2112-13.) Counterman argued that the conviction should be overturned because the statements were not true threats and so were protected under the First Amendment. (*Id.* at 2114.)

The Supreme Court noted that the Colorado courts had used an objective, reasonable person standard to determine if Counterman had made a threat. (*Id.* at 2114.) The question before the Court was “whether the First Amendment still requires proof that the defendant had some subjective understanding of the threatening nature of his statements.” (*Id.* at 2111.) The Court answered the question in the affirmative. (*Id.* at 2115-16.) The Court reasoned that reliance on an objective standard would sometimes result in self-censorship because people would be worried about how their statements would be perceived. (*Ibid.*) To prove this subjective understanding, the Court further held that a mental state of recklessness is

sufficient. In the threats context, recklessness means “that a speaker is aware ‘that others could regard his statements as’ threatening violence and ‘delivers them anyway.’” (*Id.* at 2117.)

While the Supreme Court overturned Counterman’s conviction, it did not overturn the Colorado stalking statute. Rather, what is affected going forward is the evidence prosecutors must prove to establish a conviction under the statute. Under the new U.S. Supreme Court precedent, going forward, prosecutors will have to show that the defendant knew that others could perceive a statement made threatened violence and yet the defendant uttered it anyway.

As in Colorado, California courts have applied an objective reasonable-person standard to determine if statements constitute a credible threat. The California stalking statute itself notes that the person that is the target of the threat must have reasonable fear for their safety. (Pen. Code, § 646.9, subd. (g).) However, under California law, prosecutors also have had to prove subjective *mens rea* for stalking based on threats, namely that “the defendant made a credible threat with the intent to place the other person in reasonable fear for their safety, or for the safety of their immediate family.” (See CALCRIM No. 1301; see also *People v. McCray* (1997) 58 Cal.App.4th 159, 172 [“The crimes with which appellant was charged required proof of his intent to place Michelle in fear for her safety or that of her family.... (§ 646.9, subd. (a)).”].)

- 4) **Argument in Support:** According to the *Berkeley Animal Rights Center*: Stalking is a pattern of repeated behavior that includes unwanted attention, contact, harassment, or other conduct towards a specific person. An estimated one in three women (31.2%) and one in six men (16.1%) in the United States report enduring stalking at some point in their lives while one in 15 women (8.6 million) and one in 24 men (4.8 million) in the United States report being stalked in last 12 months. Stalking behaviors may be committed in person, by following the victim, or by monitoring and harassing the victim electronically. It is a crime of power and control that causes victims to fear for their safety, or the safety of their loved ones.

Perpetrators of stalking tend to damage their victim’s property, even going as far as to target their loved ones, including pets. One National Crime Victimization Survey estimated that four in 10 stalkers threaten a “victim or the victim’s family, friends, co-workers, or family pet,” with 87,020 threats to harm a pet being reported. Unfortunately, stalking victims are unprotected by state law when it comes to their pets. Under existing state anti-stalking law, a stalker can threaten harm to a victim’s pet without consequences.

Current California statute ignores animal abuse as a means to terrorize stalking victims. The relationship between animal cruelty and violent behavior, often referred to as “The Link,” has been widely studied. The abuse of animals is often an indicator of an escalation of violence towards a human. Cruelty towards animals is a means to “perpetuate terror” towards a targeted individual.

In one such California case, a victim ended a short-term romantic relationship with the defendant. The defendant became upset and began to insult the victim. One evening, the victim left her residence and shortly thereafter received a message from the defendant that stated her dog was “gone.” Upon the victim’s return, she determined that her dog was in fact gone and contacted the authorities. The victim advised law enforcement she was fearful of what the defendant would do to her pet in retaliation of her not continuing the romantic

relationship. Under existing California statutory language, prosecutors were unable to formally charge the defendant with stalking despite the implied threat to the victim's pet.

SB 221 would amend Penal Code 646.9 to conform with the federal stalking statute to make a person guilty of stalking if the person with the intent to kill, injure, harass, or intimidate another person, or with the intent to place another person under surveillance for the purpose of killing, injuring, harassing, or intimidating that person, engages in conduct that either places that person in reasonable fear of death or serious bodily injury to themselves, a close family member, or a pet, service animal, emotional support animal, or horse that belongs to that person, or causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to one of the above.

The emotional bond between humans and their companion animals is a source of vulnerability for victims of stalking. A pet is an easy target for threats and physical harm. Both threats and injuries to pets send a strong message to stalking victims about their own helplessness. This bill will send an equally strong message that California recognizes the bond between pets and their guardians as sacred and shall not be threatened as a way to harass a person.

- 5) **Argument in Opposition:** According to *ACLU California Action*: Criminalizing behavior that is insensitive is not only impractical, but dangerous. Over-criminalization exacerbates existing racial and economic disparities in the justice system, while also disproportionately affecting individuals who are low-income and unable to afford legal representation or pay fines. This expansion of criminal activity can ensnare individuals in the criminal justice system for relatively minor infractions, leading to long-term consequences such as loss of employment, housing and civil liberties. We must be mindful of these impacts when considering legislation that seeks to expand crimes.

Moreover, existing law already provides protections to animals under animal cruelty laws at the State and Federal level. In 2016, AB 494 amended Code of Civil Procedure 527.6 (civil harassment), Welfare and Institutions Code sections 213.5 (juvenile) and 15657.03 (elder and dependent adult abuse) to permit a court to issue a protective order for animals to keep a person away from them, and restrain from conduct including making threats. California also allows domestic violence protective orders to include pets. In addition, Federal law includes the crime of stalking and actions that make the victim fear that the stalker will hurt the victim's pet, service or emotional support animal, or horse (18 U.S.C. § 2261A (2019)).

- 6) **Related Legislation:** SB 19 (Rubio) creates a new crime of threatening to commit a crime that will result in death or great bodily injury at a school or place of worship, punishable as an alternate felony-misdemeanor, or as an infraction when committed by a juvenile. SB 19 is pending in this committee.
- 7) **Prior Legislation:** SB 89 (Ochoa-Bogh) was identical to this bill and failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Kennel Club, INC.
American Society for the Prevention of Cruelty to Animals
Angel's Furry Friends Rescue
Animal Legal Defense Fund
Animal Rescue Mission
Animal Rescuers for Change
Animal Wellness Action
Arcadia Police Officers' Association
Berkeley Animal Rights Center
Better Together Forever
Born Again Animal Rescue and Adoption
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Compassionate Bay
Concerned Citizens Animal Rescue
Corona Police Officers Association
Culver City Police Officers' Association
Feline Lucky Adventures
Fullerton Police Officers' Association
Giantmecha Syndicate
Greater Los Angeles Animal Spay Neuter Collaborative
Latino Alliance for Animal Care Coalition
Latino Alliance for Animal Care Foundation
Leaders for Ethics, Animals, and the Planet (LEAP)
Los Angeles Democrats for the Protection of Animals
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Michelson Center for Public Policy
Multiple Individuals (488)
Murrieta Police Officers' Association
Newport Beach Police Association
NY 4 Whales
Palos Verdes Police Officers Association
Pibbles N Kibbles Animal Rescue
Placer County Deputy Sheriffs' Association
Plant-based Advocates
Pomona Police Officers' Association
Project Minnie

Real Good Rescue
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Seeds 4 Change Now Animal Rescue
Seniors Citizens for Humane Education and Legislation
Social Compassion in Legislation
Start Rescue
Students Against Animal Cruelty Club - Hueneme High School
The Canine Condition
The Pet Loss Support Group
The Spayce Project
Underdog Heroes, INC.
Women United for Animal Welfare (WUFAW)
World Animal Protection

Oppose

ACLU California Action
Californians United for a Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
San Francisco Public Defender

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

AMENDMENTS TO SENATE BILL NO. 221

Amendment 1

On page 2, strike out lines 7 and 8 and insert:

their immediate family,

Amendment 2

On page 3, in line 4, strike out “that” and insert:

a threat

Amendment 3

On page 3, in line 7, after the comma insert:

including threats to a person’s pet, service animal, emotional support animal, or horse,

- 0 -



PROPOSED AMENDMENTS TO SENATE BILL NO. 221

SENATE BILL

No. 221

Introduced by Senator Ochoa Bogh
(Coauthors: Senators Alvarado-Gil, Arreguín, Choi, Dahle,
Hurtado, Niello, Seyarto, Umberg, Valladares, and Wahab)
(Coauthors: Assembly Members Chen and Essayli)

January 23, 2025



An act to amend Section 646.9 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as introduced, Ochoa Bogh. Crimes: stalking.

Existing law makes a person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for the person's safety, or the safety of the person's immediate family, guilty of the crime of stalking, punishable as a misdemeanor or a felony.

~~This bill would also make a person guilty of stalking if the person willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for the safety of that~~ *expand the meaning of "credible threat" to include threats to a person's pet, service animal, emotional support animal, or horse.* By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

PROPOSED AMENDMENTS

SB 221

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SUBSTANTIVE

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

Page 2 1 SECTION 1. Section 646.9 of the Penal Code is amended to
2 read:

3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or willfully and maliciously harasses another
5 person and who makes a credible threat with the intent to place
6 that person in reasonable fear for their safety, or the safety of ~~that~~
7 ~~person's pet, service animal, emotional support animal, or horse,~~
8 ~~or the safety of their immediate family~~ *their immediate family*, is
9 guilty of the crime of stalking, punishable by imprisonment in a
10 county jail for not more than one year, or by a fine of not more
11 than one thousand dollars (\$1,000), or by both that fine and
12 imprisonment, or by imprisonment in the state prison.

13 (b) Any person who violates subdivision (a) when there is a
14 temporary restraining order, injunction, or any other court order
15 in effect prohibiting the behavior described in subdivision (a)
16 against the same party, shall be punished by imprisonment in the
17 state prison for two, three, or four years.

18 (c) (1) Every person who, after having been convicted of a
19 felony under Section 273.5, 273.6, or 422, commits a violation of
20 subdivision (a) shall be punished by imprisonment in a county jail
21 for not more than one year, or by a fine of not more than one
22 thousand dollars (\$1,000), or by both that fine and imprisonment,
23 or by imprisonment in the state prison for two, three, or five years.

24 (2) Every person who, after having been convicted of a felony
25 under subdivision (a), commits a violation of this section shall be
26 punished by imprisonment in the state prison for two, three, or
27 five years.

28 (d) In addition to the penalties provided in this section, the
29 sentencing court may order a person convicted of a felony under
30 this section to register as a sex offender pursuant to Section
31 290.006.

32 (e) For the purposes of this section, "harass" means engages in
33 a knowing and willful course of conduct directed at a specific

Amendment 1

PROPOSED AMENDMENTS

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SB 221

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SUBSTANTIVE

Page 2 34 person that seriously alarms, annoys, torments, or terrorizes the
35 person, and that serves no legitimate purpose.

36 (f) For the purposes of this section, “course of conduct” means
37 two or more acts occurring over a period of time, however short,
Page 3 1 evidencing a continuity of purpose. Constitutionally protected
2 activity is not included within the meaning of “course of conduct.”

3 (g) For the purposes of this section, “credible threat” means a
4 verbal or written threat, including ~~that a threat~~ performed through
5 the use of an electronic communication device, or a threat implied
6 by a pattern of conduct or a combination of verbal, written, or
7 electronically communicated statements and conduct, *including*
+ *threats to a person’s pet, service animal, emotional support animal,*
8 *or horse*, made with the intent to place the person that is the target
9 of the threat in reasonable fear for their safety, or the safety of
10 their family, and made with the apparent ability to carry out the
11 threat so as to cause the person who is the target of the threat to
12 reasonably fear for their safety or the safety of their family. It is
13 not necessary to prove that the defendant had the intent to actually
14 carry out the threat. The present incarceration of a person making
15 the threat shall not be a bar to prosecution under this section.
16 Constitutionally protected activity is not included within the
17 meaning of “credible threat.”

18 (h) For purposes of this section, the term “electronic
19 communication device” includes, but is not limited to, telephones,
20 cellular phones, computers, video recorders, fax machines, or
21 pagers. “Electronic communication” has the same meaning as the
22 term defined in Subsection 12 of Section 2510 of Title 18 of the
23 United States Code.

24 (i) This section shall not apply to conduct that occurs during
25 labor picketing.

26 (j) If probation is granted, or the execution or imposition of a
27 sentence is suspended, for any person convicted under this section,
28 it shall be a condition of probation that the person participate in
29 counseling, as designated by the court. However, the court, upon
30 a showing of good cause, may find that the counseling requirement
31 shall not be imposed.

32 (k) (1) The sentencing court also shall consider issuing an order
33 restraining the defendant from any contact with the victim, that
34 may be valid for up to 10 years, as determined by the court. It is
35 the intent of the Legislature that the length of any restraining order

| Amendment 2

| Amendment 3

PROPOSED AMENDMENTS

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SUBSTANTIVE

Page 3 36 be based upon the seriousness of the facts before the court, the
37 probability of future violations, the safety of the victim and their
38 immediate family, and the information provided to the court
39 pursuant to Section 273.75.

Page 4 1 (2) This protective order may be issued by the court whether
2 the defendant is sentenced to state prison, county jail, or if
3 imposition of sentence is suspended and the defendant is placed
4 on probation.

5 (l) For purposes of this section, “immediate family” means any
6 spouse, parent, child, any person related by consanguinity or
7 affinity within the second degree, or any other person who regularly
8 resides in the household, or who, within the prior six months,
9 regularly resided in the household.

10 (m) The court shall consider whether the defendant would
11 benefit from treatment pursuant to Section 2684. If it is determined
12 to be appropriate, the court shall recommend that the Department
13 of Corrections and Rehabilitation make a certification as provided
14 in Section 2684. Upon the certification, the defendant shall be
15 evaluated and transferred to the appropriate hospital for treatment
16 pursuant to Section 2684.

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

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Date of Hearing: July 15, 2025

Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 245 (Reyes) – As Amended July 8, 2025

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to notify the Department of Justice (DOJ) of potentially eligible formerly incarcerated fire crew members for possible expungement. Specifically, **this bill:**

- 1) Prohibits any state or local agency from denying a defendant whose conviction was expunged based on their participation as an incarcerated hand crew member an emergency medical technician certification or any other license or certification necessary to work as a firefighter.
- 2) Requires CDCR and a county authority to report biannually to the DOJ those individuals who have been released from custody and have successfully participated as an incarcerated hand crew member or have successfully completed an institutional firehouse program in the past 30 days. The report shall include the date of completion of the program and the individual's release date.
- 3) Requires, beginning July 1, 2026, DOJ to review records in the state summary criminal history information database and the information provided by CDCR to identify and notify the prosecution of all convictions that are potentially eligible for dismissal and set aside pursuant to this section.
- 4) States that upon receipt of notice from DOJ, the prosecution shall have 30 days to review any cases and determine whether to oppose relief.
- 5) Mandates that, within 30 days of notice from the DOJ, the prosecution shall inform the court and the public defender's office in their county when they are opposing relief. The prosecution shall also inform the court when they are not opposing relief. The public defender's office shall make a reasonable effort to notify the person whose case is being opposed.
- 6) States within 30 days of receipt of notice from the prosecution, the court may, in its discretion and in the interest of justice, issue an order to allow a defendant to withdraw their plea or set aside a conviction and dismiss the case, and if it does so, the court shall update its records to reflect its decision.
- 7) Requires a court that orders dismissal to report all cases in which relief has been granted to the DOJ for adjustment of the state summary criminal history information database.
- 8) Requires, within 30 days of notice from the court, DOJ to ensure all of the records in the state summary criminal history information database that have been dismissed and set aside, and ensure that inaccurate state summary criminal history is not disseminated.

- 9) States for those individuals whose state summary criminal history information was disseminated pursuant to existing law related to mandated reporters in the 30 days prior to an update based on the court's dismissal, and the requesting entity is still entitled to receive the state summary criminal history information, DOJ must provide a notice to the entity.
- 10) Provides that if a person is denied relief, they are entitled to file a petition at a later date.
- 11) Requires DOJ to collect data relating to the number of individuals who successfully participated as an incarcerated hand crew member or successfully completed an institutional firehouse program and the outcomes of petitions filed.

EXISTING LAW:

- 1) Allows a person who has successfully participated in the California Conservation Camp (CCC) Program, at an institutional firehouse, or in a county incarcerated hand crew to petition for expungement of their conviction, except specified individuals are disqualified from seeking relief. (Pen. Code, § 1203.4b, subd. (a)(1) and (c)(1).)
- 2) States that "successful participation" means the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program. (Pen. Code, § 1203.4b, subd. (a)(3).)
- 3) Allows the participant to file a petition for relief with the court in the county where the person was sentenced. The court shall provide a copy of the petition to the CDCR secretary, or in the case of a county incarcerated individual hand crew member, the appropriate county authority. (Pen. Code, § 1203.4b, subd. (b)(1).)
- 4) Provides that if the Secretary of CDCR or the appropriate county authority certifies to the court that the person successfully completed the incarcerated conservation camp program, the court, in its discretion and in the interests of justice, may issue an order to dismiss the accusations or information against them. (Pen. Code, § 1203.4b, subd. (b)(2).)
- 5) Prohibits the court from granting relief if the person is currently charged with the commission of any other offense. (Pen. Code, § 1203.4b, subd. (c)(2).)
- 6) Makes expungement relief available for all convictions for which the person is serving a sentence at the time they successfully complete one of the required programs. (Pen. Code, § 1203.4b, subd. (b)(4).)
- 7) Specifies that a person who is granted expungement shall not be required to disclose the conviction on an application for licensure by any state or local agency, except in an application for a position as a peace officer, public office, or for contracting with the California State Lottery Commission. (Pen. Code, § 203.4b, subd. (b)(5).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “In 2020, the Governor signed my AB 2147 (Chapter 60, Statutes of 2020), which eliminated barriers for formerly incarcerated fire crews from pursuing a career in firefighting. Incarcerated fire crew members have proven themselves as true heroes, courageously protecting homes and communities from destruction, most recently exemplified during the LA fires earlier this year. Many of these individuals, however, still struggle to obtain AB 2147 expungements upon reentry. Eligible applicants under AB 2147 face several operational challenges such as delays in certificate confirmations by the California Department of Corrections and Rehabilitation (CDCR), lack of legal assistance to initiate their expungement, insufficient data sharing between CDCR, courts, and other agencies, as well as restrictions on licensing opportunities for those with prior convictions.

“SB 245 addresses these issues by: automating the certification process for program completion and shifting the responsibility of initiating the expungement process from the eligible individuals to the Department of Justice (DOJ), ensuring individuals are not burdened with additional bureaucracy. The bill also includes improved data sharing between CDCR, the DOJ, and the judiciary to facilitate better tracking of program completions, eligibility status, and outcomes of expungement petitions. It also ensures expungement recipients are not denied emergency medical technician certification or any other license or certification necessary to work as a firefighter.”

- 2) **Conservation (Fire) Camps:** The primary mission of the Conservation Camp Program is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters. CDCR, in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operates 35 conservation camps, commonly known as fire camps, located in 25 counties. All camps are minimum-security facilities and all are staffed with correctional employees.¹

Overall, there are approximately 3,000 inmates working at fire camps currently. Approximately 1,600 of those are fire line-qualified inmates. In addition to inmate firefighters, camp inmates can work as support staff for the camps. All inmates receive the same entry-level training that CAL FIRE’s seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program. An inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have “minimum custody” status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison and participation in rehabilitative programming.

Adult male inmates receive fire-fighting training at the California Correctional Center, Susanville; Sierra Conservation Center, Jamestown; the California Men’s Colony, and San Luis Obispo, among others. Female inmates are trained at the California Institution for Women, Corona. Juvenile offenders are trained at the Pine Grove Conservation Camp in Amador County.

¹ <https://www.cdcr.ca.gov/facility-locator/conservation-camps/>

Some convictions automatically make an inmate ineligible for conservation camp assignment, even if they have minimum custody status. Those convictions include sexual offenses, arson and any history of escape with force or violence. Inmates considered potential fire crew members are evaluated for their physical fitness by CDCR and are trained in fire-fighting techniques by CAL FIRE, which includes a week of classroom instruction and a second week of field exercises.²

- 3) **Expungement Relief in General:** Expungement relief – or the clearing of prior convictions - was previously only available to defendants placed on probation. Then, after the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.)

In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment. Under existing law, expungements are not available to individuals sentenced to state prison and a few specified offenses.

As noted above, expungement means that a person “shall be released from all penalties and disabilities resulting from [an] offense.” (*People v. Field* (1995) 31 Cal.App.4th 1778, 1786.) However, in California, expungement does not completely wipe away a person’s record of conviction. When expungement relief is granted, the conviction is set aside and the charging document is dismissed. This neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. In fact, a person who is eligible to have their record expunged still faces many of the consequences of a criminal conviction, such as the inability to have a firearm or hold public office, if the conviction is one that prevents a person from holding such a position. An expunged conviction has the same effects in subsequent criminal cases as convictions that are not expunged. Applicants applying for employment do not have to disclose the conviction on an application for employment, but must disclose the conviction on an application for licensure by any state or local agency. (See Lab. Code, § 432.7, subd. (c)-(d).)

This bill would require CDCR and local county authorities to proactively provide a list to DOJ of persons who have successfully completed the fire camp program on a biannual basis. This bill would also require DOJ to evaluate the information provided as well as criminal history information to determine if the individual is eligible for relief and notify those individuals of eligibility and to file a petition for expungement relief on their behalf, if the person requests.

This bill is similar to other automatic expungement relief laws enacted by the Legislature. For example, 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.) SB 731 (Durazo), Chapter 814, Statutes of 2022, expanded automatic conviction record relief to include additional felonies but delayed the effective date to July 1, 2023.

² <https://www.cdcr.ca.gov/facility-locator/conservation-camps/>

AB 567 (Ting), Chapter 444, Statutes of 2023, again expanded automatic conviction record relief to include misdemeanor convictions where the sentence has been successfully completed following revocation of probation and again delayed implementation. Most recently, 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. This bill would work in a similar manner as those measures.

- 4) **Employment Barriers for People with Criminal History Records:** Getting a job with a criminal record may be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

Existing law provides procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her conviction dismissed or “expunged.” When these procedures are successful, they generally treat the conviction as if it had never occurred. This allows persons formally arrested or convicted to lawfully withhold information about their arrest or conviction when applying for jobs. Under existing law, an expungement does not relieve a person of the duty to disclose such a conviction when seeking licensing by the state. California has a large number of professions which require an individual to be licensed in order to engage in those activities.

Inmate firefighters can have difficulty getting an EMT or paramedic license because of their prior convictions. Without at least an EMT license, these same individuals can be excluded from jobs with firefighting organizations. This bill would allow an inmate firefighter to expunge the conviction that led to their most recent incarceration for licensing purposes, but will not clear other convictions that might be on their record. This bill seeks to relieve individuals that have had their conviction expunged from disclosing a conviction and prohibits any local or state agency, including local or state Emergency Medical Licensing Agencies (EMSA) from denying a formerly incarcerated hand crew member a license based on an expunged arrest or conviction.

Additionally, Labor Code section 432.7 generally prohibits local governments from automatically denying an applicant because of a prior conviction if they meet the minimum qualifications.

An employer, whether a public agency or private individual or corporation, shall not ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning

a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, as specified.

However, Labor Code section 432.7 does not apply to employees of, or applicants to, a “criminal justice agency.” Criminal justice agency means “any agency at any levels of government which perform as their principal functions, activities which either: Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.) However, the definition of “criminal justice agency” does not appear to include an EMT.

Given that the bill states an arrest or conviction may not be used to deny a person certification “*notwithstanding specified sections the Health and Safety Code or any other law,*” this signals to the courts that the Legislature intended for formerly incarcerated inmate hand crew members to be eligible for licensing.

- 5) **Argument in Support:** According to *Smart Justice*: “In 2020, the California Legislature took a critical step forward in recognizing the contributions of currently and formerly incarcerated hand crews by passing AB 2147 (Reyes, 2020). That law allows people who successfully completed fire camp, institutional fire house, or county incarcerated hand crew programs to petition for expungement of their records, provided that they meet certain criteria. While AB 2147 established a critical foundation, there are operational challenges that have hindered its implementation.

“These challenges include significant delays in courts receiving certificates of fire camp or institutional fire house completion from the California Department of Corrections and Rehabilitation (CDCR). The burden also falls squarely on the individual petitioning for the expungement, which can be very difficult and costly for a returning citizen to navigate. Furthermore, AB 2147 did not allow for expungements for prior convictions, thereby limiting its ability to remove barriers for individuals pursuing an Emergency Medical Technician (EMT) or similar license. SB 245 corrects these inefficiencies and streamlines the process by automating the expungement process through the DOJ, which can then provide the verification to the courts and shifts the responsibility of initiating the expungement process to the DOJ.”

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

7) **Related Legislation:**

- a) AB 247 (Bryan), would require incarcerated individual hand crew members from county jails and state prison, and youth placed at the Pine Grove Youth Conservation Camp to be paid an hourly wage of \$7.25 while assigned to an active fire incident and to have the wage rate updated on an annual basis. AB 247 is pending hearing in the Senate Public Safety Committee.
- b) AB 812 (Lowenthal), would authorize an incarcerated firefighter to petition the court for recall and resentencing. AB 812 is pending hearing in the Senate Public Safety Committee.

8) Prior Legislation:

- a) AB 567 (Ting), Chapter 444, Statutes of 2023, extended automatic conviction record relief to misdemeanor convictions where the sentence has been successfully completed following a revocation of probation.
- b) AB 1038 (Ting), of the 2021-2022 Legislative Session, would have required DOJ, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified, for all convictions that occurred on or after January 1, 1973, rather than just those that occurred on or after January 1, 2021. AB 1038 was not heard in the Senate Public Safety Committee.
- c) AB 88 (Committee on Budget), of the 2019-2020 Legislative Session, would have adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 88 died on the Senate inactive file.
- d) AB 1076 (Ting), Chapter 578, Statutes of 2019, required the DOJ, as of January 1, 2021, and subject to an appropriation, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and required the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.
- e) SB 763 (Durazo), of the 2023-24 Legislative Session, would apply automatic conviction record relief to specified felony convictions occurring on or after January 1, 1973, instead of on or after January 1, 2005. SB 763 was held in the Senate Appropriations Committee.
- f) SB 731 (Durazo), Chapter 814, Statutes 2022, as relevant here, expanded automatic arrest record and conviction relief to additional felony offenses, as specified.
- g) SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019.

REGISTERED SUPPORT / OPPOSITION:**Support**

ACLU California Action
All of US or None Los Angeles
Anti Recidivism Coalition
California Alliance for Youth and Community Justice
California Civil Liberties Advocacy
California Forestry Association
California Public Defenders Association
California Public Defenders Association (CPDA)

Californians for Safety and Justice
Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Courage California
Democratic Party of the San Fernando Valley
East Bay Community Law Center
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Indivisible CA Statestrong
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Aid At Work
Legal Services for Prisoners With Children
Michelson Center for Public Policy
Prosecutors Alliance Action
Rubicon Programs
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
The Change Parallel Project
The Forestry and Fire Recruitment Program
The W. Haywood Burns Institute
Vera Institute of Justice

Opposition

None submitted.

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

Date of Hearing: July 15, 2025

Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 258 (Wahab) – As Amended May 1, 2025

SUMMARY: Eliminates the spousal exception from the definition of rape based on the victim's inability to legally consent, as specified, because of a mental disorder or developmental or physical disability.

EXISTING LAW:

- 1) States rape is an act of sexual intercourse accomplished under any of the following circumstances:
 - a) If a person who is not the spouse of the person committing the act is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship, as specified, the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.
 - b) If it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
 - c) If a person is prevented from resisting by an intoxicating or anesthetic substance, or a controlled substance, and this condition was known, or reasonably should have been known by the accused.
 - d) If a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:
 - i. Was unconscious or asleep.
 - ii. Was not aware, knowing, perceiving, or cognizant that the act occurred.
 - iii. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
 - iv. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

- v. If a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
 - vi. If the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
 - e) If the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.
- 2) States in a prosecution for rape, sodomy, forcible oral copulation, or sexual penetration, in which consent is at issue, "consent" means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. (Pen. Code, § 261.6, subd. (a).)
 - 3) Punishes rape of a person, including a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, by imprisonment in the state prison for 3, 6 or 8 years. (Pen. Code, § 264, subd. (a).)
 - 4) Punishes rape of a minor under the age of 14 if it is accomplished against the person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another by imprisonment in the state prison for 9, 11 or 13 years. (Pen. Code, § 264, subd. (c)(1).)
 - 5) Punishes rape of a minor who is 14 years of age or older if it is accomplished against the person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another by imprisonment in the state prison for 7, 9 or 11 years. (Pen. Code, § 264, subd. (c)(1).)
 - 6) Defines "duress" for purposes of rape to mean "a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one would not have submitted. The total circumstances, including the age of the victim, and the victim's relationship to the defendant, are factors to consider in appraising the existence of duress." (Pen. Code, § 261, subd. (b)(1).)
 - 7) Punishes a person who engages in sodomy, oral copulation, or sexual penetration with a minor, except as punishable as a lewd and lascivious act with a minor under 14, by imprisonment in the state prison or in a county jail for not more than one year. (Pen. Code, §§ 286, subd. (b)(1), 287, subd. (b)(1), and 289, subd. (h).)

- 8) Punishes a person over the age of 21 who participates in an act of sodomy, oral copulation, or sexual penetration with a minor who is under the age of 16 with a felony. (Pen. Code, §§ 286, subd. (b)(2), 287, subd. (b)(2), and 289, subd. (i).)
- 9) Punishes a person who participates in an act of sodomy, oral copulation, or sexual penetration with a minor who is under 14 years of age and the minor is more than 10 years younger than the person by imprisonment in the state prison for 3, 6 or 8 years. (Pen. Code, §§ 286, subd. (c)(1), 287, subd. (c)(1), and 289, subd. (j).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “Marriage should never be a shield for rape. Senate Bill (SB) 258 ends the unequal treatment of spousal rape in California by closing a legal loophole that allows the rape of a spouse who is unable to consent due to a disability. This outdated exception denies justice to disabled survivors of sexual assault, simply because they are married to the perpetrators. All survivors of sexual assault deserve equal access to protections and legal recourse.

“Spousal rape is already underreported, and even more so among people with disabilities, who face significantly higher risks of sexual violence—particularly those with intellectual disabilities, who are over seven times more likely to be assaulted than people without disabilities. Abolishing this two-tiered system of justice is long overdue. More than 40 states have already eliminated similar provisions, affirming that rape is rape, regardless of marital status. SB 258 is essential to correct this harmful and outdated exception, bringing California in line with nearly every other state.

- 2) **History of Spousal Rape:** For decades, California did not recognize the crime of rape between a husband and wife. AB 546 (Mori), Statutes of 1979, enacted the first spousal rape law in California by adding former Penal Code section 262, which was separately codified from the general (non-marital) rape section in Penal Code section 261.

The initial reasoning for criminalizing the rape of a spouse were arguments centered upon the fact that marriage did not grant irrevocable consent to engage in intercourse with a spouse, and women should not be viewed as property. Specifically, “a woman does not give up her right to consent to sexual intercourse by virtue of marriage, and that the existing definition of rape treats married women in an unequal and unfair fashion.”¹

¹ Ross, *Making Marital Rape Visible: A History of American Legal and Social Movements Criminalizing Rape in Marriage* (Dec. 2015) Digital Commons @ University of Nebraska – Lincoln; <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1085&context=historydiss> at p. 136, citing Senate Committee on Judiciary summary of A.B. 546 at fn. 384 [as of May 26, 2021].

Former Penal Code section 262 was the spousal rape statute and mostly mirrored the rape statute:

Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(a) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(b) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(c) Where a person is at the time unconscious of the nature of the act, and this is known to the accused.

(d) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(e) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official.

Former Penal Code section 262 did not require a person to register as a sex offender and a defendant convicted of former Penal Code section 262 was eligible for probation.

In 2021, the Legislature passed AB 1171 (C. Garcia, Chapter 626, Statutes of 2021), which repealed the stand-alone spousal rape statute (Pen. Code, § 262) and expanded the definition of rape (Pen. Code, § 261) to include the rape of a spouse in all but one circumstance. The expanded version of the rape statute maintained a limited exemption for the act of sexual intercourse with a spouse who is incapable of giving "legal consent" or having the capacity to consent because of a mental disorder or developmental or physical disability. (Pen. Code, § 261, subd. (a)(1).)

The reasoning for this narrow exception at the time the Legislature eliminated spousal rape were concerns about over-criminalization of developmentally disabled people who are legally allowed to marry, but may be prohibited from having sex.

Disability advocates at the time argued, “We believe there should be continued dialog about the impacts of Penal Code 261(a)(1) to preserve the sexual agency of people with disabilities and provide equitable protections for disabled victims of spousal rape...”²

This bill now proposes to eliminate the spousal language from rape of a person not able to provide legal consent due to a mental disorder or physical or developmental disability.

Penal Code section 261 criminalizes rape, without reference to the relationship between the perpetrator and victim as a sexual act: (a) against the victim’s will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another; (b) when the victim is prevented from resisting by an intoxicating or anesthetic substance, or controlled substance, and this condition was known, or should have been known, to the accused; (c) where the victim was unconscious of the nature of the act, because they were unconscious or asleep, not aware, knowing, perceiving, or cognizant that the act occurred, not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact (the perpetrator tricked, lied to, or concealed information); or not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact (the perpetrator tricked, lied to, or concealed information); (d) against the victim’s will by threat of retaliation, as defined; or, (e) against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. (Pen. Code, § 261, subd. (a)(1-7).)

- 3) **Legal Consent and Capacity to Consent:** Penal Code section 261.6 defines legal consent for offenses involving developmental or intellectual disabilities as “positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.” (Pen. Code, § 261.6, subd. (a).) The concept of legal consent in statute dates back to 1980 when the court expressly rejected the idea that “the person who does not resist, consents.”

In *People v. Barnes* (1986) 42 Cal. 3d 284, our Supreme Court explained that the traditional requirement that a woman resist her attacker was ‘grounded in the basic distrust with which courts and commentators traditionally viewed a woman's testimony regarding sexual assault.’ (Internal citation omitted.) ‘Such wariness of the complainant's credibility created ‘an exaggerated insistence on evidence of resistance.’ [Citation.] As an objective indicator of non-consent, the requirement of resistance insured against wrongful conviction based solely on testimony the law considered to be inherently suspect. In our state, it supplied a type of intrinsic corroboration of the prosecuting witness's testimony, a collateral demanded even when extrinsic corroboration was not required. Elimination of the resistance requirement in our criminal law represents what the people of this state believe is reasonable to expect of a

² Disability Rights California, “RE: AB 1171 (Garcia) – Updated Position Letter – NEUTRAL” July 10, 2021 to the Sen. Comm. on Public Safety.

victim of a sexual assault. (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 262.)

However, *capacity to consent* is slightly different than *legal consent*. Capacity to consent includes instances where the victim is incapable of consent due to intoxication or unable to consent due to a mental disorder or physical or developmental disability.

The existence of capacity to consent is a question of fact. (*People v. Griffin* (1897) 117 Cal. 583, 585, overruled on other grounds in *People v. Hernandez* (1964) 61 Cal.2d 529, 536.) A juror is able to assess the extent of a victim's mental disability.

“The question whether a person possesses sufficient resources—intellectual, emotional, social, psychological—to determine whether to participate in sexual contact with another is an assessment within the [experience] of the average juror, who likely has made the same determination at some point.”(*People v. Miranda* (2011) 199 Cal.App.4th 1403, 1413.)

However, in instances where a victim may have an intellectual or developmental disorder (I/DD), capacity to consent likely requires expert testimony to avoid discriminatory commentary from family members or law enforcement about a person being too “simple” or “child-like” to consent. According to Disability Rights California:

California law generally presumes all persons have legal capacity to make decisions and be responsible for their acts, including people with I/DD.³ For example, the legal threshold for marrying is the lowest capacity standard in California, and even people under conservatorships can retain this right unless a court specifically finds they lack it based on medical testimony and affidavits.⁴ The probate code uses a case-by-case approach and relies on expert opinions to assess a person’s capacity. Unfortunately, the criminal legal system lags behind the probate code and still applies outdated, discriminatory, and paternalistic biases about disability. California courts have never recognized that a person with I/DD has the legal capacity to consent to sexual intercourse. ... In some cases, individuals were found legally incapable of consent even after prior sexual experience,

³ See *In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 639; see generally Rabbi Norman Cohen, The Story of Robert and Julie (2010) Impact 23(2) available at <https://publications.ici.umn.edu/impact/23-2/the-story-of-robert-and-julie>.

⁴ Prob. Code, §§ 1900-1901, 2351.5, subd. (b)(6); *In re Marriage of Greenway*, supra, at 639-640; *Conservatorship of Navarrete* (2020) 58 Cal.App.5th 1018, 1031, as modified (Dec. 21, 2020); see also generally Dinnerstein, Sexual Expression for Adults with Disabilities: The Role of Guardianship (2010) Impact 23(2) available at <https://publications.ici.umn.edu/impact/23-2/sexual-expression-for-adults-with-disabilities-the-role-of-guardianship>.

childbirth, or explicit verbal objections to the charged sexual acts.”

DRC points to cases like *People v. Mobley* (1999) 72 Cal.App.4th 761, 781, overruled on other grounds, *People v. Trujillo* (2006) 40 Cal. 4th 165, wherein the lack of testimony about capacity to consent and familial explanations about what a person understands or does not understand, may lead to profoundly unjust and discriminatory findings by the court.

Legal consent and capacity to consent is not the same. If an adult with no history of I/DD or physical disability is so intoxicated that they cannot affirmatively consent, they lack legal consent.

“A person is prevented from resisting if he or she is so incapacitated that he or she cannot give legal consent. In order to give legal consent, a person must be able to exercise reasonable judgment. In other words, the person must be able to understand and weigh the physical nature of the act, its moral character and probable consequences. Legal consent is consent that's given freely and voluntarily by someone who knows the nature of the act involved.” ((*People v. White* (July 14, 2015, No. D060969) ___Cal.App.5th___, citing 1 CALCRIM 1002.))

Capacity to consent means a person, due to an I/DD or physical disability, intoxication, or unconsciousness cannot understand the nature and consequences of the act of sexual intercourse.

Rape occurs when the victim lacks capacity to consent because of a mental disorder or disability (§ 261, subd. (a)(1)), unconsciousness (§ 261, subd. (a)(4)), or a level of intoxication that prevents resistance (§ 261, subd. (a)(3)). In each of these latter three circumstances, the accused either must have known or reasonably should have known of the victim's particular condition that precluded consent. (*People v. Linwood* (2003) 105 Cal.App.4th 59, 71 [129 Cal.Rptr.2d 73].)

A review of case law on Penal Code section 261, subdivision (a) prosecutions arguably demonstrates a discrimination of a different kind. In many cases, the conduct at issue is actually rape based on duress (Pen. Code, § 261, subd. (a)(2)) or threat of use of authority (Pen. Code, § 261, subd. (a)(7)), but are prosecuted as lack of capacity to consent. As noted in a report issued by the Stanford Law School Intellectual & Developmental Disabilities Law and Policy Project:

The law surrounding the capacity of people with developmental disabilities to consent to sexual activity is characterized by an inherent tension between a desire to protect these individuals from harm and a fear of inhibiting their autonomy. This theme runs throughout much of the case law on the topic and informs state legislature's choices in drafting the language of assault statutes. ...

Though each state has attempted to set forth its standards for capacity to consent in the statute and accompanying case law, it should be noted that the law is a blunt and imperfect instrument for assessing this question—one that has ethical, contextual, and social dimensions. The law is best adept to deal with concrete standards and facts. However, the majority of standards relating to capacity to consent to sexual activity are highly abstract and mutable.”⁵

In *People v. Mobley*, *supra*, specifically, the perpetrator was convicted of sodomy against two young men who, as it appeared from the facts, may have been manipulated and led to believe they could not refuse the perpetrator’s request for sex. The perpetrator befriended one of the victims at a train museum in San Diego and the other victim was the best friend of the first victim. (*Mobley*, *supra*, 72 Cal.App. at 769) According to the facts:

When he told Mobley it hurt him and that he did not want to do it, Mobley told him “just do it.” One time he threatened [victim] that if he did not do it, he would not be able to leave the room. Other times, he would lie on top of [victim] and just ‘rammed it in.’ Steve said the [act] was only painful a short time and then it would be done. He just got used to it and ‘cooperated.’” (*People v. Mobley*, 72 Cal.App.4th, at 775.)

In this case, it is not at all clear the victims’ actually consented without reference to the capacity to consent. The two victims may have had capacity to consent, they just did not consent.

In *People v. Thompson* (2006) 142 Cal.App.4th 1426, the perpetrator was an employee of a group home for people with I/DD. The perpetrator entered the victims’ rooms at night while they slept and committed sex acts against them. The victim explained she did not consent and told her mother she had been raped. (*Thompson*, *supra*, 142 Cal.App. at 1430-31.) Despite the victim’s statements that she had been raped – defendant was prosecuted solely on a theory of her capacity to consent.

[Victim], who is trusting and docile, did not resist; instead, she dissociated—at trial, she was able to describe everything defendant did to her, yet she insisted that she had been ‘in a deep sleep.’ Thus, while the record leaves no doubt that she did not consent, there was some question as to whether defendant knew that she did not consent, and also as to whether he used force. (*People v. Thompson*, 142 Cal.App.4th at 1429.)

⁵ Linder, “Capacity to Consent to Sexual Activity among those with Developmental Disabilities,” Stanford Law School, Stanford Intellectual & Developmental Disabilities Law & Policy Project, p. 3.)

Both *Mobley* and *Thompson* may be somewhat demonstrative of a lack of respect for the victim's experience.

If the victim is able to clearly explain they consented to sex, that must be respected; yet, if a victim states they either did not express affirmative consent or said they did not want to have to sex, that must be taken just as seriously and prosecuted in accordance with a lack of consent rather than lack of capacity to consent. The feelings, thoughts, and expressions of the victims should be the foundation of any decision to prosecute, and if so, what charge should be lodged. However, given the latent discrimination in rape prosecutions generally, it is unclear to what extent the removal of the spousal exception will impact people with I/DD. Perhaps it makes more sense to develop a more specific basis to determine capacity to consent similar to what was proposed by the opposition. The most important voice should be those with I/DD.

- 4) **Sex Offender Registration and Probation:** One of the primary differences between spousal rape and rape, before 2021, was spousal rape was eligible for probation and sex offender registration was not mandatory.⁶

Penal Code section 1203.065 states offenses that are defined as rape, with the exception of Penal Code section 261, subdivision (a) may not be granted probation. (Pen. Code, § 1203.065, subd. (a).) This bill does not eliminate the possibility that a charge of rape based on a lack of capacity to consent may be sentenced to probation.

As for sex offender registration, rape generally requires mandatory sex offender registration. (Pen. Code, § 290, subd. (c) [Penal Code section 261 convictions are required to register as a sex offender].) That will remain the case without reference to the removal of the spouse exception in Penal Code section 261, subdivision (a) because of the elimination of the spousal rape statute in 2021. As explained in the Committee analysis of AB 1171 (C. Garcia), Chapter 626, Statutes of 2021:

“By repealing the spousal rape statute and including it in the non-spousal rape statute, this bill would require mandatory sex offender registration in all instances of spousal rape. The period of registration could be from 20 years to life depending on the circumstances. (Pen. Code, § 290.) Further, a person required to register as a sex offender for spousal rape could also be included on the Megan's law website. (Pen. Code, § 290.46, subds. (c)(1) & (d)(1)(A).)”

⁶ Rape carries significant penalties. The offense is punishable by a state prison sentence up to eight years. (Pen. Code, § 264.) Probation is prohibited if the perpetrator uses a firearm in the commission of the offense or inflicts great bodily injury upon the victim. (Pen. Code, §§ 1203.06, subd. (a)(1)(F) & 1203.075, subd. (a)(6).)

Therefore, removal of the spousal exception in Penal Code section 261, subdivision (a) will have no impact on either probation or registration. Probation is still an option and, since the changes in AB 1171, registration is still mandatory.

- 5) **Argument in Support:** According to the *Coalition of Gender Equality*: SB 258 is a follow-up bill to AB 1171 (Garcia) which passed in 2021. AB 1171 repealed the spousal rape exception, but left one loophole that allows the spousal rape when the victim cannot consent due to a severe disability. This was not an omission that the author or sponsors wanted, but we ran out of time and committed that we would come back in order to remove that last exception. Former Assemblymember Garcia generally supports SB 258's goal of closing this loophole, as a continuation of her work on AB 1171.

SB 258 protects disabled individuals from being raped by their spouses when they cannot consent to sex due to the impact of a disability. Today, rape of a spouse who is too disabled to consent is not a crime in California. That same rape, if committed by a non-spouse, is a crime. SB 258 simply removes the discriminatory law that allows this rape of disabled married spouses. The bill is strongly supported by numerous disability rights and service organizations, most notably the ARC of California, United Cerebral Palsy, The Association of Regional Center Agencies which coordinate services for, and advocate on behalf of, over 450,000 Californians with intellectual and developmental disabilities. It also has the support of national and state women's rights organizations and numerous domestic violence service providers.

California is currently one of a tiny, shrinking handful of states that provide any form of spousal rape exception. These laws are an archaic holdover from 17th century common law that have no place in a modern penal code. In the last 4 years since the passage of AB 1171 more than 10 states have repealed their spousal rape exceptions. Now California stands nearly alone with this retrograde statute and is clearly an outlier. SB 258 is necessary to bring California law into alignment with that of other states.

The Public Defenders and their allies oppose the bill in a series of near-identical form letters. The Public Defenders have opposed virtually every effort to repeal California's spousal rape exception for the last 50 years. In 1993, for example, with reference to then-Assembly Member Hilda Solis's AB 187, they wrote that they opposed any effort to eliminate the spousal rape exception because "spousal rape should not be generalized in the same category as rape by a stranger, or date rape. These were outdated views in 1993, and are even more so now.

The opponents, including DRC, claim that SB 258 criminalizes all sex between disabled people. This is simply untrue. This bill respects the ability of all people, including disabled married people to have choice about their bodily autonomy -- to have sex when they choose and not have it thrust on them without their consent. Furthermore the bill provides appropriate protection for accused spouses by requiring that the accused spouse either knew or should have known that the victim was too disabled to consent.

Current law contains an ironclad presumption that a disabled spouse can never be too impaired by their disability to consent to sex. This is unconscionable. According to the opposition, It doesn't matter if the victim is paralyzed from a stroke. It doesn't matter if the victim is unable to understand their surroundings, move, or speak after being hit by a drunk

driver. It doesn't matter if they have dementia and no longer recognize their spouse. It doesn't matter if they are unable to scream, fight back, or flee.

It also doesn't matter if the defendant knew for a fact that the victim was too disabled to consent but sexually violated them anyway. According to the opponents, if a victim was competent to get married on her wedding day, then the marriage is itself proof of ongoing ability to consent to sex, regardless of how distant in time the marriage may have been, what has happened with her health since then, or what the specific facts and circumstances were at the time of the rape. Common sense alone tells you that is wrong. Current law discriminates on the basis of both marital status and disability. SB 258 will finally end that discrimination.

- 6) **Argument in Opposition:** According to *Disability Rights Education and Defense Fund*: DREDF served as a co-sponsor of AB 1663 (Maienschein), the Probate Conservatorship Reform and Supported Decision-Making Act enacted in 2022. Since then, DREDF has trained hundreds of lawyers and community members on supported decision-making as a tool to support and preserve the capacity of people with disabilities, including people with intellectual and developmental disabilities. DREDF advocates for the right of people with disabilities to make their own decisions in life with any needed supports, including decisions about friends, dating, consensual sex, reproductive health care, marriage, and parenting. ...

“Autonomy Issues Raised by SB 258

The history of law is riddled with misogyny and ableism, among other forms of oppression. Prior to the 1970s, marital rape – sex by one spouse (typically a man) with the other spouse (typically a woman) without the second spouse's consent – was legal in every US state. The original structure of Penal Code section 261, first enacted in the late 1880s, is a relic from this shameful history. California criminalized marital rape in 1979 and reformed the marital language of Penal Code 261 in 2021 (except for the provision at issue in SB 258). 2021 Cal. Stats. ch. 626 (AB 1171).

“Alongside the history of sexism which included marital rape is the history of state-sponsored eugenics and state regulation of the bodies and intimate choices of people with disabilities, particularly people with intellectual and developmental disabilities. California sought to regulate and prevent sex, marriage, and reproduction by disabled people, consistent with the eugenical mandate to prevent the “breeding” of biologically inferior persons. For decades, California law allowed the commitment of “an imbecile, or feeble-minded person, or any idiot, or epileptic” upon petition of their guardian, and permitted the sterilization of “such idiot or fool” upon the written request of their guardian. Cal. Code § 2192 (1916);⁷ *see also Buck v. Bell*, 274 U.S. 200, 206 (1927) (affirming constitutionality of law permitting sterilization of “any patient afflicted with hereditary forms of insanity [or] imbecility”).

“State law prohibited the issuance of a marriage license when either party was “an imbecile, or insane.” 1907 Cal. ch. 241, page 053, amending Cal. Civ. Code § 69 (1907).⁸ And under

⁷ One third, or 20,000, of all documented compulsory sterilizations conducted under state eugenics laws occurred in California.

⁸ *Accord* Cal. Civ. Code § 4201 (1988) (“No [marriage] license shall be granted when either of the parties, applicants therefor, is an imbecile, is insane.”). Such regulation of marriage was a common component of laws implementing eugenical thinking. Robyn M. Powell, “Achieving Justice for Disabled Parents and Their Children:

Section 261 as enacted in 1872, sex between two unmarried people in which one person was found “incapable, through lunacy or any other unsoundness of mind” of giving legal consent, was deemed rape. *See People v. Griffin*, 117 Cal. 583, 587 (1897) (finding that adult with intellectual disability could not consent to sex under Penal Code 261 where “medical superintendent for the state home for feeble-minded testified that she was (at the time of the trial) an inmate of his institution and was feeble-minded”). Over the many decades between the height of the eugenics movement and today, disabled people and their advocates have slowly built the modern disability rights and disability protection systems. In 1992, following the 1990 enactment of the federal Americans with Disabilities Act, California amended its marriage laws to eliminate the provision that barred the issuance of a marriage license “when either of the parties, applicants therefor, is an imbecile, is insane,” replacing this language with “if either of the applicants lacks the capacity to enter into a valid marriage.” 1992 Cal Stats. ch. 162 (AB 2650) (amending Fam. Code § 352); *compare* 1988 Cal Stats. ch. 228 (AB 2749).

“Californians with intellectual and developmental disabilities can now freely marry. The level of capacity required to marry is extremely low. *In re Marriage of Greenway*, 217 Cal. App. 4th 628, 641 (2013) (“There is a large body of case authority reflecting an extremely low level of mental capacity needed before making the decision to marry or execute a will. ... Family Code section 300, subdivision (a) simply states marriage requires ‘the consent of the parties capable of making that contract.’”); *see also* 1895 Stats. ch. 29 (amending Civ. Code § 55 to contain language virtually identical to present-day Family Code § 300).⁹

“In 1995, California amended the Penal Code to protect people with disabilities from sexual contact by staff and caretakers. 1995 Cal Stats. ch. 890 (SB 1161) (adding sections to Penal Code § 288 to prohibit lewd and lascivious acts by caretakers on dependent disabled people in many settings); *see also* Penal Code §§ 237, 243.4(b), 243.25, 368 *et seq.*, 422.56(b) & (d), 422.75. This category of crime does not turn on capacity to consent to sex and is often applicable to the fact patterns charged under Section 261(a)(1).

“In 2021, the Legislature declined to eliminate the marital language in section (a)(1) – retaining an imperfect form of “safe harbor” for married people with intellectual and developmental disabilities – but emphasized that “[t]his paragraph [regarding capacity to consent to sex] does not preclude the prosecution of a spouse committing the act from being prosecuted under any other paragraph of this subdivision or any other law.” In other words, while the safe harbor meant that consensual sex within a marriage cannot be rape based on lack of capacity, other types of rape can be prosecuted, including sex against a person’s will

An Abolitionist Approach,” 33 *Yale J.L. & Feminism* 37, 71 (2022) (“Another aspect of eugenics that restricted people with disabilities from creating and maintaining families was the enactment of state laws that barred disabled people from marrying or alternatively permitted marriages only after the age of forty-five. For example, a Connecticut law prohibited ‘epileptics, imbeciles, and feeble-minded persons’ from marrying or having extramarital sexual relations before the age of forty-five.”); *see also* Robyn M. Powell, “Including Disabled People in the Battle to Protect Abortion Rights: A Call-to-Action,” 70 *UCLA L. Rev.* 774, 793 (2023) (discussing analogous state marriage laws in Tennessee and Massachusetts).

⁹ Consistently, the Probate Code allocates certain autonomy rights to people with intellectual and developmental disabilities under conservatorship, including the right to consent or withhold consent to marriage, and to control their own social and sexual contacts and relationships, unless a court orders otherwise. Prob. Code § 2351.5(b)(3), (6).

by means of force, violence, duress, menace, fear, or threats. *See* Pen. Code § 261(a)(2)-(7). SB 258 would reverse the Legislature’s 2021 decision by deleting the marital language from section (a)(1). This means that consensual sex within a marriage would be rape if one party is found to lack capacity to consent to sex.

“The California code does not include a definition of capacity to consent to sex and does not require expert testimony on such capacity. Instead, prosecutors, judges, and juries use the standard adopted by *Griffin* in 1897. In practice, appellate courts affirming Section 261(a)(1) convictions readily find that people with even mild or moderate intellectual and developmental disabilities lack capacity to consent to sex,¹⁰ often in factual contexts in which another form of rape set out in section (a)(2)-(7) and other criminal offenses (such as those set out in Penal Code § 288) could have been charged.

“This body of case law raises serious concerns about the rights of people with intellectual and developmental disabilities to make intimate choices free of government interference. As the appellate court acknowledged in *People v. Thompson*, “the state has restricted the ability of developmentally disabled people to have consensual sex.” *People v. Thompson*, 142 Cal. App. 4th 1426 (2006). SB 238 would not modify or update existing restrictions but would extend them to married disabled people.

“Oppose Unless Amended

Given the serious autonomy concerns described, DREDF opposes SB 258 unless it is amended. Along with other disability rights stakeholders, DREDF seeks an amendment to provide updated standards on the capacity of people with intellectual and developmental disabilities to consent to sex. DREDF and other stakeholders have offered language and are prepared to work with the author to resolve these concerns. DREDF also recommends that SB 258 be made a two-year bill to permit this work to continue.”

- 7) **Prior Legislation:** AB 1171 (C. Garcia), Chapter 626, Statutes of 2021, repeals provisions of code relating to spousal rape thereby making an act of sexual intercourse accomplished with a spouse punishable as rape if the act otherwise meets the definition of rape.

REGISTERED SUPPORT / OPPOSITION:

Support

¹⁰ See, e.g., *People v. Thompson*, 142 Cal. App. 4th 1426, 1429, 1431 (2006) (evidence showed that victim knew what sex was, knew that sex causes pregnancy when sperm connects to the egg, had heard of AIDS, had had sex with developmentally disabled boyfriend, could feed and dress herself, and could read at a second-grade level); *People v. Mobley*, 72 Cal. App. 4th 761, 768, 770-771, 774, 776-777 (1999) (evidence showed that one victim could read, dress himself, hold down a part-time job, handle money, make purchases, vote, use a microwave, use public transportation, and choose friends, and the other victim could read, hold down a job, vote, take public transportation, and choose friends); *People v. Boggs*, 107 Cal. App. 492, 493-94 (Dist. Ct. App. 1930) (testimony was that victim kept house on a farm for her father and brother for several years, doing the cooking and general housework, attended school, was able to describe dates, places, and events, and knew what sex was and that it could result in pregnancy).

Action Together Bay Area
 Alameda County Families Advocating for the Seriously Mentally Ill
 American Association of University Women (AAUW) San Jose
 American Association of University Women - California
 Asian Americans for Community Involvement
 Association of Regional Center Agencies
 CA Legislative Women's Caucus
 California Civil Liberties Advocacy
 California District Attorneys Association
 California National Organization for Women
 California State Sheriffs' Association
 Coalition for Gender Equity
 Community Solutions for Children, Families, and Individuals
 County of Santa Clara
 Dawn (democratic Activists for Women Now)
 Feminist Majority
 Joyful Heart Foundation
 Los Angeles County Democratic Party
 National Clearinghouse on Marital and Date Rape
 National Women's Political Caucus of California
 Ruby's Place
 San Francisco Senior and Disability Action
 Santa Barbara Women's Political Committee
 Santa Clara County Democratic Party
 Santa Clara County District Attorney's Office
 Santa Clara; City of
 Silicon Valley Democratic Club
 Tahirih Justice Center
 The Arc California
 Voices of Women for Change
 Weave
 Women's Equal Justice
 Women's March Action

2 private individuals

Oppose

ACLU California Action
 Black Women for Wellness Action Project
 California Public Defenders Association
 Cal Voices
 California Attorneys for Criminal Justice
 Californians United for a Responsible Budget
 Disability Rights California
 Disability Rights Education & Defense Fund
 Felony Murder Elimination Project
 Initiate Justice
 LA Defensa

Law Project for Psychiatric Rights (PSYCHRIGHTS)
Local 148 LA County Public Defenders Union
Racial and Ethnic Mental Health Disparities Coalition
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Universidad Popular

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