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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

## Analysis Packet Part II
## SB 276 (Wiener) – SB 571 (Archuleta)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 276 (Wiener) – As Amended May 6, 2025

**SUMMARY**: Authorizes the City and County of San Francisco (San Francisco) to impose criminal penalties on sidewalk vendors that sell specified goods without a permit. Specifically, **this bill**:

1) Provides that, notwithstanding the prohibition against local authorities regulating sidewalk vendors except as otherwise specified, San Francisco may adopt an ordinance requiring a permit for the sale, on public property, including public streets or sidewalks, of merchandise that San Francisco has determined is a common target of retail theft.

2) Requires such an ordinance, if adopted, to include the following written findings supported by substantial evidence in the record:

   a) That there has been a significant pattern of merchandise being the subject of retail theft and then appearing for sale on public property within San Francisco.

   b) That requiring a permit to sell will further the objective of preventing retail theft.

   c) That there are reasonable permit requirements to enable the lawful sale of merchandise and to safeguard civil rights.

   d) That multiple non-law-enforcement measures to address the resale of stolen goods were attempted prior to adopting the ordinance, including opening marketplaces where vendors may sell items, reducing or removing permit fees, expanding efforts to combat retail theft, partnering with local nonprofit organizations to triage needs of vendors and their families, and offering wraparound support services, resource fairs, marketing support, trainings on entrepreneurship and business development, workforce development opportunities, and support to open brick and mortars if desired.

3) Excludes food items that are prepared for sale onsite or prepackaged, including a bag of chips or a nonalcoholic beverage that is sold along with a food item that is prepared for sale onsite, from the definition of "merchandise."

4) Authorizes such an ordinance to remain in effect for up to three years, subject to annual approval of the written findings by resolution of the San Francisco Board of Supervisors, and subject to the filing of an annual report, as specified below.

5) Requires such an ordinance to identify a local permitting agency, separate from the San Francisco Police Department, to be responsible for administering a permit system, and requires that agency to:

a) Adopt rules and procedures for administering the permit system; and

b) Issue permits to persons who are able to demonstrate that they obtained the merchandise lawfully and not through theft or extortion.

6) Authorizes such an ordinance to punish the selling of merchandise without a permit as follows:

a) A written warning for a first violation.

b) An infraction for a second or third violation.

c) An alternate infraction/misdemeanor for subsequent violations after two prior convictions, punishable up to six months in county jail, or by both imprisonment and a fine.

7) Provides that a violation resulting in a misdemeanor or infraction shall be eligible for dismissal, and for automatic conviction record relief, as specified, and as applicable.

8) Requires San Francisco, at least 60 calendar days prior to the enactment of the ordinance, to hold one or more workshops to inform the development of the ordinance by soliciting feedback from the vendor community.

9) Provides that the workshop shall solicit input on the proposed ordinance, including, but not limited to, input regarding the methods by which street vendors currently acquire goods and feasible methods by which street vendors can keep records.

10) Requires San Francisco, for at least 30 calendar days prior to the enactment of such an ordinance, to administer a public information campaign, including public announcements in major media outlets and press releases, subject to the following:

a) Information shall be made available in English, Spanish, Mandarin, Cantonese, Tagalog, and Vietnamese.

b) The public information campaign shall describe the city and county's program, including how vendors may obtain the required permits, how they demonstrate they obtained merchandise lawfully, and where they can ask questions about the process.

c) San Francisco shall also provide trainings and workshops, and shall conduct street-level outreach and distribute informational flyers on these topics.

11) Authorizes San Francisco to charge a fee for the cost of issuing a permit, not to exceed the reasonable regulatory costs of implementation, as specified. The fee shall not exceed $25 for an applicant that meets either of the following conditions:

a) The applicant earns less than 200 percent of the area median income; or

b) The applicant is a current enrollee in, or recipient of, CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income, the State Supplementary Payment Program, the California Special Supplemental Nutrition Program for Women, Infants, and Children, the California Alternate Rates for Energy (CARE), or the Family Electric Rate Assistance program.

12) Requires the permitting agency to accept a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the permitting agency otherwise requires a social security number for the issuance of a permit or business license, and the number collected shall not be available to the public for inspection, shall be confidential, and shall not be disclosed except as required to administer the permit or licensure program or to comply with a state law or state or federal court order.

13) Prohibits the permitting agency from:

a) Inquiring into or collecting information about an individual's immigration or citizenship status or place of birth.

b) Inquiring into or collecting information or documentation regarding an individual's criminal history, including requiring an applicant to submit fingerprints or a LiveScan, or submit to a background check, as part of an application for a permit or valid business license for sidewalk vending.

14) Requires the permitting agency to submit a report to the San Francisco Board of Supervisors and to the relevant committees of the Legislature, by January 1 of each year, that includes all of the following:

a) The local permitting agency that was made responsible for administering the permit system.

b) The rules and procedures the permitting agency adopted for administering the permit system.

c) The list or lists of merchandise that San Francisco determined was a common target of retail theft.

d) Whether San Francisco elected to renew its ordinance and, if so, when.

e) The total number of permits issued.

f) The method by which the local permitting agency determined whether an applicant for a permit was able to demonstrate that they obtained merchandise lawfully and not through theft or extortion.

g) The total number of infractions and misdemeanors issued, and the number for which convictions were reached.

h) The race or ethnicity, gender, and age of the person issued an infraction or misdemeanor, provided that the identification of these characteristics was solely based on the observation and perception of the local authority who issued the infraction or misdemeanor.

i) The actions taken by a local authority when issuing infractions or misdemeanors, including, but not limited to, all of the following:

i) Whether the local authority asked for consent to search the person, and, if so, whether consent was provided.

ii) Whether the local authority searched the person or any property, and, if so, the basis for the search and any contraband or evidence discovered.

iii) Whether the local authority seized any property and, if so, the type of property that was seized and the basis for seizing the property.

15) Establishes a sunset date of January 1, 2031.

16) Includes findings and declarations.

17) Includes an urgency clause.

**EXISTING LAW**:

1) Provides that a city or county may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Const. Art. XI, Sec. 7.)

2) Defines "sidewalk vendor" to mean a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other non-motorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path. (Gov. Code, § 51036, subd. (a).)

3) Prohibits a city or county (local authority) from regulating sidewalk vendors unless those authorities comply with the below requirements. (Gov. Code, § 51037, subd. (a).)

4) Authorizes a local authority to adopt a program to regulate sidewalk vendors, but prohibits:

a) Requiring a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

b) Prohibiting a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except as specified, although it may adopt requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if specified requirements are met.

c) Requiring a sidewalk vendor to first obtain consent from any nongovernmental entity or individual selling food or merchandise.

d) Restricting sidewalk vendors from operating only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns, although a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential.

e) Restricting the overall number of sidewalk vendors permitted to operate within its jurisdiction, unless the restriction is directly related to objective health, safety, or welfare concerns. (Gov. Code, § 51038, subds. (a) & (b).)

5) Authorizes a local authority to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns. (Gov. Code, § 51038, subd. (c).)

6) Authorizes administrative fines of between up to $100 and $1,000 for violating a local authority's sidewalk vending program. (Gov. Code, § 51039, subd. (a)(1) & (3).)

7) Authorizes a local authority to rescind a permit issued to a sidewalk vendor for the term of that permit upon a fourth or subsequent violation. (Gov. Code, § 51039, subd. (a) (2).)

8) Prohibits punishing a person's failure to pay such an administrative fine from being punished an infraction or misdemeanor. (Gov. Code, § 51039, subd. (c).)

9) Prohibits a violation of a local authority's sidewalk vending program from being punishable as an infraction or misdemeanor, and prohibits the person alleged to have violated any of those provisions from being arrested, except when permitted under law. (Gov. Code, § 51039, subd. (d).)

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

11) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950, and punishes grand theft as a an alternate misdemeanor/felony punishable by up to one year in county jail, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)

12) Makes it a crime to buy or receive stolen property. If the value of the property is less than $950, the offense is a misdemeanor punishable by up to one year in county jail. If the value of the property is over $950, the offense is punishable as an alternate misdemeanor/felony punishable by up to one year in county jail, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489, 496.)

13) Provides that a person who unlawfully possesses property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, where the property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value; and value of the possessed property exceeds $950, is guilty of

unlawful deprivation of a retail business opportunity, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in county jail for 16 months, two years, or three years. (Pen. Code, § 496.6.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "San Francisco's vibrant culture of street vending supports many families and showcases the diversity of our communities. But that cultural richness is threatened when bad actors are allowed to openly sell stolen goods on our streets, often pushing out legitimate street vendors and undermining public safety.

   "SB 276 recognizes that a narrowly tailored, surgical response, which accounts for the realities and benefits of these local economies, is needed in order to adequately address the issue of illegal fencing. This bill does so by allowing San Francisco to create additional permitting requirements to sell items they have determined are commonly associated with retail theft and to give law enforcement the tools to hold bad actors accountable."

2) **Background**: Prior to 2019, local jurisdictions had sole authority to regulate or ban sidewalk vending as they saw fit. In 2018, however, the Legislature passed SB 946 (Lara), Chapter 459, Statutes of 2018, which prohibited local governments from banning sidewalk vending and established various parameters for local ordinances seeking to regulate sidewalk vending. Under SB 946, local authorities are permitted to restrict sidewalk vendors from operating in certain areas, and regulate the time, place, and manner of sidewalk vending, such as requiring vendors to obtain a permit, where the restriction or requirements directly relate to objective health, safety, or welfare concerns. SB 972 (Gonzalez), Chapter 489, Statutes of 2022 further refined the sidewalk vending law by establishing a new retail food facility type, known as a "compact mobile food operation" (CMFO), which is a mobile food facility that operates as a pushcart or stand, and establishing a regulatory framework for CMFOs.

   In recent years public attention and media focus on retail theft – and specifically, organized retail theft – have noticeably increased. Images and videos of smash and grabs of high-end retailers and people running out of stores with grocery carts loaded with stolen goods have become ubiquitous. In 2022, the Public Policy Institute of California (PPIC) published a blog post in which it reported that its examination of retail theft and robbery pointed toward recent increases across the state, with significant jumps in the Bay Area, the Central Valley and in Southern Coastal California.[1] According to the report, "the 2022 data shows that while California's shoplifting rate jumped notably in 2022, it remains lower than it was at any point in the decade before the pandemic."[2] It further noted that "the challenges of retail theft and robbery appear to be widespread, but they vary across the state."[3] Data from 2023 showed that commercial burglaries fell by 9% compared to the previous year, but shoplifting

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[1] PPIC, *Retail Theft and Robbery Rates Have Risen Across California* (Sept. 7, 2023) <https://www.ppic.org/blog/retail-theft-and-robbery-rates-have-risen-across-california/> [as of July 7, 2025].
[2] *Ibid.*
[3] *Ibid.*

continued to rise.[4] Another analysis conducted by the Little Hoover Commission notes that "reported retail theft has ticked up since 2019, but remains at roughly the same level it was during the 2010s and lower than it was in earlier decades."[5]

The rise in retail theft in the Bay Area corresponded with the resale of illegally acquired goods, often through street vendors, a practice also known as "fencing." On Mission Street in San Francisco, a street market for stolen items developed, at one point covering a stretch of 10 blocks.[6] In response to community complaints about illegal vending, vending of stolen goods, theft, assaults and vandalisms occurring on Mission Street, on November 27, 2023, San Francisco issued Public Works Order No. 208803, which banned street vending for 90 days (which was later extended) within a 300-foot radius of the Mission Street corridor.[7] The order cited a host of health and safety issues associated with the fencing activity, including that between October 10, 2022, and October 10, 2023, the San Francisco Police Department received 580 calls for service or on-viewed incidents in this area, whereby the three most common types of calls related to assault and battery, petty theft, and vandalism.[8]
The City subsequently launched two sanctioned vending cites, although vendors reported significant reductions in sales, leading one of these cites to close.[9] The City has since launched a pilot program that authorized ten vendors, selected through a lottery process, to return to sell their goods on a portion of Mission Street.

Nevertheless, crime rates in San Francisco have significantly dropped in recent years, and at a rate far faster than in other cities of similar size.[10] In 2024, reported crime in San Francisco fell to *its lowest point in two-decades*.[11] From 2023-2024 reported property crimes dropped 31% and reported violent crimes fell by 14%.[12] An analysis of changes in violent and property crime in cities with 500,000 to 1,000,000 persons from January 2024 to January 2025 found that San Francisco had the largest decrease in property crime.[13]

3) **Effect of This Bill**: This bill seeks to address the issue of illegal fencing by authorizing San Francisco to impose criminal penalties for sidewalk vendors that sell specified merchandise without a permit. It contains several notable provisions.

First, it authorizes San Francisco to adopt an ordinance requiring a permit for the sale, on public property, including public streets or sidewalks, of merchandise that San Francisco has

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[4] PPIC, *Commercial Burglaries Fell in 2023, but Shoplifting Continued to Rise* (August 2, 2024) <https://www.ppic.org/blog/commercial-burglaries-fell-in-2023-but-shoplifting-continued-to-rise/#:~:text=Recently%20released%20crime%20statistics%20for,above%20their%20pre%2Dpandemic%20level> [as of July 7, 2025].
[5] Little Hoover Commission, *Retail Theft: A Data-Driven Response for California* (July 2024), at p. 5 <https://lhc.ca.gov/wp-content/uploads/Report_RetailTheft-1.pdf> [as of July 7, 2025].
[6] The Voice of San Francisco, *San Francisco Standard article on Mission street vendors attracts backlash* (Dec. 5, 2024) <https://thevoicesf.org/san-francisco-standard-article-on-mission-street-vendors-attracts-backlash/> [as of July 7, 2025].
[7] San Francisco Public Works, *Public Works Order No: 208803* (Nov. 27, 2023), at p. 1 <https://sfpublicworks.org/sites/default/files/Order208803.docx.pdf> [as of July 7, 2025].
[8] *Id.* at p. 2.
[9] Dominguez, *Street vendor's trial return to Mission Street marks hard-fought political win*, El Tecolote (June 23, 2024) <https://eltecolote.org/content/en/mission-street-vendors-pilot/> [as of July 7, 2025].
[10] Echeverria, *Crime in S.F. dropped to a two-decade low in 2024. Here's where it fell the most*, S.F. Chronicle (Jan. 8, 2025) <https://www.sfchronicle.com/crime/article/san-francisco-2024-data-20020378.php> [as of July 7, 2025]
[11] *Ibid.*
[12] *Ibid.*
[13] Danielle Echeverria, *San Francisco Crime is going through an incredible and rare change*, S.F. Chronicle (April 9, 2025), available at: https://www.sfchronicle.com/crime/article/sf-crime-decline-comparison-data-20257604.php

"determined is a common target of retail theft." This does not apply to food items prepared on-site or prepackaged, such as a bag of chips or a nonalcoholic beverage, sold with a food item prepared-onsite. The bill does not define or identity what merchandise may be considered "a common target of retail theft." This gives San Francisco discretion to make this determination. Absent additional guidelines or restrictions, this could authorize criminal penalties on vendors for the un-permitted sale of a broad range of merchandise.

Second, it provides that in order to receive a permit from the applicable administering permitting agency (which must be separate from the San Francisco Police Department) an applicant must prove that they obtained the merchandise lawfully and not through theft or extortion. This shifts the burden of proof onto vendors to demonstrate that they lawfully possess their merchandise, which may not always be possible if the merchandise is gifted or purchased without a receipt. This is particularly true for vendors who, prior to this bill's effective date, lawfully purchased or possessed merchandise but no longer have access to written records proving lawful ownership. Requiring proof of lawful possession may deter or otherwise prevent some vendors who lawfully possess their property from engaging in sidewalk vending, creating a barrier to an otherwise lawful economic opportunity.

Third, unlike the sidewalk vendor ordinances permitted under existing law, this bill authorizes the imposition of criminal penalties against a person who sells merchandise determined to be a common target of retail theft, without a permit. Under this bill, a written warning must be issued for a first time violation, a second and third violation are punishable as an infraction, while a subsequent violation after two prior convictions is punishable either as an infraction or as misdemeanor punishable by up to six months in county jail, or by both that imprisonment and a fine. Notably, such criminal penalties apply even if the merchandise is not in fact stolen. The criminal conduct proposed by this bill is the selling of specified merchandise *without a permit*.

Such criminal penalties are in stark contrast to the Legislature's approach to regulating sidewalk vending since 2018, which explicitly disavowed imposing criminal punishment for violations of sidewalk vending ordinances. (SB 946 (Lara), Ch. 459, Stats. 2018; see Gov. Code, § 51039, subd. (c).) In its findings and declarations, SB 946 stated "the safety and welfare of the general public is promoted by *prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations*." (SB 946, Ch. 459, Stats. 2018, italics added.) Instead, SB 946 permitted violations of an authorized sidewalk ordinance to be punished by a series of administrative fines that increase in scale as the number of violations increases, or by revocation of a sidewalk vending permit. (Gov. Code, § 51039, subds. (a) & (c).) Similarly, SB 972 (Gonzalez), Chapter 489, Statutes of 2022, which created the statutory framework for CMFOs, prohibited any violation of a CMFO requirement from being punished as an infractions or misdemeanor. (Health & Saf. Code, §114368.8, subds. (a), (b).)

Given that the Legislature has repeatedly prohibited localities from imposing criminal penalties for sidewalk vending violations, and local authorities already have the authority to regulate sidewalk vending and issue administrative fines of up to $1,000 for un-permitted vending, the need to give San Francisco the authority to prosecute sidewalk vendors for un-permitted vending of certain goods is unclear.

4) **Existing Penalties for Conduct Prohibited by this Bill**: There are numerous penalties that can already be used to address the type of retail theft and fencing at issue in this bill, many of

which were specifically created by the Legislature last year to address concerns of rising retail theft. Further, Proposition 36, which was passed by the voters in November of 2024 established additional penalties for repeat theft violators, and made it easier to prosecute grand theft. Available tools that can be utilized to target the retail theft and fencing include the following:

*a) Administrative Fines for Un-permitted Sidewalk Vending*

Cities and counties already may regulate sidewalk vending, including requiring vendors to have a permit. A vendor who violates the provisions of such an ordinance can be punished by a series of fines including $100 for a first violation, a $200 fine for a second violation within one year of the first, and a $500 fine for each additional violation within one year of the first. (Gov. Code, § 51039, subd. (a)(1).) Notably, higher fines are authorized for violations of vending without a permit where one is required, including $250 for a first violation, $500 for a second violation within one year of the first, or up to $1,000 for each additional violation within one year of the first violation (Gov. Code, § 51039, subd. (a)(3).) Further, a local authority may rescind a permit issued to a sidewalk vendor upon the fourth violation or subsequent violations. (Gov. Code, § 51039, subd. (a)(2).)

The default fines for infractions and misdemeanors are $250, and $1,000 respectively. (Pen. Code, §§ 19 & 19.8, subd. (b).) Given that vending without a permit, where one is required, can already be punished by administrative fines ranging from $250 to $1,000, the need to authorize additional infraction and misdemeanor fines, and potential jail time, is unclear.

b) *Receipt of Stolen Property*

A person who buys or receives stolen merchandise, with knowledge it was stolen, and attempts to sell that property as a sidewalk vendor, can be prosecuted for receipt of stolen property. It is already crime to buy or receive stolen property, with knowledge that the property was stolen and with knowledge of the presence of the property. (Pen. Code, §§ 487, 489, 496; 1 CALCRIM 1750 (2025).) Receipt of stolen property is punishable as an alternate misdemeanor/felony, depending on the amount stolen. (Pen. Code, §§ 487, 489, 496.) A person convicted of receiving more than $50,000 in stolen property is also subject sentencing enhancements. (See Pen. Code, § 12022.6.) As such, persons who are not directly involved in stealing merchandise, but nonetheless receive or purchase stolen merchandise for the purpose of selling such merchandise as a sidewalk vendor, can be prosecuted for receipt of stolen property.

*c) Theft*

A person who feloniously steals or takes away the personal property of another, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. If the value of the property is under $950, it is petty theft punishable by imprisonment in county jail for one year. If the value of stolen property exceeds $950, the offense can be charged as grand theft, punishable by imprisonment in a county jail for up to one year, or by imprisonment in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 487, 489, 496.) A person convicted of theft of more than $50,000 is also subject sentencing enhancements. (See Pen. Code, § 12022.6.) Here, a person who steals merchandise and attempts to re-sell such

merchandise as a sidewalk vendor can be prosecuted for theft or grand theft, depending on the amount stolen.

Notably, after the passage of Prop 36 in November of 2024, it is now easier for prosecutors to charge persons with a felony for theft. First, Prop 36 targeted repeat theft offenders by making a conviction for theft and shoplifting, where that person has two or more prior theft convictions, punishable by imprisonment in county jail for up to one year or by 16 months, or two or three years; and it made a second or subsequent conviction of petty theft with two or more priors punishable by imprisonment in the county jail not exceeding one year or by 16 months, or two or three years in state prison. (Pen. Code, § 666.1, subd. (a).) Here, a person with two or more priors who is caught stealing merchandise from San Francisco retail stores can face up to three years in county jail. (Pen. Code, § 666.1, subd. (a).)

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

*d) Organized Retail Theft:*

A person commits organized retail theft where they: 1) act in concert with one or more persons to steal merchandise with the intent to sell, exchange, or return the merchandise for value; 2) act in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen; 3) act as the agent of another individual or group of individuals to steal merchandise from one or more merchant as part of a plan to commit theft; or, 4) recruit, coordinate, organize, supervise, direct, manage, or finance another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).) Violations of the above provisions that are committed on two or more separate occasions within a one-year period, and where the aggregated value of the merchandise exceeds $950, are in most cases punishable as either a misdemeanor punishable by up to one year county jail not exceeding one year or a felony punishable by up to three years in county jail.

Here, individuals who act in concert to engage in fencing can be prosecuted under the organized retail theft statute. Particularly, acting in concert to steal merchandise with intent to sell for value, or acting in concert to receive or possess stolen merchandise, irrespective, of whether the ultimate sale occurs, can already be punished under organized retail theft. More importantly, organizing, directing, and financing such fencing schemes is punishable by up to three years in county jail for first time violations under the organized retail theft statute.

*e) Deprivation of a Retail Opportunity*

Fencing can additionally be prosecuted under the specific statute of deprivation of a retail business opportunity. The statute provides that a person that unlawfully possesses property acquired through one or more acts of theft from a retail business, where the property is not

possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value, and value of the possessed property exceeds $950, is guilty of unlawful deprivation of a retail business opportunity, punishable by up to one year in a county jail or by 16 months, two years, or three years in county jail. (Pen. Code, § 496.6.)

This statute is particularly applicable to the type of fencing schemes this bill is concerned with because it targets unlawful possession of property that is stolen from a retail business, where the property is not possessed for personal use, and the person has intent to sell such merchandise for value. Further, to be convicted of this crime a person does not actually need to sell such merchandise for value, but simply needs the intent to do so.

Given the significant effort the Legislature has made in recent years to provide prosecutor's with more tools to prosecute theft offenses, and impose greater punishments for such offenses, and considering San Francisco's historically low crime levels, the need to create new criminal penalties on sidewalk vendors for the un-permitted sale of certain merchandise is unclear.

5) **Urgency Clause**: This bill is an urgency measure, requiring a two-thirds vote of each house of the Legislature. The facts constituting the need for the urgency are set forth in the bill as follows: "The City and County of San Francisco is experiencing rampant retail theft and the reselling of stolen goods on their streets, which leads to chaos and violence. In order to address this serious issue at the earliest time possible, it is necessary for this act to take effect immediately." In fact, as previously referenced, the 2024 crime rates in San Francisco dropped to their lowest point in two-decades.[14] Specific to property crime, San Francisco's reduction in property crime from 2024-2025 was the largest of any comparably sized city.[15]

6) **Argument in Support**: According to the *San Francisco Bay Area Rapid Transit District (BART)*, "This bill seeks to combat fencing, or the sale of stolen goods, by authorizing the City and County of San Francisco to adopt an ordinance requiring vendors to obtain a permit to sell common retail theft items.

"In San Francisco, the illegal vending of stolen goods has become a public safety concern for community members, brick-and-mortar businesses, and permitted street vendors. Working closely with our city partners, BART has assisted with the response to this crisis, by erecting temporary fencing at the 16th and 24th Street Mission station plazas, providing increased presence and outreach by BART Police personnel, and conducting more frequent station cleaning.

"Under current law (Penal Code Section 602.7), BART Police can cite a person who is selling or peddling goods or services on BART property, including our station plazas, or on our trains without authorization. However, existing law does not allow for the criminal citation of unauthorized vending on the public sidewalks leading to our stations. SB 276

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[14] Danielle Echeverria, *Crime in S.F. dropped to a two-decade low in 2024. Here's where it fell the most*, S.F. Chronicle (Jan. 8, 2025), available at: https://www.sfchronicle.com/crime/article/san-francisco-2024-data-20020378.php

[15] Danielle Echeverria, *San Francisco Crime is going through an incredible and rare change*, S.F. Chronicle (April 9, 2025), available at: https://www.sfchronicle.com/crime/article/sf-crime-decline-comparison-data-20257604.php

offers a tool for our law enforcement partners at the City of San Francisco to address dangerous situations associated with the fencing of stolen goods on public sidewalks outside BART property."

7) **Argument in Opposition**: According to the *San Francisco Public Defender's Office*, "The bill allows for the imposition of criminal penalties for selling merchandise without a permit. Such punitive measures disproportionately impact vulnerable communities, including low-income individuals and immigrants, who rely on street vending as a primary source of income. These penalties could lead to significant hardship and exacerbate existing inequalities. Misdemeanor convictions can have long-lasting consequences, impacting employment, housing, and family instability. This will result in putting vulnerable individuals into even more precarious circumstances, increasing the likelihood of recidivism and incarceration as a revolving door."

8) **Related Legislation**: SB 635 (Durazo) would prohibit an agency or department of a local authority that regulates street vendors or compact mobile food operation, or enforces sidewalk vending regulations, from collecting citizenship or criminal background data. SB 635 will be heard in this committee today.

9) **Prior Legislation**:

   a) SB 925 (Wiener), of the 2023-2024 Legislative Session, was substantially similar to this bill. SB 925 was held in suspense in Assembly Appropriations Committee.

   b) AB 2791 (Wilson), of the 2023-2024 Legislative Session, would have allowed local authorities to prohibit sidewalk vendors from operating within 250 feet of both the entrance and exit of a fair and the associated parking lot of that fair during the hours the fair is operating. AB 2791 did not receive a hearing in the Senate Committee on Local Government.

   c) SB 972 (Gonzalez), Chapter 489, Statutes of 2022, establishes a regulatory framework for compact mobile food operations (CMFOs).

   d) SB 1290 (Allen), of the 2021-2022 Legislative Session, would have required, by January 1, 2025, the Governor's Office of Business and Economic Development, in consultation with others, to submit a specified report to the Legislature on local sidewalk vending in California. SB 1290 was held in suspense in the Assembly Appropriations Committee.

   e) SB 946 (Lara), Chapter 459, Statutes of 2018, establishes requirements for local regulation of sidewalk vendors.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Bay Area Council
California Retailers Association
Clecha

Mayor Daniel Lurie, City and County of San Francisco
Mission Merchant's Association
Mission Street Vendors Association
Mnc Inspiring Success
San Francisco Bay Area Rapid Transit District (BART)
University of California, College of the Law, San Francisco
48 private individuals

**Oppose**

ACLU California Action
All of US or None (HQ)
California Alliance for Youth and Community Justice
Courage California
Legal Services for Prisoners With Children
San Francisco Public Defender
San Francisco Public Defender's Office
The W. Haywood Burns Institute
Viet Voices

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

Date of Hearing: July 15, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 356 (Jones) – As Amended April 9, 2025

**SUMMARY:** Provides that the submitted statements and recommendations that must be considered in a parole hearing include, but are not limited to, written statements, photographs, crime scene photographs, autopsy photographs, photographs of weapons used in the crime, photographs of the inmate, photographs of the victim, police reports, investigative reports, autopsy reports, victim and witness statements, court transcripts, court documents, printed media articles, social media postings, online petitions, business records, and any other documents or photographs relevant to determining parole suitability.

**EXISTING LAW**:

1) Provides that in the case of any incarcerated person sentenced pursuant to any law, except as specified, the Board of Parole Hearings (BPH) must meet with each incarcerated individual during the sixth year before the individual's minimum eligible parole date (MEPD) for the purposes of reviewing and documenting the individual's activities and conduct pertinent to parole eligibility. (Pen. Code, § 3041, subd. (a)(1).)

2) Requires that during the incarcerated individual's consultation, the BPH provide the person with information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the person regarding his or her work assignments, rehabilitative programs, and institutional behavior. Requires the board, within 30 days following the consultation, to issue its positive and negative findings and recommendations to the person in writing. (Pen. Code, § 3041, subd. (a)(1).)

3) Requires a panel of two or more commissioners or deputy commissioners to meet with the incarcerated person one year before the person's MEPD and provides that the panel shall normally grant parole. (Pen. Code, § 3041, subd. (a)(2).)

4) Requires the person to be released upon a grant of parole, subject to all applicable review periods. Prohibits a person from being released before reaching his or her MEPD unless the person is eligible for earlier release, as specified. (Pen. Code, § 3041, subd. (a)(4).)

5) Provides that the panel or the BPH, sitting en banc, shall grant parole to an incarcerated individual unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. (Pen. Code, § 3041, subd. (b)(1).)

6) Requires the BPH to conduct a parole hearing as a de novo hearing. Provides that findings made and conclusions reached in a prior parole hearing must be considered but are not

deemed to be binding upon subsequent parole hearings for an individual. Specifies that findings made and conclusions reached in a prior parole hearing are subject to reconsideration based upon changed facts and circumstances. (Pen. Code, § 3041.5, subd. (c).)

7) Requires the BPH, in considering parole for an individual, to consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, and recommendations of other persons interested in the granting or denying of parole. Requires BPH to enter on its order granting or denying parole to these individuals, the fact that the statements and recommendations have been considered by it. (Pen. Code, § 3046, subd. (d).)

8) Establishes the youth offender parole hearing process for eligible individuals who were convicted of a controlling offense that was committed when the person was 25 years of age or younger and after serving a minimum amount of time, as specified. Defines "youth parole eligible date" as the earliest date upon which a youth offender is eligible for release on parole at a youth offender parole hearing. (Pen. Code, § 3051, subds. (a) & (b).)

9) Requires the BPH, when considering the release of an individual via the youth offender parole process, to give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual in accordance with relevant case law. (Pen. Code, § 4801, subd. (c).)

10) Establishes the Elderly Parole Program to be administered by the BPH for purposes of reviewing the parole suitability of any incarcerated person who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the individual's current sentence, serving either a determinate or indeterminate sentence. Defines "elderly parole eligible date" as the date on which an incarcerated individual who qualifies as an elderly offender is eligible for release from prison. (Pen. Code, § 3055, subds. (a) & (b).)

11) Requires the BPH, when considering the release of an individual via the Elderly Parole Program, to give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the person's risk for future violence. (Pen. Code, § 3055, subd. (c).)

12) Defines "unreasonable risk of danger to public safety" to mean an unreasonable risk that the individual will commit a new violent felony, as defined. (Pen. Code, § 1170.18, subd. (c).)

13) Requires the BPH, within 20 days following any decision denying parole, to send the incarcerated individual a written statement setting forth the reason or reasons for denying parole, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "In January 2024, the Board of Parole Hearings (BPH) enacted a policy that prevents the submission of photographs deemed

"graphic" for consideration at parole hearings. This change was implemented without public notice, stakeholder input, or transparency, and it denies commissioners access to critical evidence when making parole suitability decisions.

"Photographs of the crime scene and autopsy are essential to understanding the nature of the crime and evaluating an inmate's credibility and insight. California law, under Title 15 of the Code of Regulations, requires that an inmate's commitment offense be reviewed when determining parole suitability. The Board has an obligation to consider all relevant and reliable evidence in its decision-making process (Cal. Code Regs., tit. 15 § 2281(b)).

"Historically, commissioners have used photographic evidence to assess an inmate's truthfulness, remorse, and rehabilitation. These images provide visual confirmation of case facts that written reports alone cannot convey. By excluding such evidence, the Board undermines public safety and disregards the voices of crime victims and their families.

"SB 356 ensures that the Board must accept all relevant materials, including photographs, for consideration at parole hearings. This bill restores fairness and transparency in the parole process, ensuring that victims' families are heard and that commissioners have the necessary tools to make informed decisions."

2) **Effect of the Bill**: The proponents of this bill assert that this bill was introduced in response to the Board's policy prohibiting the submission of photographs prior to a parole hearing which they state was a departure from the Board's prior practice. First, the Board no longer prohibits the submission of these photographs. In May, the California Office of Administrative Law determined that the Board's policy prohibiting such submissions constituted an underground regulation, which means the Board can no longer enforce this policy.[1] As a result, the Board is now accepting such photographs.

   Second, the scope of this bill goes beyond the submission of photographs. This bill amends Penal Code section 3046 which currently requires the BPH to consider all statements and recommendations which have been submitted by the judge, district attorney, sheriff, and other individuals interested in the granting or denying of parole, when considering whether to grant or deny parole for an individual. This bill specifies that the submitted statements and recommendations that must be considered in a parole hearing include, but are not limited to, "written statements, photographs, crime scene photographs, autopsy photographs, photographs of weapons used in the crime, photographs of the incarcerated person, photographs of the victim, police reports, investigative reports, autopsy reports, victim and witness statements, court transcripts, court documents, printed media articles, social media postings, online petitions, business records, and any other documents or photographs relevant to determining parole suitability."

   If the impetus for the bill's introduction was the Board's adoption of a policy related to the submission of crime scene and autopsy photographs, should the bill include any other materials—in particular, the printed media articles, social media postings, online petitions, and business records? And, given that the Board is again accepting crime scene photographs,

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[1] https://danewscenter.com'news/da-succeeds-in-reversing-parole-board-policy-on-banning-crime-scene-and-autopsy-photos

is this bill even necessary?

3) **Parole Hearings**: A parole hearing is a hearing to determine whether an incarcerated individual is suitable for release to parole supervision. Incarcerated individuals who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. An incarcerated individual is entitled to legal counsel at their parole hearing, which may be a private attorney or one appointed by the BPH, and a representative from the District Attorney's office from the prosecuting county may make a presentation regarding the office's position on the individual's suitability for parole.

The Penal Code provides that the parole board "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an individual's suitability for parole is whether the person *currently* poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) In deciding whether to grant parole, the BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, §§ 2402, subd. (b), 2281, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including the circumstances of the person's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the individual may safely be released to the community; and any other information which bears on the individual's suitability for release. (Cal. Code Regs., tit. 15, § 2281, subd. (b).) The regulations further state that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (*Ibid.*)

Although the parole board is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense "continue to be predictive of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.) The parole board is prohibited from requiring an admission of guilt to any crime for which an incarcerated person was committed to California Department of Corrections and Rehabilitation (CDCR) when considering whether to grant an inmate parole. (Pen. Code, § 5011, subd. (b).) However, "an implausible denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole....it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*In re Shaputis* (2011) 53 Cal.4th 192, 216.) Although the term "insight" is not explicitly included in the regulations, the regulations "direct the Board to consider the inmate's 'past and present attitude toward the crime' and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense'... fit[ting] comfortably within the descriptive category of 'insight.'" (*Id.* at 218 (citations omitted).)

Additional guidance for making parole suitability determinations is provided in the

regulations which list circumstances tending to show suitability and those tending to show unsuitability. The following circumstances tend to show unsuitability for release:

- The person committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
    - Multiple victims were attacked, injured or killed in the same or separate incidents.
    - The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
    - The victim was abused, defiled or mutilated during or after the offense.
    - The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
    - The motive for the crime is inexplicable or very trivial in relation to the offense.
- The person on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the incarcerated person demonstrated serious assaultive behavior at an early age.
- The person has a history of unstable or tumultuous relationships with others.
- The person has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
- The person has a lengthy history of severe mental problems related to the offense.
- The person has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., tit. 15, § 2281, subd. (c).)

The following are circumstances tending to show suitability for release:

- The person does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
- The person has experienced reasonably stable relationships with others.
- The person performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
- The person committed his or her crime as the result of significant stress in his or her life, especially if the stress has built over a long period of time.
- At the time of the commission of the crime, the person suffered from Battered Woman Syndrome, as defined, and it appears the criminal behavior was the result of that victimization.
- The person lacks any significant history of violent crime.
- The person's present age reduces the probability of recidivism.
- The person has made realistic plans for release or has developed marketable skills that can be put to use upon release.
- Institutional activities indicate an enhanced ability to function within the law upon release. (Cal. Code of Regs., tit. 15, § 2281, subd. (d).)

The circumstances which tend to show suitability and unsuitability for parole are set forth as general guidelines, and the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. (Cal. Code of Regs., tit. 15, § 2281, subds. (c) & (d).)

4) **Submission of Documents Prior to a Parole Hearing**: The BPH's Parole Hearing Process Handbook provides guidance pertaining to documents that may be submitted by a prosecutor's office prior to a parole suitability hearing. It provides:

> Prosecutors have a right to attend a parole hearing, and the Board welcomes prosecutors' input. To comply with the law and to ensure the input is submitted timely to the hearing panel, the Board proposes these general guidelines. Prosecutors are not required to submit documents to the Board for a parole hearing, but they may do so if they have documents that are reliable and relevant to a parole suitability determination. Most relevant law enforcement and court documents such as arrest reports, minute orders, abstracts of judgment, and probation officer reports are submitted to CDCR when a person is first admitted to state prison so they are already in the person's central file. Prosecutors are expected to review the incarcerated person's central file and the Board's hearing packet to determine if a document they believe is relevant has already been submitted to CDCR. Any additional documents submitted should be brief, clearly written, and relevant to the person's suitability for parole.[2]

The handbook specifies that prosecutors submitting documents prior to a parole hearing should not submit documents that are already contained in the incarcerated person's central file, documents that are lengthy, or documents that were previously submitted by the prosecutor's office or the courts.[3]

The BPH's parole handbook states the following as it relates to its policy on the submission of photographs prior to a parole hearing:

> The Board is tasked with determining whether the person before them poses a current, unreasonable risk of danger to society. In making this determination, the Board must consider all relevant, reliable evidence and uses the SDMF (Structured Decision-Making Framework), which is consistent with empirical research, governing statutes, regulations, and case law. Determining the manner in which factors relevant to parole suitability are considered lies within the discretion of the Board. Relevant information for a parole hearing is defined as "evidence which proves or disproves an issue or fact in dispute."
>
> The Board accepts the incarcerated person's conviction as true and is not re-litigating the commitment offense at a parole hearing. Accordingly, hearing panels do not need to consider every piece of evidence presented at trial, including photographic materials. The Board already receives many documents containing information about the crime, which includes documents from courts, prosecutors, probation officers, the incarcerated person, and victims and their family members. Hearing panels review these documents for the hearing and are familiar with the facts of the commitment offense. If there are disputes regarding the commitment offense that need to be resolved, such as an incarcerated person's

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[2] BPH, *The California Parole Hearing Process Handbook* (Mar. 8, 2024), p. 27 available at <https://www.crcd.ca.gov/bph/wp-content/uploads/sites/161/2024/03/pv-CA-Parole-Hearing-Process-Handbook-For-Publication-03-08-24.pdf>.
[3] *Id.* at p. 27.

> implausible denial of the crime, the hearing panel is usually able to resolve these disputes based on materials already in the record. If the hearing panel determines that photographs or other documents are necessary for them to reach a decision on the incarcerated person's parole suitability, they can postpone or continue the hearing so the additional information can be gathered.
>
> Photographic materials, such as crime scene or autopsy photos, are often very graphic and may contain images of a deceased victim's unclothed body. When these items are received, they may be scanned and uploaded to the person's central file, which is accessible to the incarcerated person and CDCR employees statewide. Crime scene and autopsy photos are also generally duplicative of evidence already contained in the record.
>
> For these reasons, the Board will not accept photographs, including crime scene and autopsy pictures. The Board continues to welcome prosecutors' submission of written documents in compliance with this section.[4]

In support of its statement that it has the discretion to weigh relevant factors in making a parole suitability determination, the Board cites a case which provides:

> Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of [the Board or] the Governor. … [T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of [the Board or] the Governor … (internal citations omitted.) (*In re Shaputis*, 53 Cal.4th 192, 210.)

As previously noted, the Board is again accepting crime scene and autopsy photographs after the Office of Administrative Law (OAL) determined that its decision to prohibit submission of such documents amounted to an underground regulation. The Board retains discretion consider these items when necessary to make a decision as to an incarcerated person's suitability for parole. Given that the issue this bill seeks to address was the prohibition on submission of such photographs and not the discretion of the Board to review them in appropriate circumstances, and in light of the Board's change in policy, this bill appears to be an excessive remedy to a resolved issued.

5) **Argument in Support**: According to *Crime Victims United of California*, "In January 2024, BPH implemented a policy that prohibits commissioners from reviewing crime scene, autopsy, and other graphic photographs during parole suitability hearings. This policy change limits the information available to commissioners, undermining their ability to make fully informed decisions about whether an inmate still poses a threat to public safety. Victims and their families are being retraumatized, not only by the parole process but by the exclusion of critical evidence that conveys the true impact of the crime.

"Victims and their families do not choose to be involved in the criminal justice system, yet they are forced to relive their trauma when advocating for justice. SB 356 corrects this unfair practice by requiring the Board to accept and consider all relevant photographs at parole

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[4] *Id.* at pg. 28.

hearings, ensuring that commissioners have access to the full scope of evidence needed to determine whether an inmate is fit for release.

"This bill restores fairness, transparency, and justice to parole hearings and upholds the rights of victims."

6) **Argument in Opposition**: According to *Californians for Safety and Justice*, "**Parole hearings are *not* the appropriate setting to relitigate the facts of someone's commitment offense.** These determinations take place during trial and sentencing in the presence of a judge. Rather, the central determination in a parole hearing as defined by the California Supreme Court in *In re Lawrence*, is whether someone poses a *current* "unreasonable risk of danger to society if released from prison."1 The court explicitly limited BPH's ability to deny parole based entirely on "immutable circumstances," such as the heinous nature of the offense, instead, directing the Board to consider "only the factors relevant to predicting whether the incarcerated person "will be able to live in society without committing additional antisocial acts.'"2 In accordance with the governing case law, the hearing panel clearly states on the record at the beginning of every hearing, "We are not here to reconsider or retry your original case. We accept as true the findings of the previous court. The purpose of today's hearing is to find out who you are today and whether you pose an unreasonable risk of danger to society." By forcing graphic crime scene photos to be considered in a parole hearing, SB 356 jeopardizes the intent and legal framework of a parole hearing.

"**Perhaps most importantly, the incorporation of graphic crime scene and autopsy photos into parole hearings jeopardizes dignity for victims, many of whom are no longer alive.** Crime scene photos depict survivors, often women and sometimes young children, in deeply vulnerable and traumatizing conditions. Victims are often brutally wounded, unclothed or deceased in these photos. For these reasons among others outlined below, BPH does not accept photographs. The nonconsensual sharing of graphic photos is an inevitable consequence of SB 356, the devastating impacts of which cannot be overstated. This is particularly troubling when considering deceased victims who no longer have a say regarding the use of photos depicting them, including those depicting their death.

"**The negative impact on victims, survivors and next of kin, who frequently attend parole board hearings, is not considered in this bill.** In 2008, the Victim's Bill of Rights Act of 2008 (also known as "Marsy's Law") amended the California Constitution to provide additional rights to victims, resulting in more than sufficiently guarantees that victims have full participation in parole hearings. Under the law, victims, survivors and next of kin are included in the parole hearing process to ensure that parole hearings are fair and that victims and survivors are acknowledged and treated with understanding, dignity, and respect.4 Parole hearings are often very difficult for victims, survivors and their families and BPH cites respect for victims, survivors and next of kin as a key reason for their policy decision *to not* accept graphic crime photos.5 The current policy helps to preserve respect and dignity for crime victims, survivors and their loved ones, who deserve not to have sensitive photos viewed and circulated unnecessarily. Parole hearings are already emotionally intense and retraumatizing—SB 356 would make hearings significantly more traumatic for everyone involved as commissioners, administrative staff, and legal teams would all be subjected to graphic depictions of violence. In addition, SB 356 opens the door for prosecutors to submit graphic crime scene photographs even without the consent of survivors and their loved ones. In fact, District Attorneys have already been doing so, consistent with their practice of

providing written and oral comments at parole hearings without coordinating with registered victims/survivors and their wishes, sometimes even opposing parole when the victim/survivor supports parole. Victims/survivors deserve dignity and access to healing support, not subjugation to a further traumatizing hearing culture.

"**SB 356 is unnecessary because parole commissioners already have access to ample relevant information regarding the commitment offense.** Prior to a hearing, the panel receives many documents with detailed information about the commitment offense including probation officer reports, sentencing transcripts, autopsy reports, written statements from prosecutors, as well as statements submitted by victims and their family members. As the Board has stated in their California Parole Hearing Process Handbook, "crime scene and autopsy photographs are generally duplicative of evidence already contained in the record"6 and are not necessary for commissioners to understand the commitment offense. In the rare occasion that a crime scene or autopsy photograph is helpful or useful in resolving a disputed issue to determine a person's current risk of danger, the Board has the discretion to work with law enforcement to obtain the photographs for consideration in a parole hearing."

7) **Prior Legislation**:

a) AB 47 (Nguyen) would have provided that a person sentenced for a one-strike sex offense or as a habitual sex offender is ineligible for elderly parole until the person is 60 years old or older and has served a minimum of 25 years of continuous incarceration on their current sentence. AB 47 was held in suspense in the Assembly Appropriations Committee.

b) SB 286 (Jones) was substantially similar to AB 47 above. SB 286 was held in suspense in the Senate Appropriations Committee.

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

d) SB 445 (Jones), of the 2021-2022 Legislative Session, would have excluded "One Strike" sex offenses from the Elderly Parole Program. SB 445 failed passage in the Senate Public Safety Committee.

e) AB 3234 (Ting), Chapter 334, Statutes of 2020, lowered the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20 years.

f) SB 411 (Jones), of the 2019-2020 Legislative Session, was nearly identical to SB 445 above. SB 411 did not receive a hearing in the Senate Public Safety Committee.

g) AB 1448 (Weber), Chapter 676, Statutes of 2017, codified the Elderly Parole Program, to be administered by the Board of Parole Hearings.

h) SB 224 (Liu), of the 2015-2016 Legislative Session, was substantially similar to AB 1448 above. SB 224 was ordered to the Inactive File on the Senate Floor.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California District Attorneys Association
California Protective Parents Association
California Sexual Assault Investigators Association
California State Lodge Fraternal Order of Police
Crime Victims Alliance
Crime Victims United of California
Los Angeles County District Attorney's Office
Los Angeles County Professional Peace Officers Association
Riverside County District Attorney
San Diego County District Attorney's Office

**Oppose**

ACLU California Action
All of US or None
Asian Law Alliance
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice
Courage California
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Peace and Justice Law Center
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
The Change Parallel Project
The Mend Collaborative
Uncommon Law
University of San Francisco School of Law, Racial Justice Clinic

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 357 (Menjivar) – As Amended May 29, 2025

**SUMMARY:** Authorizes a board of supervisors, in a county with a population of at least 6,000,000 people, to delegate to a county official who has jurisdiction over youth development, the duties and authorities that the county probation department has with respect to juveniles, as specified. In addition, this bill would allow for the inspection of a juvenile case file by county officials who have been delegated duties, authorities, or both that the county probation department currently has with respect to juveniles.

**EXISTING LAW**:

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

2) Requires that a chief probation officer is appointed in every county. (Gov. Code, § 27770, subd. (a).)

3) Requires the chief probation officer to perform the duties and discharge the obligations imposed on the office by law or by order of the superior court, including the following:

   a) Community supervision of offenders subject to the jurisdiction of the juvenile court.

   b) Operation of juvenile halls.

   c) Operation of juvenile camps and ranches.

   d) Community supervision of individuals subject to probation.

   e) Community supervision of individuals subject to mandatory supervision.

   f) Community supervision of individuals subject to postrelease community supervision.

   g) Administration of community-based corrections programming.

   h) Serving as chair of the Community Corrections Partnership.

   i) Making recommendations to the court, including, but not limited to, pre-sentence investigative reports. (Gov. Code, § 27771, subd. (a).)

4) Authorizes the chief probation officer to perform other duties that are consistent with those enumerated. (Gov. Code, § 27771, subd. (b).)

5) Provides that the office of chief probation officer shall not be consolidated with any other office, nor shall the services provided by the chief probation officer be integrated with or reorganized into any other office or department of the county. (Gov. Code, § 27773.)

6) Provides that a probation officer and deputy probation officer are peace officers. (Pen. Code, § 830.5, subd. (a); Welf & Inst. Code, § 283.)

7) Provides that the juvenile hall is under the management and control of the probation officer. (Welf & Inst. Code, § 852.)

8) Authorizes a county board of supervisors to delegate to the county welfare department all or part of the duties of the probation officer concerning dependent children. (Welf. & Inst. Code, § 272, subd. (a)(1).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "In 2020, when the Legislature directed the closure of the Division of Juvenile Justice (DJJ), it envisioned a system that would use public health approaches to support positive youth development, build the capacity of community-based programs and interventions, and reduce crime by youth.

   "Senate Bill 81 (Budget – Chapter 275, Statues of 2007) and Senate Bill 823 (Budget – Chapter 337, Statues of 2020) transferred the custody, treatment, and supervision of youth from the state to local County Probation Departments. This added responsibilities such as providing wraparound services, specialized treatment, and managing juvenile facilities. However, some Probation Departments, particularly the Los Angeles one, have struggled to meet these responsibilities.

   "Persistent challenges to implementing this new vision of youth justice have been ongoing. LA Probation has faced a staffing crisis, has had their juvenile facilities fail Board of State and Community Corrections inspections, currently has 30 officers indicted for running a fight club with the juveniles and a long history of committed sexual assault on these same youth. The staffing crisis has hindered the County's ability to implement effective programming and has fallen short in providing a safe environment for the juveniles within their facilities. SB 357 seeks to address the realignment efforts of California's youth justice system by granting the Los Angeles County Board of Supervisors the ability to delegate certain functions from County Probation Departments to another county entity.

   "By granting LA County the authority to bring in another County entity to support their Probation Department, SB 357 will ensure the youth justice system prioritizes rehabilitation and the services, programs, and placements young people need to successfully return to the community."

2) **County Probation Departments Appointments and Training**: Each county has a probation department headed by a probation chief appointed by the county board of supervisors based on recommendations from the Superior Court. (Gov. Code, § 27770, subd. (a).) The probation department is responsible for the supervision of youth who are within the jurisdiction of the juvenile court as well as the operation of juvenile facilities, including juvenile halls, camps, and ranches. The scope of the probation department's role with respect to supervising and providing for the care and custody of justice-involved youth has expanded over the years.

   Existing law states that each county shall appoint a chief probation officer (CPO), depending on the county charter, either by the Board of Supervisors or by the Presiding Judge of the Superior Court. (Gov. Code § 27770 subd. (a).) The probation departments, which is led by the CPO, handles the duties and obligations, including but not limited to, adult probation, juvenile probation, and pretrial detainees, as codified in existing law.

   According to California State Association of Counties (CSAC) "The primary staff of the Probation Department are probation officers and institutional counselors who are sworn peace officers (Penal Code Section 830.5) with the powers of arrest, search, and seizure. Probation Officers are required to have 200 hours of comprehensive training prior to assuming their duties and 40 hours each year thereafter. This training is certified and paid for by the Standards and Training for Corrections Program of the State Board of Corrections."[1] In order to carry out these duties the Board of State and Community Corrections (BSCC) is required to establish selection criteria and minimum training standards for correctional facilities, including probation departments. BSCC established the Standards and Training for Corrections (STC) program in 1980.[2] The STC programs main purpose is to raise the level of competence of individuals in the state's local corrections and probation departments.

   This bill does not specify what kind of qualifications, standards, or training this county official shall have or complete in order to be delegated part of the duties that are usually given to the probation department when handling juveniles, as specified. This lack of specificity may lead to underqualified individuals operating juvenile halls and camps, among other probation duties that may be given to this county official, such as, community supervision of juveniles and making recommendations to the courts regarding a juvenile's case. The author may consider adding qualification and/or require training that aligns with BSCCs standards and training that is required for probation officers to also apply to the county official that may get delegated certain probation duties.

3) **LA County Probation Department:** The operation of the L.A. County Probation Department has come under heightened scrutiny in recent years. The department has been criticized for operating decrepit buildings where violence between youth as well as between youth and staff is alleged to be commonplace, youth do not receive adequate educational or programing opportunities, and the actions of the staff and department are generally deemed too punitive.

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[1] Probation - California State Association of Counties (Last accessed March 26, 2025)
[2] Probation-Officer-Core-Training-Course-Manual-July-2020.pdf (Last accessed March 26th, 2025)

The county's juvenile halls have been found unsuitable multiple times over the last several years. Following unsuitability findings of its other juvenile facilities, Los Padrinos Juvenile Hall was reopened in July of 2023. Within a month of reopening, BSCC staff found twelve items of noncompliance, almost all related to staffing deficiencies.[3] The BSCC was particularly concerned with "noncompliance that results in late and missed safety checks, inappropriate and undocumented use of room confinement, youth not getting to school on time, and youth not having access to recreation or programs." (*Ibid.*) The items of noncompliance were mostly corrected by a re-inspection in early 2024, and Los Padrinos Juvenile Hall was found suitable in April of 2024. (BSCC, History of Suitability, *supra.*) BSCC staff was, however, directed to conduct inspections of Los Padrinos Juvenile Hall and the Secure Youth Treatment Facility (SYTF) at Barry J. Nidorf a minimum of twice per month to monitor compliance. (Ibid.)

Over a five-month period, the BSCC conducted nine inspections of Los Padrinos Juvenile Hall, including some unannounced inspections. (BSCC, History of Suitability, *supra.*) During those inspections, BSCC staff discovered that facility staff had been falsifying documentation to indicate that required activities had occurred, that education, recreation and medical appointments were impacted by lack of staffing, and that youth continued to be held in their rooms for long periods of time following incidents on the unit. (*Ibid.*) A final corrective action plan was submitted in October 2024 which the BSCC had advised would not be approvable given that it failed to detail actions to be taken to resolve the item of noncompliance or include several required elements. (Ibid.) As a result, the corrective action plan was denied, Los Padrinos Juvenile Hall was found unsuitable, and the county was given 60 days to discontinue use of the facility until brought into compliance with the law. (Ibid.)

After the probation department requested a re-inspection of the facility in December 2024, the BSCC conducted an inspection and determined that the facility remained out of compliance. (BSCC, History of Suitability, supra.) In finding that Los Padrinos Juvenile Hall had continued to remain unsuitable, the BSCC specified that "the current staffing numbers do not allow for all required activities, operations, programs and facility functions, and to ensure the safety of youth and staff."[4] The probation department, with the support of the board of supervisors, kept the facility open, and the L.A. County Public Defender's Office challenged that action on behalf of a client. (Queally, L.A. County judge moves toward shuttering troubled Los Padrinos Juvenile Hall, supra.) On April 18, 2025, an L.A. County judge issued a tentative ruling that it was *unlawful* to allow the department to continue housing juveniles at the facility, and ordered the department to submit a plan by early May outlining how it will relocate approximately 270 youths to other secure locations. (Ibid.)

As noted above, staffing at L.A. County's juvenile halls has been an ongoing issue. After an escape incident at Los Padrinos Juvenile Hall in November of 2023, the L.A. County Office of Inspector General conducted an investigation at the direction of the county supervisors. In

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[3] BSCC, History of Suitability at the Central, Barry J Nidorf, and Los Padrinos Juvenile Halls, Los Angeles County Probation Department 2018-Present, available at <http://www.bscc.ca.gov/news/nidorf-los-padrinos-suitability-timeline-2018-present/.

[4] BSCC, Letter to Los Angeles County Probation Department Regarding Unremedied Non-Compliance at Los Padrinos Juvenile Hall (Dec. 10, 2024), p. 2 available at <https://www.bscc.ca.gov/wp-content/uploads/2024/12/Los-Angeles-County-Los-Padrinos-Juvenile-Hall-Reinspection-Non-Compliance-Section-1321-FINAL-12-10-2024.pdf .)

its report, the Inspector General indicated that at the time of the escape, 100 staff members were scheduled by the department to work at the facility—the minimum necessary to operate the facility—but only approximately 40 reported to work.[5]

This bill seeks to address the impacts that the ongoing challenges the probation department has faced have had on the youth housed in L.A. County's juvenile facilities. Specifically, this bill authorizes the board of supervisors in a county with a population of at least 6 million people to delegate to a county official who has jurisdiction over youth development part of the duties and authorities, unless they are duties required to be undertaken by a peace officer, that the county probation department has with respect to juveniles. Only one county, Los Angeles County, meets the criteria in this bill. This bill would also allow for the inspection of a juvenile case file by county officials who have been delegated duties, authorities, or both that the county probation department currently has with respect to juveniles.

Presumably, if this bill were enacted, and the L.A. County Board of Supervisors voted to delegate some the duties of the probation department as they relate to juveniles to another county official, that entity could be L.A. County's Department of Youth Development, however, the intention of the county official to come from the Department of Youth Development is not clearly stated within the language of this bill.

Having another department other than the probation department take over duties such as juvenile community supervision, operating of juvenile's halls and camps, and making recommendations to the courts on juvenile cases, among other duties, may lead to unseen consequences in connection to the already growing problem of how juveniles are being mishandled by probation in LA County. Again it is unclear if this county official will be qualified enough to carry out these duties, which may lead to more mishandling of juvenile supervision.

Another consideration for the author is to take into account weather or not the courts will have jurisdiction and authority over this county official as they do with probation department, Welfare and Institutions Code section 281 authorizes the juvenile court to order the probation department to investigate "any matter involving the custody, status, or welfare of a minor or minors" and file a report with the court. Will the LA juvenile court be able to direct this new department as they are able to with the probation department? This bill does not clearly state out who this county official shall be, what trainings they will be required to undergo, which exact duties of probation officers may be delegated to this county official, and it would allow this county official to gain access to juvenile case files.

4) **L.A. County Department of Youth Development:** The L.A. County Department of Youth Development (DYD) was established in 2022. DYD's responsibilities include: investing in regional youth development networks; expanding community-based youth diversion and restorative practices; enhancing care coordination for system-involved youth; advancing the county's Youth Justice Reimagined vision and care-first strategies; and centering youth and

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[5] Los Angeles County Office of Inspector General, Report Back on Investigating the November 4, 2023 Escape from Los Padrinos Juvenile Hall and Preventing Future Incidents (Mar. 7, 2024), pp. 3-4 available at <https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/0e2c2ace-6068-4534-bb71-f780efe0dddf/Report%20Back%20on%20Investigating%20the%20November%204%2C%202023%20Escape%20from%20Los%20Padrinos%20Juvenile%20Hall%20and%20Preventing%20Future%20Incidents.pdf .)

community expertise in collaborative innovation.[6] The department seeks to address gaps in equitable access to youth development resources in three areas: development, diversion, and reentry. (*Ibid.*) To accomplish this goal, DYD partners with various organizations to provide free, comprehensive youth development programming and services, including mentorship, recreational activities, and academic and employment support; funds community-based organizations to provide youth diversion services, including substance use treatment, restorative justice, mental health services, and education and career support; and partners with community-based organizations to serve as "credible messengers" to support youth while in custody and upon release as well as partners with the probation department to provide supportive programs and services to youth in L.A. County juvenile facilities.

5) **Argument in Support**: According to *County of Los Angeles Board of Supervisors*, "We write in support of your bill, Senate Bill (SB) 357. Our Board adopted a motion on May 13, 2025, to support the bill if amended to allow the new lead designee and lead department staff access juvenile records. The recent amendments would provide such records access. Therefore, County of Los Angeles supports SB 357 because it is aligned with the County's long-standing objectives to decarcerate girls and gender-expansive youth, move more boys to less restrictive placements, and expand holistic, educational, and therapeutic services to the youth in our care.

"As you know, Los Angeles County (County) has embarked on a transformational journey to reimagine its youth justice system, committing to a care-first approach grounded in healing, accountability, and equity. The establishment and growth of the Department of Youth Development (DYD) reflects this vision: a commitment to preventative, rehabilitative, and developmentally appropriate services for young people, particularly those most impacted by systemic inequities. Since its launch, DYD has demonstrated measurable success by diverting youth away from punitive systems, reducing recidivism, and improving educational and mental health outcomes through community-based partnerships and holistic, trauma-informed programming. This approach is aligned with national best practices and garnered public support.

"DYD's 2024 evaluation report revealed that 95 percent of youth enrolled in the program remained free from legal trouble, compared to approximately 20 percent of those who did not participate. Additionally, the program resulted in cost savings of $40,000 per youth by reducing the need for arrest or court involvement. Key outcomes of the participating young people included improvements in emotional regulation, school engagement, social support, and conflict resolution skills – critical outcomes that the Los Angeles County Probation Department (Probation) has failed to demonstrate success in. In contrast, Probation continues to experience deep-seated crises. Probation, the facilities they oversee, and most importantly, the youth in Probation's custody, remain in crisis. On April 18, 2025, Los Angeles Superior Court Judge Miguel Espinoza ordered Probation to depopulate Los Padrinos Juvenile (Los Padrinos) after the facility was deemed unsuitable for housing youth by state regulators due to staffing and other issues.

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[6] (DYD, *About DYD* <https://www.dyd.lacounty.gov/about/>.)

"...SB 357 is designed to support the County's shift toward a more developmentally appropriate and health-focused youth justice system by expanding the role of DYD while maintaining Juvenile Division Courts' authority and the peace officer duties that only Probation's POST-certified staff are able to perform. The bill does not alter the current relationship between the courts and Probation regarding recommendations about dispositions or conditions of supervision. Probation will continue to offer recommendations to the court as it does today.

"This bill enables the County to enact and expand the goals of youth justice reimagined by allowing DYD to lead programming and supportive services, giving capacity to Probation deputies to focus on its primary duties of keeping all involved safe and secure. A memorandum of understanding would define the roles and boundaries between the two departments. Over time, the County could place lower-risk youth in less restrictive, community-based placements under DYD oversight, while higher-risk youth would remain in secure facilities where Probation will ensure safety and DYD will deliver rehabilitative programming. SB 357 has potential to close a gap in the way that the County approaches oversight for the youth in our care."

6) **Argument in Opposition**: According to the *Chief Probation Officers of California (CPOC)*, "This proposal, including the 5/29 amendments gives rise to fundamental issues of concern regarding the safe and effective supervision and provision of services to the juvenile justice population. This population includes juveniles and emerging adults up to age 25, adjudicated for misdemeanors to serious and violent felonies such as murder, rape, arson, robbery and assault with a firearm, many of whom would have previously been required to serve their time at the state Division of Juvenile Justice and which was recently realigned to counties. Further the amendments do not address opposition for the following reasons:

   • Referencing peace officer duties in PC 830 does not set necessary guardrails for the specific duties and responsibilities regarding juvenile supervision, detention and release decisions, and reporting to the court. Accordingly, under the bill all of these functions could still be transferred to a non-law enforcement entity as the bill continues to amend the government code section authorizing transfer of these duties and does not account for the many duties imparted to probation, as an arm of the court, throughout the Welfare and Institutions Code Section. The cross reference to the penal code peace officer section does not address the entirety of code sections and rules of court which spell out the duties and authority of probation.

   • The bill authorizes a new entity access to juvenile case files which gives rise to questions of confidentiality and the role of non-peace-officers in making decisions about filing court petitions and detention decisions. Probation officers are trained in confidentiality and records, legal foundations and liability, court report writing, testifying in court, and restitution orders that have interplay with the important work of accessing juvenile court records to provide required reports to the court for their determinations. There is no training or guardrails for the access and use of juvenile case records for a new entity.

   • Changing the population minimum does not address the issue that the bill will impact other counties as there is interoperability among probation departments and courts statewide necessitated by transfers of youth and young adults. The bill would continue to

impact court jurisdiction and probation supervision of court ordered conditions as youth are transferred between counties due to a change in residence or because they committed an offense in a county outside of their place of residence. Further, what impacts would result when courts are considering whether to transfer cases to a court in another county if youth are not supervised and supported by the probation department?

"As Probation Chiefs with extensive training and experience in evidence-based approaches to working with youth and young adults, CPOC is deeply concerned not only about the potential impacts of this bill on community safety, service coordination at the county level, coordination with the courts, and the justice system's ability to function effectively."

7) **Related Legislation**: AB 946 (Bryan) would require, in a county with a population of at least 3,500,000 people, the chief probation officer (CPO), or a designee who is appointed by the county board of supervisors and who has jurisdiction over youth development, to perform duties and discharge obligations normally within the jurisdiction of the CPO. This measure is still in the Assembly Public Safety Committee.

8) **Prior Legislation**:

   a) AB 2417 (Ting), Chapter 786, Statues of 2021 expanded the Youth Bill of Rights in order to ensure that juveniles are aware of their rights as well as how to handle filing complaints.

   b) SB 92 (Com. on Budget & Fiscal Review), Chapter 18, Statues of 2021 made conforming changes to implement the realignment of youth from the department of Juvenile Justice to county-based custody.

   c) SB 823 (Com. on Budget & Fiscal Review), Chapter 337, Statues of 2020 operationalized the realignment of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice, to the counties.
   d) SB 81 (Com. on Budget & Fiscal Review), Chapter 175, Statues of 2007 allowed counties with the option to take a portion or all of the current youthful offender population with the Division of Juvenile Facilities and requires all non-violent, non-serious offenders released to parole after September 1, 2007 to become the responsibility of the counties.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

2nd Call
ACLU California Action
All of US or None (HQ)
Alliance for Boys and Men of Color
Alliance for Community Empowerment
Anti-recidivism Coalition

Artlifelive
Arts for Healing and Justice Network
Bend the Arc: Jewish Action California
Better Youth, INC.
Boyle Heights Arts Conservatory
Brothers, Sons, Selves
Brown Issues
CA Native Vote Project
California Alliance for Youth and Community Justice
California Alliance of Child and Family Services
California Native Vote Project
California Public Defenders Association
California United for a Responsible Budget (CURB)
California Youth Connection
California Youth Defender Center
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Centinela Youth Services
Chapman University, Dispute Resolution for Juveniles
Children's Defense Fund - CA
Children's Defense Fund-california
Coalition for Engaged Education
Communities United for Restorative Youth Justice
Community Interventions
Community Warriors 4 Peace
Community Works
Conxion to Community
County of Los Angeles Board of Supervisors
Courage California
Dignity and Power Now
Disability Rights California
Ella Baker Center for Human Rights
End Child Poverty California Powered by Grace
Fair Chance Project
Felony Murder Elimination Project
Flintridge Center
Freedom 4 Youth
Friends Committee on Legislation of California
Gente Organizada
Hang Out Do Good
Healing and Justice Center
Hoops 4 Justice
Initiate Justice
Initiate Justice Action
Inner City Struggle
Jesse's Place Organization
LA Defensa
League of Women Voters of California
Liberation Fund Coalition

Local 148 LA County Public Defenders Union
Los Angeles County Supervisor Lindsey P. Horvath
Loyola Law School's Youth Justice Education Clinic
Million Dollar Hoods Project At Ucla
Moving Mountains by Illumination
National Center for Youth Law
No Easy Props
Peace and Justice Law Center
Project Knucklehead
Project Optimism
Prosecutors Alliance Action
Public Counsel
Restoring Hope California
Returning Home Reentry Program
Sanctuary of Hope
Silicon Valley Debug
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Social Justice Learning Institute
Southern California Psychiatric Society
Street Poets
Students Deserve
The Collective for Liberatory Lawyering
The Gathering for Justice
The Social Impact Center
The W. Haywood Burns Institute
Upward Together
Urban Peace Institute
Urban Peace Movement
Ventura County Juvenile Justice and Delinquency Prevention Commission
Vera Institute of Justice
Westcal Academy
Young Women's Freedom Center
Youth Justice Coalition

**Oppose**

Afscme Local 1967
American Federation of State, County and Municipal Employees, Afl-cio
Aocds
Association for Los Angeles Deputy Sheriffs (ALADS)
Association of Orange County Deputy Sheriffs
Bu 702- Seiu 721 Joint Council
California District Attorneys Association
California Fraternal Order of Police
Chief Probation Officers' of California (CPOC)
County of Contra Costa
County of Fresno
County of Kern

County of Monterey
County of Santa Cruz
Fresno County Board of Supervisors
Inyo County Board of Supervisors
Judicial Council of California
Long Beach Police Officers Association
Los Angeles County Probation Managers Association Afscme Local 1967
Los Angeles County Probation Officers Union, Afscme Local 685
Marin County Probation Department
Mendocino County Board of Supervisors
Monterey; County of
Our Streets Dream
Parents Anonymous, INC.
Peace Officers Research Association of California (PORAC)
Sacramento County Deputy Sheriffs Association
Sacramento County Probation Association
San Bernardino County
San Diego County Probation Officers Association
San Gabriel Valley Conservation and Service Corps
San Joaquin County Probation Officers Association
San Mateo County Probation Detention Association
Sheriff's Employee Benefits Association (SEBA)
Solano County Board of Supervisors
State Coalition of Probation Organizations
Ventura County Professional Peace Officers Association

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

Date of Hearing: July 15, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 398 (Umberg) – As Amended July 3, 2025

**SUMMARY:** Makes it a crime for a person to pay money or other valuable consideration to another person in exchange for that person to voting or registering to vote. Specifically, **this bill**:

1) Makes it a crime for a person to knowingly or willfully pay or offer to pay money or other valuable consideration to another person with the intent to induce the person to vote or to register to vote, or where the payment is contingent upon whether the person voted or the person's voter registration status.

2) Makes this crime punishable for 16 months, two years, or three years, or in county jail for up to one year, by a fine of up to $10,000, or by both fine and imprisonment.

3) Defines "other valuable consideration" to include, but not be limited to, a chance to win a lottery or similar prize-drawing contest.

4) Establishes that this law does not apply to a person transporting someone or from a voting location, compensation provided to an individual by a governmental entity, and granting time off to an employee to vote.

**EXISTING FEDERAL LAW:**

1) Provides that whoever knowingly or willfully pays or offers to pay any person to register to vote or to vote, or accepts payment for registering to vote or voting, shall be fined not more than $10,000, imprisoned not more than five years, or both. (52 U.S.C. § 10307(c).)

2) Provides that whoever makes or offers to make an expenditure to any person, either to vote or withhold their vote, or to vote for or against any candidate; and whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote, shall be fined or imprisoned not more than one year, or both; and if the violation was willful, shall be fined or imprisoned not more than two years, or both. (18 U.S.C. § 597.)

**EXISTING STATE LAW:**

1) Provides that any person who, in exchange for money or other valuable consideration, assists another to register to vote, must provide their identifying information on the affidavit of registration, as well as the identifying information of the person, company, or organization, if any, that agrees to pay money or other valuable consideration for the completed affidavit of registration. (Elec. Code, § 2159, subd. (a).)

2) Requires a person, company, or other organization that agrees to pay money or other valuable consideration, to assist another person to register to vote by receiving or assisting with the submission of a completed affidavit to maintain records, as specified. (Elec. Code, § 2159.5.)

3) Authorizes the court, for a conviction for any crime punishable by imprisonment in jail or prison in which no fine is prescribed, to impose a fine of up to $1,000 for a misdemeanor or up to $25,000 for a felony, in addition any imprisonment. (Elec. Code, § 18001.)

4) Establishes that every person who, in the person's official capacity, knowingly and fraudulently acts in contravention or violation of any laws relating to elections, is, unless a different punishment is prescribed, punishable by fine not exceeding $1,000 or by imprisonment for 16 months or two or three years, or by both. (Elec. Code, § 18002.)

5) States that every person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that they are not entitled to registration, is punishable by an alternate felony/misdemeanor. (Elec. Code, § 18100, subd. (a).)

6) Provides that a person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable as an alternate felony/misdemeanor. (Elec. Code, § 18100, subd. (b).)

7) States that every person who knowingly and willfully completes, or causes or procures the completion of, in whole or in part, an affidavit of registration or a voter registration card, with the intent to cause the registration or reregistration as a voter of a fictitious person or of any person who has not requested registration or reregistration as a voter, is guilty of a crime punishable as an alternate felony/misdemeanor. (Elec. Code, § 18101.)

8) Provides that knowingly or negligently interfering with the prompt transfer of a completed affidavit of registration to the county elections official, retaining a voter's completed registration card, without the voter's authorization, under specified circumstances, or denying a voter the right to return to their completed registration card, is guilty of a misdemeanor punishable by a fine not to exceed $1,000. (Elec. Code, § 18103.)

9) Specifies that every person is punishable by an alternate felony/misdemeanor who, without the specific consent of the affiant, willfully and with the intent to affect the affiant's voting rights, causes, procures, or allows the completion, alteration, or defacement of the affiant's party affiliation declaration contained in an executed, or partially executed, affidavit of registration, as defined. (Elec. Code, § 18106.)

10) States that a person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, except as defined, and fails to sign in his or her handwriting and affix directly on the affidavit of registration specified information, is guilty of a misdemeanor punishable by a fine not exceeding $1,000 or by up to one year in county, or both. (Elec. Code, § 18108, subd. (a).)

11) Provides that a third or subsequent conviction for the above is punishable by up to $10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108, subd. (b).)

12) States that a person who receives money or other valuable consideration to assist another to register to vote by receiving the completed affidavit of registration from the elector, except as defined, and knowingly misrepresents himself or herself as having helped register another to vote on a registration form, as defined, is guilty of a misdemeanor punishable by a fine of up to $1,000, by up to six months in county jail, or by both. (Elec. Code, § 18108.1, subd. (a).)

13) Provides that a third or subsequent conviction for the above is punishable by a fine of up to $10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.1, subd. (b).)

14) Provides that a person, company, or other organization that agrees to pay money or other valuable consideration, whether on a per-affidavit basis or otherwise, to a person who assists another person to register to vote by receiving the completed affidavit of registration, or by assisting with the submission of an affidavit of registration electronically, who fails to sign in his or her handwriting and affix directly on the affidavit of registration specified information, is guilty of a misdemeanor punishable by a fine of up to $1,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.5, subd. (a).)

15) Specifies that a third or subsequent conviction of the above is punishable by a fine of up to $10,000, by up to one year in county jail, or by both. (Elec. Code, § 18108.5, subd. (b).)

16) States that any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony punishable by imprisonment for 16 months or two years or three years. (Elec. Code, § 18500.)

17) Makes it an alternate felony/misdemeanor for a person to directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to refrain from voting, vote for any particular person, or refrain from voting for any particular person. (Elec. Code, § 18520.)

18) Makes it an alternate felony/misdemeanor for a person to directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person voted, agreed to vote, refrained from voting, or agreed to refrain from voting; remained away from the polls; refrained or agreed to refrain from voting; or induced any other person from any of the above. (Elec. Code, § 18521.)

19) Makes it an alternate felony/misdemeanor for a person or a controlled committee to directly or through any other person or controlled committee pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter or to or for any other person to induce or reward any voter for refraining from voting at any election, voting or refraining from voting at an election for any particular person or measure, or remaining away from the polls at an election. (Elec. Code, § 18522.)

20) Makes it an alternate felony/misdemeanor for a person to directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election, or knowingly pay or cause to be paid any money or other valuable thing to any

person in discharge or repayment of any money, wholly or in part, expended in bribery at any election. (Elec. Code, § 18523.)

21) Makes it an alternate felony/misdemeanor for a person to directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, will be used for boarding, lodging, or maintaining a person at any place or domicile in any election precinct, ward, or district, with intent to secure the vote of that person or to induce that person to vote for any particular person or measure. (Elec. Code, § 18524.)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "In October 2024, Elon Musk's 'America PAC' announced a $1 million lottery for individuals in swing states who signed a petition supporting the First and Second Amendments. Despite vote buying being illegal, Musk and the PAC argued that they weren't directly paying people to vote in a specific way. Musk and America PAC claimed legality on the basis that they weren't technically paying someone to vote in a particular manner. However, it can still be inferred that America PAC created an alluring offer that likely incentivized constituents to register to vote if they had not already done so with a designated swing state. Federal law explicitly prohibits anyone from knowingly or willingly paying or offering to pay or accepting payment either for registration to vote or for voting. At the very least, what Elon Musk has done is spit in the face of our forefathers, longstanding campaign ethics, and federal election law. At least we know he's consistent in his blatant disregard for the rule of law. Californians should not tolerate such blatant interference with our elections by wealthy oligarchs like Elon Musk. We need to hold those who seek to bend our institutions to their own selfish whims, accountable. If Mr. Musk wants to muck around in elections ethics, he can try that in Texas. My bill, SB 398 will make it clear that such electioneering is not welcome in California."

2) **Effect of the Bill**: This bill would clarify that existing prohibitions against providing consideration to a person as a means of inducing them to vote or for actually voting includes lotteries or other prize-drawing style contests.

   The ability for the American people to choose their leaders through a confidential and secure voting process is sacrosanct. Despite attacks on this process by some officials, including some elected through our democratic process, we had a relatively long history of confidence in the veracity of the outcomes and mostly peaceful transfers of power.[1] At the dawn of Civil Rights era, in 1960, President Dwight Eisenhower said, "In the long perspective of history, the right to vote has been one of the strongest pillars of a free society. Our first duty is to protect this right against all encroachment."[2] Restoring voter confidence in elections is

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[1] See *The 2020-21 Presidential Transition: Lessons Learned and Recommendations* (Jan. 20, 2022) Center for Presidential Transition <https://presidentialtransition.org/reports-publications/2020-21-lessons-learned/> [as of June 30, 2025].

[2] Annual Message to the Congress on the State of the Union, The American Presidency Project (Jan. 7, 1960) < https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-6> [as of June 5, 2025].

essential to the success of our experiment in self-government.[3] This bill attempts to protect Californians' right to freely and securely vote by prohibiting rewarding actual or likely voters through a lottery or contest.

During the 2024 U.S. Presidential Election, billionaire Elon Musk's political action committee "America PAC" announced that it was giving away $1 million per day to *registered voters* in swing states who signed his petition supporting the First and Second Amendments.[4] As one scholar noted, "The law prohibits paying people to vote, to register to vote, or to vote in a particular way or not in a federal election. This is none of those things."[5] In Pennsylvania, the Philadelphia District Attorney tried suing to block America PAC's effort alleging that the payouts were an illegal lottery, but he was unsuccessful.[6] Two weeks prior to a state Supreme Court election, Musk's group was using a nearly identical tactic, offering $100 to Wisconsin voters to sign a petition in opposition to "activist judges."[7]

According to information provided by the author's office: "Musk and America PAC claimed legality on the basis that they weren't technically paying someone to vote in a particular manner. However, it can still be inferred that the America PAC created an alluring offer that likely incentivized constituents to register to vote if they had not already done so with a designated swing state . . . Currently, the problem is that no such crime exists at the state level, limiting enforcements only through federal prosecution."

While California does not currently have a crime on the books squarely directed at prohibiting the type of behavior engaged in by Elon Musk, under California law it is a crime to pay or provide valuable consideration to a person to induce them to vote for a particular person or measure or to reward them for voting for a particular person or measure. (Elec. Code, §§ 18520-18521.) It is also a crime to pay or receive any money or other valuable consideration in order to reward a person or as a reward for voting for or against or agreeing to vote for or against the election or endorsement of any other person as the nominee or candidate of any caucus, convention, organized assemblage of delegates, or other body representing or claiming to represent a political party, candidate, or principle, or any club, society, or association. (Elec. Code, § 18522.) Both offenses are punishable by imprisonment in the county jail for 16 months, two years, or three years. (*Ibid.*)

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[3] See Cain and Ginsberg, *Restoring Confidence in American Elections* (June 2024) Hoover Institution at Stanford University <https://www.hoover.org/sites/default/files/research/docs/Restoring_Confidence_in_American_Elections.pdf> [as of June 30, 2024].

[4] Renshaw, *Elon Musk's Election promise of $1 million daily giveaway sparks call for probe* (Oct. 20, 2024) Reuters <https://www.reuters.com/world/us/elon-musk-promises-award-1-mln-each-day-signer-his-petition-2024-10-20/> [as of June 30, 2025].

[5] Tenbarge, *Elon Musk's PAC offers $47 payouts to refer swing state voters to sign petition* <https://www.nbcnews.com/tech/tech-news/musk-pac-signature-47-pay-refer-swing-state-voters-sign-petition-rcna174310> [as of June 30, 2025].

[6] Tanenbaum, *Judge dismisses Philly DA Larry Krasner's lawsuit challenging Elon Musk's $1 million giveaways* <https://www.phillyvoice.com/elon-musk-lottery-america-pac-random-court-philadelphia-krasner/> [as of June 30, 2025].

[7] Bauer, *Musk group offers $100 to Wisconsin voters ahead of pivotal state Supreme Court election* <https://apnews.com/article/wisconsin-supreme-court-musk-trump-b9be6119d500bdacc9c6341be013cd62> [as of June 30, 2025].

This bill expands on these provisions to prohibit paying money or other valuable consideration to a person with the intent to induce them to vote or where the payment is contingent upon them voting, irrespective of whether they vote for a particular person or measure. This bill also prohibits paying money or valuable consideration to a person with the intent to induce them to register to vote or where the payment is contingent on them registering to vote. This bill would, however, would not apply to a person transporting someone or from a voting location, compensation provided to an individual by a governmental entity, or an employer granting time off to an employee to vote. While this bill expands current prohibitions on paying someone to vote and prohibits paying someone to register to vote, to capture what Musk and America-PAC did under this bill, it will be necessary to show it was done with the intent to induce someone to vote or register to vote.

Also, while this bill specifies that a "lottery or similar prize-drawing contest" is valuable consideration for purposes of inducing votes or registration, as noted above, a Philadelphia judge concluded that what Musk and America PAC did was not an illegal lottery.[8]

3) **Argument in Support**: According to *California Clean Money Campaign,* "I am writing to express strong support for SB 398 (Umberg) to criminalize the use of lotteries or similar prize-drawing contests as incentives for voter registration.

"One of the cornerstones of our democracy is the principle that no one should be allowed to buy votes. Federal law prohibits offering payments in exchange for registering to vote or for voting. However, it does not explicitly ban the use of lotteries as incentives for voter registration. This loophole has recently been exploited.

"During the 2024 U.S. Presidential Election, Elon Musk's "America PAC" conducted a $1 million lottery for individuals in swing states who signed a petition under the guise of supporting the First and Second Amendments of the U.S. Constitution. Voter registration in a swing state was a prerequisite for entry. In March, America PAC offered Wisconsin registered voters entry into another $1 million lottery for signing a petition against "activist judges" in a transparent attempt to influence voter registration ahead of Wisconsin's highly contested Supreme Court race. Elon Musk then tweeted (but took down) that anyone who voted in the election would be eligible to attend his event where they would be eligible for two more $1 million lottery prizes.

"SB 398 closes these loopholes in California by making offering to pay money or other valuable consideration for another person to register to vote a crime in California and by explicitly counting giving voters "a chance to win a lottery or similar prize-drawing contest" as a violation.

"As now amended, SB 398 also includes offering such monetary compensation based on whether the person voted or the person's voter registration status, which addresses the types of petitions and offers made by America PAC and Elon Musk. Under SB 398, knowingly or willfully offering such incentives for voter registration would be punishable by imprisonment

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[8] Dale, *Philly DA failed to show that Elon Musk's voter sweepstakes was illegal: Judge* (Nov. 13, 2024) NBC News Philadelphia <https://www.nbcphiladelphia.com/news/local/philly-da-failed-to-show-that-elon-musks-voter-sweepstakes-was-illegal-judge/4027537/> [as of June 30, 2025].

for up to three years and/or a fine of up to $10,000, conforming to Section 1170 of the Penal Code.

"Neither billionaires nor anyone else should be able to circumvent federal bans on payments for voter registration by offering lotteries or prize-drawing contests to individuals likely to hold certain political views. SB 398 is thus a critical addition to California law to ensure this practice is prohibited."

4) **Argument in Opposition**: According to the *San Francisco Public Defender's Office*, "I write in respectful opposition to SB 398 (Umberg). While the bill may be well-intentioned, it creates an unnecessary, new felony within our criminal legal system…

"The United States has the highest rate of incarceration in the world – with this nation making up less than 5% of the world's population, but nearly 25% of the world's total prison population. While California has recently made some progress in reducing its incarceration rate, that progress cannot continue if proposals for creating new felonies are passed.

"California must invest in effective and less expensive ways to ensure that billionaires do not buy elections, such as championing campaign finance reform, increasing transparency, and passing laws that amplify the voices of everyday Californians."

5) **Prior Legislation**:

   a) AB 2839 (Pellerin), Chapter 262, Statutes of 2024, would prohibit a person, committee, or other entity from knowingly distributing an advertisement or other election communication that contains certain materially deceptive content with malice, as defined, subject to specified exemptions.

   b) AB 2642 (Berman), Chapter 533, Statutes of 2024, would prohibit a person from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for engaging in specified election-related activities.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Civil Liberties Advocacy
California Clean Money Campaign
Election Integrity Project California
Indivisible CA Statestrong

**Oppose**

San Francisco Public Defender

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 483 (Stern) – As Amended July 9, 2025

**SUMMARY:** Makes changes to the mental health diversion law including adding to the suitability requirements that a defendant agrees the recommended treatment plan will meet their specialized needs. **Specifically, this bill:**

1) Revises the definition of "pretrial diversion" to require that the court is also satisfied that the recommended program is consistent with the underlying purpose of mental health diversion.

2) Clarifies that notwithstanding the specified statutory public safety suitability consideration, the court retains the discretion already provided in the existing mental health diversion law to deny diversion if it concludes that, despite the proposed treatment program and any available terms and conditions of diversion, the defendant poses an unreasonable risk to the physical safety of another.

**EXISTING LAW**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d) A qualified mental health expert opines that:

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

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

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

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "Diversion for those struggling with mental illness is a vital part of California's criminal justice system. Those who benefit most from diversion, those who don't have access to care until they interact with the courts, deserve equitable due process and full engagement in their treatment plan. Without providing this plan to them with their full informed consent, we undermine their treatment outcomes and further fail them. That's what this is about—SB 483 will ensure that all courts across California counties present a treatment plan before granting diversion and makes clear that those being diverted from entering the carceral system understand the conditions of diversion before consenting to comply with treatment. This is how we prevent recidivism, restore dignity, and create a safer public."

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

   "To avoid incarceration, individuals with serious mental illness need to be diverted from the legal system and offered rehabilitative resources. The homeless comprise a significant share of individuals who come to the attention of law enforcement. A recent review revealed that lifetime arrest rates of homeless individuals with serious mental illness ranged from 62.9% to 90.0%, compared with approximately 15.0% in the general population. For this population, stable housing is a major issue. A recent randomized trial comparing housing first with assertive community treatment with treatment as usual demonstrated significantly decreased rates of arrest among those receiving assertive community treatment at 2 years. These results suggest that efforts to provide stable, affordable, and safe shelter for homeless individuals may lead to lower rates of involvement in the justice system...

   "When individuals with serious mental illness are brought to court attention, several models have demonstrated positive outcomes, including mental health courts, drug courts, and Veterans Treatment Courts. Although they serve different populations, the common goal of all these court formats is to address the causes of behavior that brought an offender to police attention. Mental health courts are becoming more common in different communities, each with slight variations; however, common features include a specialized court docket that emphasizes problem solving, community-based treatment plans that are designed and supervised by judicial and clinical staff, regular follow-up with incentives and sanctions related to treatment adherence, and clearly defined "graduation" criteria. A recent prospective study of 169 individuals showed that the likelihood of perpetrating violence during the following year was significantly lower among participants processed through a

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

mental health court than among individuals in a matched comparison group who were processed through traditional courts (odds ratio, 0.39; 95% CI, 0.16-0.95; P = .04)."[5]

3) **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.[6] The cited reason for this change was a recommendation from the Committee on the Revision of the Penal Code.[7] 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

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[5] Hirschtritt & Binder, Interrupting the Mental Illness–Incarceration-Recidivism Cycle (Feb. 21, 2017) 317 JAMA 695-696, fn. omitted.
[6] SB 1223 (Becker), Ch. 735, Stats. 2022.
[7] 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.

finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.[8]

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; and, 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 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).)

As stated above, existing law requires the court to be satisfied that the recommended inpatient or outpatient program will meet the specialized mental health treatment needs of the defendant. This bill requires the court to be satisfied that the recommended outpatient program or mental health treatment is consistent with the underlying purpose of mental health diversion as described in Penal Code section 1001.35.

This bill adds to the factors that the court must consider when determining the defendant's suitability for mental health diversion. Specifically, this bill requires the defendant to agree that the recommended treatment plan will meet their specialized needs in addition to the requirement under existing law that the defendant agrees to comply with the treatment as a condition of diversion.

4) **Court's Discretion**: Existing law states that a court may, *in its discretion*, grant mental health diversion to a defendant pursuant to the procedures laid out in the mental health diversion statute. (Pen. Code, § 1001.36, subd. (a).) Courts have discretion to grant diversion

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[8] *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).

if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements[9]:

> There may be times because of the defendant's circumstances, where the interests of justice do not support diversion of the case. The defendant's criminal or mental health history may reflect an unsuitability of the crime or the defendant for diversion. It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. (See § 1001.36, subd. (k) [the court may consider past performance on diversion in determining suitability].) The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (f)(1)(A)(ii)) [the court may consider interests of the community in selecting a program].) The court is not limited to excluding persons only because of the risk of committing a "super strike." (*Qualkinbush*, *supra*, 79 Cal.App.5th at pp. 888-889.) In exercising its discretion to grant or deny mental health diversion under subdivision (a), the court may consider any factor relevant to whether the defendant is suitable for diversion.4 (See *Qualkinbush*, *supra*, 79 Cal.App.5th at pp. 889-890.)[10]

While the court retains discretion to deny or grant diversion even where the defendant meets the threshold requirements for diversion (Pen. Code, § 1001.36, subd. (a)), this discretion must be exercised "consistent with the principles and purpose of the governing law." (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 892.) Thus, when exercising its discretion to deny diversion, the court's conclusion that a defendant is not suitable for diversion must be supported by substantial evidence based on the individual facts of the case. If the facts do not support such a conclusion, the court's denial may be overturned under an abuse of discretion standard which is a deferential standard: "A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard, or bases its decision on express or implied factual findings that are not supported by substantial evidence." (*Id.* at pp. 901-901, citing *People v. Moine* (2021) 62 Cal.App.5th 440, 449.)

This bill clarifies that notwithstanding the specified public safety suitability consideration, the court retains the discretion already provided in subdivision (a) of Penal Code section 1001.36 to deny diversion if it concludes that, despite the proposed treatment program and any available terms and conditions of diversion, the defendant poses an unreasonable risk to the physical safety of another.

5) **Argument in Support**: According to *California Behavioral Health Association*, "CBHA members see every day how mental health treatment, when appropriately matched and

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[9] J. Couzens, *Memorandum RE: Mental Health Diversion Under Penal Code Sections 1001.35-1001.36* [revised] (May 2024), p. 14.
[10] *Id.* at pg. 4.

consistently applied, can stabilize individuals who are cycling through jails and courts not because they are dangerous, but because they are unwell and untreated. SB 483 offers critical clarity: the court must not only ensure that a treatment plan exists, but that it is consistent with the intent of diversion and tailored to meet the individual's actual condition. That clarity will protect the integrity of diversion programs and the safety of our communities.

"SB 483 upholds due process while reinforcing collaboration between mental health professionals and the justice system. It keeps judicial discretion intact, but arms the court with a stronger standard for assessing program suitability."

6) **Argument in Opposition**: None received.

7) **Related Legislation**:

   a) AB 46 (Nguyen) would make various changes to mental health diversion program including modifying the public safety consideration in determining suitability of a particular defendant for diversion. AB 46 is pending hearing by the Senate Appropriations Committee.

   b) AB 433 (Krell) would have added more crimes to the list of crimes excluded from mental health diversion eligibility. AB 433 failed passage in Assembly Public Safety Committee.

8) **Prior Legislation**:

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

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

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

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

   e) SB 666 (Stone), of the 2019-2020 Legislative Session, would have added offenses which would preclude an individual from being eligible for mental health diversion. SB 666 was held in the Senate Public Safety Committee.

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

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

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Alameda County Families Advocating for the Seriously Mentally Ill
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Behavioral Health Association
California District Attorneys Association
California Narcotic Officers' Association
California Peer Watch
California Public Defenders Association
California State Sheriffs' Association
Claremont Police Officers Association
Culver City Police Officers' Association
Family Advocates for Individuals With Serious Mental Illness (FAISMI) of Sacramento
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association

**Opposition**

None Submitted

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

Date of Hearing: July 15, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 485 (Reyes) – As Amended April 7, 2025

**SUMMARY:** Authorizes the board of supervisors to remove an appointed public defender from office by a 3/5 vote for neglect of duty, malfeasance or misconduct in office, or other good cause.

**EXISTING FEDERAL LAW:**

1) States that no person shall be deprived of life, liberty, or property, without due process of law. (U.S. Const. amend. V.)

2) Establishes that in all criminal prosecutions, the accused shall enjoy the right to have assistance of counsel for his defense. (U.S. Const. amend VI.)

3) Provides that no state shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const. amend. XIV.)

**EXISTING LAW**:

1) States that a person may not be deprived of life, liberty, or property without due process of law. (Cal. Const. art. I, § 7.)

2) Establishes that the defendant in a criminal cause has the right to have the assistance of counsel for the defendant's defense. (Cal. Const. art. I, § 15.)

3) States the board of supervisors of any county may establish the office of public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties. (Gov. Code, § 27700.)

4) Provides that at the time of establishing the office the board of supervisors shall determine whether the public defender is to be appointed or elected. (Gov. Code, § 27702.)

5) Establishes that if the public defender of any county is to be appointed, they shall be appointed by the board of supervisors to serve at its will, and the public defender of any two or more counties shall be appointed by the boards of supervisors of such counties. (Gov. Code § 27703.)

6) Requires that the public defender shall perform the following duties:

   a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, any person who is not financially able to

employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings, as specified.

e) Upon order of the court, the public defender shall represent any person who is entitled to be represented but is not financially able to employ counsel in proceedings, as specified.

f) Upon order of the court the public defender shall represent any person who is required to have counsel, as defined.

g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings. (Gov. Code, § 27706.)

7) Provides that in any county a county counsel may be appointed by the board of supervisors. (Gov. Code, § 27640.)

8) Provides that an appointed county counsel may be removed at any time by the board of supervisors for neglect of duty, malfeasance or misconduct in office, or other good cause shown, upon written accusation to be filed with the board of supervisors, by a person not a member of the board, and heard by the board and sustained by a three-fifths vote of the board. (Gov. Code, § 27641.)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "Chief Public Defenders play a crucial role in ensuring a fair and equitable justice system. They uphold the Constitution by guaranteeing access to competent legal counsel for all, regardless of financial status. When a public

defender fulfills this duty to their clients, it may mean taking unpopular stances which can include positions that, although legal, come into conflict with their appointing board. "This creates a challenging environment as public defenders can be fired without cause by a county board of supervisors, creating a disincentive to fulfill their duties out of fear of retaliation, and in turn not offering their clients their constitutionally guaranteed rights.

"To ensure a fair legal system, public defenders must be free from political pressure and retaliation. SB 485 seeks to eliminate the "at-will" status of Chief Public Defenders, allowing them to be removed only by a 3/5 vote of the board for neglect, misconduct, or other justifiable reasons. This reform would protect their independence and allow them to serve with integrity."

2) **Effect of the Bill:** This bill would require public defenders be removable only for cause, as defined. One goal of this bill is to protect public defenders from fear that performing their duties could lead to retaliatory termination. The author suggests that if a public defender's incentive to fulfill their duties and uphold their clients' constitutionally guaranteed rights is compromised by fear of retaliation, there is a possibility that public defenders will be unable to provide the effective, conflict-free counsel demanded by the federal and state constitutions.

According to information provided by the author's office, there are no documented cases in California where a board of supervisors has removed a public defender for taking up a controversial case or issue. Yet, this has occurred in Pennsylvania. The Chief Public Defender and Deputy Chief Public Defender of Montgomery County, Pennsylvania were both fired by their board of supervisors after their office submitted an amicus brief supporting a lawsuit challenging bail setting practices.[1] They filed lawsuits raising retaliation, whistleblower, and First Amendment claims, which the county settled for $310,000.[2] Though the case settled, there is risk of a chilling effect from having been fired for performing duties inherent to their jobs because local elected officials disagreed with a legal position asserted as part of that job responsibility. This bill limits board of supervisors' removal power of public defenders, unless the public defender has demonstrated neglect of duty, misconduct or malfeasance in office, or other good cause for removal. To clarify the scope of these removable offenses in different cases, our courts have given us guidance.

This bill would allow for removal of public defenders for neglect of duty, malfeasance or misconduct in office, or for other good cause. Noting that the term "neglect of duty" has an "accepted legal meaning", the California Supreme Court defined neglect of duty as "an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty." (*People v. McCaughan* (1957) 49 Cal. 2d 409, 414.) Another court found, in a case involving public officials' duty to make an arrest that the officials were

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[1] Vaughn, *Pennsylvania Public Defenders not Reinstated Despite Public Outcry over Firing* (Mar. 6, 2020) The Appeal <https://theappeal.org/pennsylvania-public-defenders-not-reinstated-despite-public-outcry-over-firing/> [as of July 2, 2025].

[2] Mitchell, *Montgomery County to Pay $310K to Settle Claims from Former Public Defenders in Row over Bail Policies* (Mar. 19, 2021) <https://www.law.com/thelegalintelligencer/2021/03/19/montgomery-county-to-pay-310k-to-settle-claims-from-former-public-defenders-in-row-over-bail-policies/?slreturn=2025041005802> [as of July 2, 2025].

"punishable for neglect of duty if they neglected to act in a case where there was sufficient or probable cause for acting." (*Michel v. Smith* (1922) 188 Cal. 199, 209.)

The California Supreme Court also found that a crime committed in an official capacity is necessarily sufficient to establish "misconduct in office." (*Stark v. Superior Court* (2011) 52 Cal. 4th 368, 410.) Misconduct in office is "broad enough to include any willful malfeasance, misfeasance, or nonfeasance in office, even without any criminal intention." (*Id.* at p. 411.) Misconduct in office is not limitlessly broad, however, as one court held that an "act or omission for which [a] public officer may be removed from office does not necessarily imply corruption, criminal intent, or commission of crime . . . ." (*People v. Hale* (Cal. App. 5th Dist. 1965) 232 Cal. App 2d 112, 118.)

Another court defined malfeasance as "a wrongful, unlawful, or dishonest act; especially wrongdoing or misconduct by a public official." (*People v. Smith* (Cal. App. 6th Dist. 2024) 100 Cal. App. 5th 741, 754, quoting Black's Law Dict. (11th ed. 2019) at p. 1145.) The court found that "the term 'malfeasance in office' . . . means misconduct or wrongdoing by a public official while in office, at least where the conduct 'evidences moral corruption and dishonesty.'" (*Ibid,* see also *Otsuka v. Hite* (1966) 64 Cal. 2d 596, 608.) The court held a public official charged and convicted of perjury had committed malfeasance in office and thus, barred from jury duty. (See *ibid.*) Another court, however, found that a conviction for obstruction of justice did not necessarily "imply moral corruption or dishonesty" and thus, the person constitutionally was able to hold the office to which he was elected. (See *People ex rel. City of Commerce v. Argumendo* (Cal. App 2nd Dist. 2018) 28 Cal. App. 274, 280-82.)

While the term "other good cause" leaves apparent room for ambiguity, good cause standards exist in the law. The California Supreme Court cited to the Book of Approved Jury Instructions (BAJI) for the standard that must be met when an employee is contractually unable to be terminated except for good cause. (*See Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal. 4th 93, 99.) That standard reads,

> Where there is an employment agreement not to terminate an employee except for good cause, an employer may not terminate the employment of an employee unless such termination is based on a fair and honest cause or reason. In determining whether there was good cause, you must balance the employer's interest in operating the business efficiently and profitably with the interest of the employee in maintaining employment." (*Id.* at fn. 2.)

The California Supreme Court noted the inquiry for demotion for good cause is identical to discharge with good cause. (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal. 4th 454, 467.) The good cause inquiry involves determining whether the adverse employment action was done for "'a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power . . . as opposed to one that is 'trivial, capricious, unrelated to business needs or goals, or pretextual.'" (*Ibid.*)

Additionally, while this bill would change public defenders from at-will employees to removable only for cause, the law does not permit blanket authority for termination of at-will employees by their employers. Beyond the protections afforded at-will employees in state and federal law, a person who maliciously induces an employer to discharge an employee through the use of false statements, fear, or "malevolent advice and persuasion" is liable to

the employee for damages "and it makes no difference whether the employment was for a fixed term not yet expired of is terminable at the will of the employer." (See *Haddle v. Garrison* (1998) 525 U.S. 121, 126.)

By making county public defenders removable for cause, this bill would more closely align those public defenders with county counsels, who have similar statutory protections. (See Gov. Code, § 27641.)

3) **The Right to Counsel**: This bill would modify board of supervisors' authority to remove an appointed public defender. Public defenders help ensure an accused's constitutional right to representation are actualized. Indigent criminal defendants are entitled to the assistance of counsel at trial. (See U.S. Const., amend. VI, Cal. Const., art. I, § 15.) The right to counsel is guaranteed by California's Constitution, but is also guaranteed by the US Constitution and is binding on the states through the Fourteenth Amendment's Due Process clause. (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-343.) In initially establishing this right, the Supreme Court wrote, "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel . . . ." (*Gideon*, supra, at p. 344, quoting *Powell v. Alabama* (1932) 287 U.S. 45, 68.) The Court went on to state, "In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth . . . ." (*Ibid.*)

The bounds of this right have been further formed since these initial decisions. The Court found that the right to counsel is violated unless counsel provides effective assistance to their client. (*Strickland v. Washington* (1984) 466 U.S. 668, 686.) Assistance is ineffective when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (*Id.* at pp. 692-93.) At the trial level, being effective requires counsel to "subject the prosecution's case to meaningful adversarial testing." (*United States v. Cronic* (1984) 466 U.S. 648, 659.)

To ensure a criminal defendant's right to counsel, the majority of California's 58 counties have established an Office of the Public Defender. (Gov. Code, § 27700.) When counties create a public defender office, the board of supervisors can choose to have an elected or appointed public defender. (Gov. Code, § 27702.) An appointed public defender serves at the will of the board of supervisors, which means the board can remove them for any reason. (Gov. Code, § 27703.) By contrast, county counsels who are also appointed by the board of supervisors only can be removed by the board of supervisors for neglect of duty, malfeasance or misconduct in office, or other good cause. (Gov. Code, § 27641, subd. (b).)

This bill limits the board of supervisors' ability to remove a public defender from office except for neglect of duty, malfeasance or misconduct in office, or other good cause. By requiring some cause for removal of a public defender, this bill arguably helps achieve fuller fidelity to the constitutional right to counsel.

4) **Public Employment and Property Interests:** This bill would change the ability of boards of supervisors to remove a county public defender from at-will to only for removable for specified causes. This could create a property interest in the job for the public defender. Creating a property interest in the job could require counties to provide due process protections to public defenders, even with documented evidence of good cause.

The Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures. (*Cleveland Bd. of Educ. V. Loudermill* (1985) 470 U.S. 532, 541.) Courts have found that "'the root requirement' of the Due Process Clause is 'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.'" (*Id.* at p. 542.) In determining whether a government job creates a property interest, the proper inquiry involves analyzing the expectations created by the law and the customs surrounding the position. (See *Bishop v. Wood* (1976) 426 U.S. 341, 353-54.) One court found the Constitution's procedural due process requirement satisfied where the employee had access to the material upon which the charge was based and the employee could then respond orally and in writing and present rebuttal affidavits. (See *Arnett v. Kennedy* (1974) 416 U.S. 134.)

This bill could create a property interest in the position of county public defender because the language of the bill would create a statutory expectation of continued employment, absent a showing of good cause for removal. (See *Arnett,* supra, at pp. 151-52 ["appellee did have a statutory expectancy that he not be removed other than for [stated] cause."].) The Court noted that by passing the law at issue in the case, "Congress was obviously intent on according a measure of statutory job security to governmental employees which they had not previously enjoyed." (*Id.* at p. 152.) This bill largely would do the same thing for similar reasons by requiring additional job security for county public defenders that the current law does not provide. Whether there is evidence of custom is less clear as current California law makes public defenders at-will employees, while some other municipal public attorneys have a history of removal only for cause. (See Gov. Code, § 27703, *cf.* Gov. Code, § 27641.)

There are also potential concerns with holding the position of public defender that create potential risks for being able to provide to their clients independent, zealous, and unconflicted counsel. These concerns add potential support for the bill creating a property interest in the position of county public defender. The Court has said, "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." (*Roth*, supra, at p. 573.) It went on to note that where discharge from a job "imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities" there is a heightened need for due process protections to refute allegations of impropriety. (See *ibid.*)

The Court's decisions generally proscribe summary dismissal from public employment without hearing or inquiry required by due process. (*Id.* at p. 576.) California's Supreme Court held that a permanent public employee may not be dismissed or even disciplined by the appointing authority or authorized representative by simply notifying the employee that the adverse action was being taken, if that notice does not then include an opportunity to respond to the grounds forming the adverse action. (See *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194, 202.) By modifying how public defenders can be removed, this bill may create a constitutional property interest in the county public defender position. It is unclear whether this change would address concerns regarding the level of independence that is currently inherent in these roles.

5) **Argument in Support**: According to the *California Public Defenders Association (CDPA),* The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, defense social workers, and investigators, is pleased to sponsor Senate Bill 485 (Reyes). This bill protects the independence of chief public

defenders who are appointed by county Boards of Supervisors by ensuring that they can only be removed from office by a 3/5 vote of the Board for neglect of duty, malfeasance or misconduct in office, or other good cause. This affords chief public defenders the same protections that are currently in place for county counsels.

In order to be effective, chief public defenders must have independence. Public defenders have a duty to their clients, guaranteed by the Constitution, that is unique among county agencies; it is this duty that must guide every decision that public defenders make. They need the freedom to take unpopular stances, to advocate for those who may not be politically popular, and to occasionally draw the ire of other county departments, or even the members of the Board of Supervisors who appointed them. A public defender who fears losing their job if they take up controversial causes cannot adequately fight for their office or for their clients.

Currently, Government Code Section 27703 states that a public defender who is appointed by a county's Board of Supervisors shall "serve at its will." This stands in stark contrast to the protections afforded by Government Code Section 27641 to another, similarly situated, county department head: county counsel. SB 485 seeks to correct this anomalous discrepancy; it mirrors the language of Government Code Section 27641, and gives public defenders the same protection that county counsels currently enjoy.

In this time of arbitrary terminations and political retribution, it is more important than ever to protect the independence and integrity of civil servants, particularly those entrusted with protecting Constitutional rights.

6) **Argument in Opposition**: According to the *California State Association of Counties (CSAC),* "On behalf of the California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), we write to respectfully express our joint opposition to SB 485, unless amended to include provisions that offer essential checks and balances regarding the appointment and removal of board of supervisors-appointed county public defenders.

"SB 485 proposes to change the public defender's employment status from at-will to one in which removal may only occur by a majority vote of the local board of supervisors and only for neglect of duty, malfeasance, misconduct in office, or other good cause. While we understand and respect the underlying objective to ensure independence in this important role, we believe the bill, as currently written, lacks key structural safeguards. Our request for amendments is rooted in principles of good governance, organizational consistency, and process clarity – standards that we would be seeking to accompany statutory changes in the employment status for any appointed county department head.

"Specifically, CSAC, UCC, and RCRC are respectfully requesting amendments that would:

- Establish a defined term of office such as the four-year term outlined in Government Code section 27640 for county counsel; and
- Set forth a clear process for judicial review should a public defender contest their removal from office.

"CSAC, UCC, and RCRC are concerned about the long-term implications of a perpetual

appointment if it is not paired with routine performance oversight or a structured review process. These additional elements are needed to ensure that all department heads are held to the same standards to meet their various responsibilities adequately. Public accountability is an essential element of county governance, and it is both reasonable and prudent to provide clear procedures in the event of a contested termination."

7) **Related Legislation**: AB 690 (Schultz), would revise the process and require a county or court, when contracting for the provision or administration of indigent defense services, to include certain elements in the contract or other agreement for indigent services, including requirements for compliance with the California Standards for Contract and Panel Defense Systems. This bill is pending hearing in the Senate Appropriations Committee.

8) **Prior Legislation**:

   a) AB 1209 (Jones-Sawyer), of the 2023-24 Legislative Session, would have created representation to commence as soon as feasible after being notified of a person's arrest, but in any case within 24 hours after booking or sufficiently before the arraignment to allow the provision of meaningful representation, as specified. This bill was held in the Assembly Appropriations Committee.

   b) SB 1117 (Becker), Chapter 615, Statutes of 2022, authorizes the State Public Defender to administer and award grants to improve indigent defense services.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

ACLU California Action
California Public Defenders Association
California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
Initiate Justice
Local 148 LA County Public Defenders Union
Oakland Privacy
Smart Justice California, a Project of Tides Advocacy

**Opposition**

California State Association of Counties (CSAC)
Rural County Representatives of California (RCRC)
Urban Counties of California (UCC)

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

Date of Hearing: July 15, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 497 (Wiener) – As Amended May 23, 2025

**SUMMARY:** Creates two misdemeanors related to misuse of the state's prescription drug monitoring program (PDMP), prohibits other improper sharing of PDMP data, and prohibits the Department of Justice (DOJ) from providing PDMP data to out-of-state law enforcement absent a warrant, subpoena, or court order. Specifically, **this bill**:

1) Prohibits a state or local agency or employee, appointee, officer, contractor, or official or any other person acting on behalf of a public agency from knowingly providing any Controlled Substance Utilization Review and Evaluation System (CURES) data or knowingly expending or using time, money, facilities, property, equipment, personnel, or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil, criminal, or disciplinary liability upon the provision or receipt of legally protected health care activity. Specifies that this prohibition does not prohibit the investigation of any activity that is punishable as a crime under the laws of this state so long as CURES data related to any legally protected health care activity is not knowingly shared with any individual or entity from another state.

2) Prohibits an out-of-state authorized user who obtains CURES data through the interstate data sharing hub from providing any CURES data in furtherance of any investigation or proceeding seeking to impose civil, criminal, or disciplinary liability upon the provision or receipt of legally protected health care activity.

3) Prohibits DOJ from providing CURES data to out-of-state law enforcement absent a warrant, subpoena, or court order, as specified.

4) Provides that any person who accesses the CURES database and who is not authorized by law to do so is guilty of a misdemeanor. Specifies that this offense is not applicable to a provider of health care that is subject to applicable state and federal medical privacy laws.

5) Provides that any person authorized by law to access the CURES database and who knowingly furnishes the information from the CURES database to a person who is not authorized by law to receive that information is guilty of a misdemeanor. Specifies that this offense is not applicable to a provider of health care that is subject to applicable state and federal medical privacy laws.

6) Prohibits, under the CMIA, a provider of health care, a health care service plan, or a contractor from releasing medical information relating to person seeking or obtaining gender-affirming health care or gender-affirming mental health care in response to any subpoena or request, including a foreign subpoena, based on another state's law that interferes with an individual's right to seek or obtain gender-affirming health care or gender-affirming mental

health care.

7) Prohibits, under the Confidentiality of Medical Information Act (CMIA), a provider of health care, health care service plan, contractor, or an employer from cooperating with any inquiry or investigation by, or providing medical information to, any individual, agency, or department from another state or, to the extent permitted by federal law, to a federal law enforcement agency that would identify an individual and that is related to an individual seeking or obtaining gender-affirming health care or gender-affirming mental health care that is lawful under the laws of this state.

8) Specifies that the provisions of the bill pertaining to the CMIA do not prohibit compliance with the investigation of an activity that is punishable as a crime under the laws of this state.

9) Prohibits a subpoena from being issued if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to seek or obtain gender-affirming health care or gender-affirming mental health care.

10) Prohibits an authorized attorney from issuing a subpoena pursuant to a foreign subpoena if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to seek or obtain gender-affirming health care or gender-affirming mental health care.

**EXISTING LAW**:

1) Provides that each state shall give full faith and credit to the public acts, records, and judicial proceedings of every other state, and that Congress may prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof. (U.S. Const., art. IV, § 1.)

2) Establishes privacy protections for patients' protected health information and generally provides that a covered entity, as defined (including a health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. §§ 164.500 *et seq.*)

3) Provides that all people have inalienable rights, including the right to pursue and obtain safety, happiness, and privacy. (Cal. Const., art. I, §1.)

4) Classifies controlled substances into five schedules according to their danger and potential for abuse. (Health & Saf. Code, §§ 11054-11058.)

5) Classifies testosterone as a Schedule III controlled substance. (Health & Saf. Code, §11056, subd. (f)(30).)

6) Authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under their treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. (Bus. & Prof. Code, § 2241.5, subd. (a).)

7) Establishes the CURES, a PDMP maintained by DOJ. Provides that the purpose of CURES is to assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, and law enforcement and regulatory agencies in controlling diversion and abuse of Schedule II, III, IV, and V controlled substances and for statistical analysis, education, and research. (Health & Saf. Code, § 11165, subd. (a).)

8) Requires pharmacists and other dispensers to report information relating to prescriptions of Schedule II, III, IV, and V controlled substances to CURES as soon as reasonably possible but not more than one working day after the date a controlled substance is dispensed. (Health & Saf. Code, § 11165, subd. (d).)

9) Requires CURES to operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Provides that data obtained from CURES can only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by DOJ, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. (Health & Saf. Code, § 11165, subd. (b)(2)(A).)

10) Requires DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES. (Health & Saf. Code, § 11165, subd. (b)(2)(A).)

11) Requires DOJ to adopt regulations regarding the access and use of the information within CURES no later than January 1, 2021. (Health & Saf. Code, § 11165, subd. (c)(3).)

12) Authorizes DOJ to enter into an agreement with an entity operating an interstate data sharing hub, or an agency operating a PDMP in another state, for purposes of interstate data sharing of PDMP information. (Health & Saf. Code, § 11165, subd. (h)(1).)

13) Provides that data obtained from CURES may be provided to authorized users of another state's PDMP, as determined by the department, if the entity operating the interstate data sharing hub, and the PDMP of that state, as applicable, have entered into an agreement with the department for interstate data sharing of PDMP information. (Health & Saf. Code, § 11165, subd. (h)(2).)

14) Requires that an agreement entered into by the department for purposes of interstate data sharing of PDMP information ensures that all access to data obtained from CURES and the handling of data contained within CURES comply with California law, including regulations, and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES. (Health & Saf. Code, § 11165, subd. (h)(3).)

15) Requires the CURES database to comply with all applicable federal and state privacy and security laws and regulations. Requires the DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES. (Health & Saf. Code, § 11165, subd. (c).)

16) Prohibits, under the CMIA, providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civ. Code, § 56 et seq.)

17) Prohibits a clerk of a superior court in the county in which discovery in a foreign action is sought from issuing a subpoena for discovery in this state based on a foreign subpoena if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care or gender-affirming mental health care. (Civ. Code Proc., § 2029.300, subd. (e)(1).)

18) Sets forth a subpoena process by which a witness may be required to appear before a court or magistrate in a criminal action, which may include a subpoena compelling the production of records or other documents. (Pen. Code, § 1326.)

19) Prohibits a provider of health care, health care service plan, or contractor from releasing medical information related to a person or entity allowing a child to receive gender-affirming health care or gender-affirming mental health care in response to any foreign subpoena that is based on a violation of another state's laws authorizing a criminal action against a person or entity that allows a child to receive gender-affirming health care or gender-affirming mental health care. (Pen. Code, § 1326, subd. (c).)

20) Enumerates, under the Interstate and International Depositions and Discovery Act, the procedure for obtaining discovery in California for a civil case pending in a jurisdiction outside of California. (Code Civ. Proc., § 2029.100 et seq.)

21) Prohibits a subpoena from being issued pursuant to the Interstate and International Depositions and Discovery Act if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care or gender-affirming mental health care. (Code Civ. Proc., § 2029.300, subd. (e)(1).)

22) Prohibits an authorized attorney from issuing a subpoena if the foreign subpoena is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care or gender-affirming mental health care. (Code Civ. Proc., § 2029.350, subd. (b)(1).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "California must strongly reject Trump's disgusting efforts to distract from his own incompetent failures by demonizing our transgender neighbors. The President is attempting to eliminate trans people's very existence in the eyes of the law, and he has made clear he is willing to violate laws and norms to target them. We must do all we can to prevent him, his lawless administration, and his cruel extremist allies from abusing Californians' sensitive medical information.

   "Senate Bill 497 recognizes California's role in prioritizing the safety of those seeking gender affirming health care by:

1) Requiring warrants for law enforcement requests through the state's healthcare database;
2) Establishing that accessing and knowingly sharing health data from state database without a warrant to unauthorized parties is punishable as a misdemeanor; and
3) Expanding California's transgender shield laws to prohibit health care providers from complying with subpoenas requiring the disclosure of medical information related to gender-affirming health care; and
4) Stating intent to protect teachers affirming of trans youth."

2) **CURES:** A PDMP is "an electronic database that tracks controlled substance prescriptions in a state. PDMPs can provide health authorities timely information about prescribing and patient behaviors."[1] Forty-nine states currently have monitoring programs (Missouri is the only state currently without a PDMP). Of the 50 programs throughout the nation, only four are housed at the state's DOJ, 17 are housed at a state Department of Health or substance abuse agency, 19 are housed at a state Board of Pharmacy, and 7 are housed state professional licensing agency.[2] California is one of only four states that houses its PDMP within a law enforcement agency.

*CURES.* The CURES database was first established in 1996 as a "technologically sophisticated" database containing prescription records collected through California's Triplicate Prescription Program, which provided the DOJ with copies of all Schedule II drug prescriptions. Subsequent legislation made CURES the state's sole prescription record repository and added Schedule III, IV, and V drugs to the database. In 2008, CURES was upgraded to function as a PDMP, allowing health professionals, regulators, and law enforcement to conduct web-based searches of the system to inform prescribing practices and support investigations.

Budget problems later plagued the database as the elimination of the DOJ's Bureau of Narcotics Enforcement effectively defunded the CURES program. Users of the system complained that the PDMP offered insufficient client support and was plagued with technical issues. In response, Attorney General Kamala Harris sponsored legislation to overhaul the database with revenue newly derived from a license fee charged to healing arts professionals. The resulting system, commonly referred to as "CURES 2.0," was considered to be a significantly improved, state-of-the-art tool for addressing the abuse and diversion of opioids and other prescription drugs.

Every dispenser of controlled substances and every health practitioner authorized by the DEA to prescribe controlled substances is required to obtain a login for access to CURES. For each dispensed Schedule II, III, IV, or V drug, pharmacists are required to report basic information about the patient and their prescription within one working day. This information is then made available to other system users in a variety of possible contexts. For example, physicians may query a patient's prescription history prior to writing a new prescription; pharmacists can check the system before agreeing to fill a prescription for a

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[1] https://www.cdc.gov/drugoverdose/pdmp/states.html.)
[2] http://www.pdmpassist.org/content/prescription-drug-monitoring-frequently-asked-questions-faq

controlled substance; regulators may review a licensee's prescribing practices as part of a disciplinary investigation; and law enforcement can incorporate a search of the system into a potential criminal case of drug diversion.

The vast majority of these searches (over 99%) are made by prescribers and dispensers seeking to review a patient's prescription history as a component of exercising informed clinical judgment before providing access to opioids or other controlled substances. As of October 2018, health practitioners are required to consult the CURES database prior to writing a prescription for a Schedule II, III, or IV drug for the first time, and then at least once every six months as long as the prescription continues to be renewed. There are a number of existing exceptions to this requirement, including exemptions for pharmacists, veterinarians, and prescribers working in specified settings.

*Placement of CURES Database.* California is one of only four states that houses its PDMP within a law enforcement agency. This is because the database traces its origins back to the TPP, created in 1939 within the Bureau of Narcotics Enforcement, which was principally considered a tool for law enforcement to investigate cases of criminal drug diversion. The earliest iterations of prescription monitoring in California were not available to health professionals, but served to aid law enforcement in cracking down on illicit drug activity.

As national attention to combatting the opioid crisis has grown, experts have established that abuse and addiction are best addressed through a public health lens, rather than through criminal prosecution. While regulatory investigators and local law enforcement may still utilize PDMP data, prescription drug misuse and diversion by patients should be treated by medical professionals rather than stigmatized as a chiefly criminal concern. This paradigm shift has led most states away from housing their PDMPs within a justice department, with some states having transitioned their own databases away from their Department of Justice in recent years.

Most states house their PDMP within either their state's health department or a licensing agency. Over half of all states currently have their PDMP within either their Board of Pharmacy or their licensing department (equivalent to the Department of Consumer Affairs (DCA) in California). The majority of other states house their PDMP within either their Department of Health or their Department of Human Services. While proposals have been introduced to relocate California's CURES database from the DOJ to another department, none have been successful and DOJ continues to operate the system.

*Privacy and Security of CURES Data.* A number of state and federal privacy laws apply to information contained in CURES. This includes the federal Health Insurance Portability and Accountability Act (HIPAA), the California Medical Information Act, and the Information Practices Act. Whether law enforcement use of the system implicates the Fourth Amendment's protections against unreasonable searches has historically been a topic of discussion. In 2017, the Supreme Court of California ruled in *Lewis v. Superior Court* that privacy interests are justified by the state's interest in preventing drug diversion.

CURES access is also subject to specific privacy and security regulations that have evolved as the state has modernized and expanded its PDMP. In 2013, SB 809 required the DOJ to develop regulations to implement access and use protocols for CURES, which DOJ formally promulgated in 2016. These regulations established clear standards for system access, data

use, user eligibility, and interagency and interstate data sharing. In 2018, Assembly Bill 1751 (Low) mandated the DOJ to adopt additional regulations governing access to and use of CURES information. These regulations, effective July 1, 2020, delineate additional processes for approving or denying access requests, specify permissible purposes for health care practitioners to access CURES, establish protocols for using CURES data in education, research, or peer review, and outline conditions under which law enforcement must obtain warrants or subpoenas to access CURES data as part of an investigation into a patient or prescriber.

*Interstate PDMP Datasharing.* Currently, all 50 states and the District of Columbia have some form of PDMP. Many of these states participate in one of several interstate data share hubs that allow for the exchange of prescription information. For example, the National Association of Boards of Pharmacy administers PMP InterConnect, a technology solution developed in partnership with Bamboo Health that currently connects 48 state PDMPs. Another interstate data share hub, RxCheck, has historically been operated by the federal Bureau of Justice Assistant using Prescription Monitoring Information Exchange National Architecture specifications developed by a PDMP Training and Technical Assistance Center housed within Brandeis University.

As of April, 2025, California does not participate in any major interstate data share hubs. AB 1751 was enacted in 2018 to authorize, but not require, the DOJ to share prescription records between the CURES PDMP and other databases across state lines, with a requirement that other states meet California's patient privacy and data security standards. To date, DOJ has not reached an agreement to share prescription data with PMP InterConnect or RxCheck in a manner consistent with California's privacy and security requirements. However, DOJ does currently have a direct interstate data-sharing agreement with the State of Oregon, which allows for prescription data to be shared between CURES and Oregon's PDMP.

*Federal vs. State Controlled Substances Scheduling.* The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a DEA registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Schedule I drugs may not be prescribed by any health practitioner in the United States. Examples of Schedule I drugs include cannabis, LSD, peyote, heroin, and ecstasy.

California also has its own schedule of controlled substances under the Uniform Controlled Substances Act. While the federal and state schedules are typically aligned in regards to how medications are classified, there have been conflicts between the federal and state acts, typically when the federal government reschedules a substance or exempts a specific drug from the Controlled Substances Act. When this occurs, statute in California typically must be legislatively amended to reconcile the differences.

For purposes of reporting to the CURES database, subdivision (d) of Section 11165 of the Health and Safety Code specifically references the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and 1308.15, respectively, of Title 21 of the Code of Federal Regulations. This would mean that if the federal government were to add a drug like mifepristone to a schedule within the federal

Controlled Substances Act that is not currently considered a controlled substance in California, prescriptions for that drug would be required for reporting to CURES. Meanwhile, testosterone is listed as a Schedule III substance in both the state and federal acts.

3) **Full Faith and Credit Clause**: This bill implicates the U.S. Constitution's Full Faith and Credit Clause which provides that full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state. (U.S. Const. art. IV, § 1.)

Generally, the laws of the state regulate conduct that occurs within that state. However, situations may arise where more than one state's laws may apply such as the collection of previously-owed income taxes or child support obligations from another state. The purpose of the Full Faith and Credit Clause "is to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." (*Baker v. General Motors Co.* (1998) 522 U.S. 222, 232 (citing *Milwaukee County v. M. E. White Co.* (1935) 296 U.S. 268, 277).)

The U.S. Supreme Court has held that even when criminal conduct takes place outside of the state, extraterritorial jurisdiction may be proper when the conduct was intended to produce or did produce harmful effects within the state. (*Strassheim v. Daily* (1911) 221 U.S. 280.)

The U.S. Supreme Court has also made a distinction between the strength of the Full Faith and Credit Clause's applications to judgments versus state law:

> The Full Faith and Credit Clause does not compel "a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. (*Baker v. General Motors Co.*, *supra*, 522 U.S. at 232-233.) (Internal citations omitted.)

This concept is often referred to as the "public policy exception" meaning that a statute in one state is given effect only if it does not contravene the public policy of the other state. If this bill were enacted and challenged based on a violation of the Full Faith and Credit Clause, California could argue that enforcing the criminal statutes of another state regarding gender-affirming care is contrary to the public policy of this state.

4) **Argument in Support**: According to *Equality California*, "Since his first day in office, President Trump has waged an unprecedented attack on the rights, safety, and dignity of transgender Americans. The Trump administration is systematically dismantling legal recognition of transgender and nonbinary people across the federal government and rolling back critical protections in healthcare, education, housing, and public life. Now, more than ever, it is crucial for California to remain a safe haven for the transgender community, ensuring their privacy and access to essential health care are protected against growing threats from hostile out-of-state actors.

"SB 497 builds upon the foundation set by SB 107 (Wiener, 2022) by addressing a major vulnerability – the potential access and misuse of sensitive patient medical data through California's Prescription Drug Monitoring Program (PDMP), also known as the Controlled Substance Utilization Review and Evaluation System (CURES). The CURES database contains information on Schedule II, Schedule III, Schedule IV, and Schedule V controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

Existing law provides the authority for CURES data sharing between authorized law enforcement entities and law enforcement in other states if California's Department of Justice (DOJ) enters into an agreement with other states. Specifically, a law enforcement officer may obtain CURES reports, including a "Patient Activity Report" and a "Prescription History Report." A CURES Patient Activity Report contains highly sensitive information, including patient first name, patient gender, patient address, prescriber name, pharmacy name and prescriber address. This presents privacy and safety issues for both health care providers and patients when out-of-state law enforcement pull an activity report in attempts to prosecute people receiving care that is legal in California.

A recent study found that in nearly half of U.S. states, law enforcement can access testosterone prescription records through PDMPs without basic safeguards – such a warrant or subpoena.

"Shockingly, California is among those states lacking these strong privacy protections. Because testosterone is commonly prescribed for gender-affirming care, this loophole creates significant risks for transgender individuals and their health care providers.

"SB 497 takes crucial steps to address these concerns by:

- Prohibiting out-of-state law enforcement from accessing prescription data in CURES absent a warrant, subpoena, or court order;
- Establishing that accessing and knowingly sharing prescription data from CURES without a warrant to unauthorized parties is punishable as a misdemeanor; and
- Expanding California's existing transgender shield laws to prohibit health care providers from complying with subpoenas requiring the disclosure of medical information related to gender-affirming health care.

"SB 497 ensures that transgender individuals and their families seeking refuge in our state receive the privacy, dignity, and protections they deserve."

5) **Argument in Opposition**: According to *Concerned Women for America*, "Science has shown that puberty blockers and cross-sex hormones for young children are experimental and cause irreversible damage. HHS 2025 Report on Treatment for Pediatric Dysphoria confirms there is no evidence that hormones reduce youth suicide, that depression and anxiety persist after medical transition, and that cross-sex hormones cause infertility and cognitive damage.

"Preventing disclosure of information about these experimental procedures prevents holding

providers accountable and directly undermines legitimate concerns for child welfare. This bill also undermines the rule of law that shields harmful medical interventions from scrutiny.

"SB 497 advances the gender ideology but does nothing to protect children. This bill is in direction [sic] opposition and contradiction of multiple European countries and over 20 states that have banned medical transition for minors. There is no science to trust and children should not be in the hands of medical experimenters to further a specific ideology and agenda."

**6) Related Legislation**: AB 82 (Ward) would expand existing protections for reproductive health care services to include gender-affirming health care services. AB 82 is pending hearing in the Senate Appropriations Committee.

7) **Prior Legislation**:

a) SB 107 (Wiener), Chapter 810, Statutes of 2022, enacted various safeguards against the enforcement of other states' laws that purport to penalize individuals from obtaining gender-affirming care that is legal in California.

b) AB 2091 (Bonta), Chapter 628, statutes of 2022, prohibited providers, health care service plans, contractors, employers from releasing medical information related to abortion services or information related to a person allowing a minor to receive gender-affirming health care and gender-affirming mental health care in response to a subpoena/investigation-related request seeking to impose liability under another state's law for an abortion lawful in CA or for allowing minor to receive gender-affirming health care and gender-affirming mental health care, among other provisions.

c) AB 1666 (Bauer-Kahan), Chapter 42, Statutes of 2022, prohibited California courts from applying another state's laws authorizing civil action for receiving, seeking, providing, and/or aiding abortion in deciding the cases before them or from enforcing civil judgments under those laws, and thus designates those laws contrary to California public policy, among other provisions.

d) AB 528 (Low), Chapter 677, Statutes of 2019 reduced the required timeframe in which pharmacists are required to report dispensed prescriptions to CURES from seven days to the following business day, added Schedule V drugs to CURES, and changed the requirement for health practitioners to continue consulting the CURES database from every four months to every six months beginning July 1, 2021.

e) AB 1751 (Low), Chapter 478, Statutes of 2018, authorized DOJ to share prescription records between the state's PDMP, CURES, and other databases across state lines, with a requirement that other states meet California's patient privacy and data security standards.

f) SB 54 (De León), Chapter 495, Statutes of 2017, enacted the California Values Act, which further limits the involvement of state and local law enforcement agencies in federal immigration enforcement.

g) AB 40 (Santiago), Chapter 607, Statutes of 2017, required DOJ to make electronic prescription drug records contained in its CURES accessible through integration with a

health information technology system, if that system meets certain information security and patient privacy requirements.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Alice B. Toklas Lgbtq Democratic Club
Alliance for Trans Youth Rights
Alliance for Transyouth Liberation
American Academy of Pediatrics, California
American College of Obstetricians & Gynecologists - District Ix
Api Equality-la
Asian Americans Advancing Justice-southern California
Board of Behavioral Sciences
California Academy of Family Physicians
California Association for Nurse Practitioners
California Chapter of the American College of Emergency Physicians
California Civil Liberties Advocacy
California Legislative Lgbtq Caucus
California Lgbtq Health and Human Services Network
California Medical Association (CMA)
California Psychological Association
California Teachers Association
Calpride
Calpride Valle Central
Cft- a Union of Educators & Classified Professionals, Aft, Afl-cio
Children Now
City of San Jose
Community Clinic Association of Los Angeles County (CCALAC)
County Behavioral Health Directors Association, (CBHDA)
Courage California
Culver City Democratic Club
Disability Rights California
Easterseals Northern California
El/la Para Translatinas
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Equality California
Family Violence Appellate Project
Goleta West Sanitary District
Gusd Parents for Pubic Schools
Health Access California
Hmong Innovating Politics
Indivisible San Francisco
LA Defensa
Lgbtq+ Inclusivity, Visibility, and Empowerment (LIVE)
Los Angeles Lgbt Center
National Health Law Program

Oakland Privacy
Oasis Legal Services
Our Family Coalition
Pflag Los Angeles
Pflag Oakland-east Bay
Pflag Sacramento
Pflag San Jose/peninsula
Planned Parenthood Affiliates of California
Pride At the Pier
Rainbow Families Action Bay Area
Sacramento Lgbt Community Center
San Francisco Aids Foundation
San Francisco Marin Medical Society
Santa Monica Democratic Club
Secure Justice
Seneca Family of Agencies
The Translatin@ Coalition
Transfamily Support Services
Viet Rainbow of Orange County
Western Center on Law & Poverty, INC.
2 private individuals

**Oppose**

California Baptist for Biblical Values
California Family Council
Cause: Californians United for Sex-based Evidence in Policy and Law
Concerned Women for America
Lighthouse Baptist Church
1 private individual

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 562 (Ashby) – As Amended July 8, 2025

**SUMMARY:** Requires a court to order a refund to an arrestee or defendant of any money paid to a licensed bail surety agent within 30 days in specific circumstances. Specifically, **this bill**:

1) Requires a court to order a refund of the bail premium paid to a bail bond company under any of the following circumstances:

    a) The prosecuting agency files a motion to dismiss a complaint or indictment within 21 days of the defendant's original arraignment, and the defendant's bond has been exonerated.

    b) The prosecuting agency fails to file charges within 21 days of the posting of the arrestee's bail surety bond and the arrestee has not missed any court appearances where the arrestee's presence is mandatory, and the arrestee's bond has been exonerated.

2) Provides that for an arrestee that is not charged within 21 days, the court shall order the licensed bail surety agent to provide a refund to the entities or persons who were billed the money or property of an amount equal to any bail premium paid, less an administrative reimbursement equal to two percent of the bond liability amount and the premium tax paid to the state by a licensed surety company in connection with the posting of the bond.

3) Provides that for a defendant who has their case dismissed within 21 days, the court shall order the licensed bail surety agent to provide a refund to the entities or persons who were billed the money or property of an amount equal to any bail premium paid, less an administrative reimbursement for an amount equal to two percent of the bond liability amount and the premium tax paid to the state by a licensed surety company in connection with the posting of the bond.

4) Specifies that a court shall order a return of money or property only for a bail surety bond entered into on or after January 1, 2026.

5) Contains a severability clause.

**EXISTING LAW**:

1) Prohibits excessive bail. (U.S. Const., 8th Amend. & Cal. Const., art. I, § 12.)

2) States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great:

a) Capital crimes;

b) Felonies involving violence or sexual assault if the court finds by clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or,

c) Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, § 12.)

3) States that in setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of their appearing at the trial or hearing of the case; public safety and the safety of the victim shall be the primary considerations. (Cal. Const., art. I, § 28, subd. (f)(3).)

4) Requires the court to consider the safety of the victim and the victim's family in setting bail and release conditions for a defendant. (Cal. Const., art. I, § 28, subd. (b)(3).)

5) Provides that the Judicial Council shall adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. (Cal. Const., art. VI, § 6, subd. (d).)

6) Requires the superior court judges in each county to prepare, adopt, and annually revise a uniform, countywide bail schedule. (Pen. Code, § 1269b, subd. (c).)

7) Specifies if a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved. (Pen. Code, § 1269b, subd. (b).)

8) Provides that an arrested person must be taken before the magistrate with 48 hours of arrest, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a).)

9) Authorizes the officer in charge of a jail, or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, the bail schedule, or an order admitting to bail in case or surety bond, and to issue and sign an order for the release of the arrested person, and to set a time and place for the person's appearance in court. (Pen. Code, § 1269b, subd. (a).)

10) States that if a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, the officer shall file a declaration with the judge requesting an order setting a higher bail. (Pen. Code, § 1269c.)

11) Allows a defendant to ask the judge for release on bail lower than that provided in the schedule of bail or on his or her own recognizance and states that the judge is authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. (Pen. Code, § 1269c.)

12) Provides that, after a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. (Pen. Code, § 1289.)

13) States if money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders [themselves] to the officer to whom the commitment was directed, as specified, the court shall order a return of the deposit to the defendant or to the person or persons found by the court to have deposited said money on behalf of the defendant, upon the production of the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate. (Pen. Code, § 1302.)

14) States if an action or proceeding against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal. If, within such period, the defendant is arrested and charged with a public offense arising out of the same act or omission upon which the action or proceeding was based, the bail shall be applied to that offense. If an undertaking of bail is on file, the clerk of the court shall promptly mail notice to the surety on the bond and the bail agent who posted the bond whenever the bail is applied to an offense, as specified. (Pen. Code, § 1303.)

15) Prohibits the release of a defendant on his or her own recognizance (OR) for any violent felony until a hearing is held in open court and the prosecuting attorney is given notice and an opportunity to be heard on the matter. (Pen. Code, § 1319.)

16) Specifies conditions for a defendant's release on OR. (Pen. Code, § 1318.)

17) Provides that a defendant released on bail for a felony who willfully fails to appear in court, as specified, is guilty of a crime. (Pen. Code, § 1320.5.)

18) Specifies that if an on-bail defendant fails to appear for any scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor within 30 days, or the defendant is brought before the court within 180 days. (Pen. Code, § 1305, subds. (a) & (b).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "SB 562 is a financial justice bill. This bill allows a person to receive a refund from a bail bond company if: 1) the person uses a bail bond agency to secure their release and 2) no charges are filed by the prosecuting agency within 21 days of the posting of the bond, or the charges are dismissed within 21 days of the arraignment hearing.

   "Under current law, when no charges are filed or charges are dismissed, the person who uses a bail bond company to secure their release does not get any of their money back. SB 562 simply seeks to remedy this very narrow and unjust circumstance by allowing the person to receive their bonded money back, excluding state tax and administration fees, equal to 2% of the surety bond paid, by the bail bond company."

2) **Bail Generally:** In California, bail is a constitutional right except when the defendant is charged with: (a) a capital crime; (b) a felony involving violence or sex and the court finds that the person's release would result in great bodily harm to another; or (c) when the defendant has threatened another and the court finds it likely that the defendant might carry out that threat. The constitution also allows for an arrestee to be released upon a written promise to appear, known as release on own recognizance. The constitution prohibits excessive bail. (Cal. Const. art. I, § 12.)

   Courts require many defendants to deposit monetary bail in order to be released from custody. Bail is intended to act as a financial guarantee to the court that the defendant will appear for all required court hearings. An arrestee may post bail with his or her own cash, or may post bail using a bail bond.

   Currently, each county sets a bail schedule based exclusively on the charged offense. The bail schedule is used by the arresting officer to allow an arrestee to post bail before their arraignment. Once a defendant is brought before the court, there must be an individualized determination of the appropriate amount of bail, or if a defendant is eligible for a recognizance release. The defendant, or someone acting on their behalf, may deposit cash with the court in lieu of obtaining a bail bond. The cash must be the sum fixed by the bail order or schedule. Jailers are also authorized to accept cash. However, the clerk of the court may not accept a general assistance check for any part of the deposit. (See Pen. Code, § 1295, subd. (c).)

   If a bail bond is posted by a surety (bail agency), it remains in effect until the completion of the pronouncement of judgment or grant of probation or until a new bond is required due to an increase or a forfeiture of bail. (See *People v. Allied Fidelity Ins. Co.* (1978) 82 Cal. App. 3d 242, 246–247.) A bail bond is commonly provided by a commercial bonder, acting as an agent for an insurer. (See Ins. Code, § 1800 et seq.)

   The professional surety charges the defendant a nonrefundable fee, usually ten percent of the face value of the bond, and usually requires the defendant to post security. If the defendant is unable or unwilling to obtain a commercial bond, he or she may seek the aid of a private surety (third party individual with money). Such a surety must be a resident, householder, or freeholder within the state, and, at the court's discretion, within the county where the bail is offered. (Pen. Code, § 1279.)

Exoneration releasing the surety from obligations on the bail bond or deposit occurs after the defendant appears, as required. For example, if the defendant pleads guilty and is sentenced at a scheduled court state, the bond is exonerated. (See Pen. Code, § 1195.)

Bail is also exonerated when a case is dismissed unless the court orders the case resubmitted. A court must exonerate bail within 15 days after a court directs a complaint to be dismissed, unless the defendant is arrested and charged with a new offense arising out of the original act or omission. In such a case, the bail is applied against the new charge. (See Pen. Code, § 1302.)[1]

A bond may forfeited if a defendant fails to appear without justification. Thereafter, the defendant or the bail agent has 180 days to bring the defendant before the court or the bail amount posted by the surety is forfeited. (Pen. Code, § 1305, subd. (a).)

3) **Regulation of Bail Rates:** The amount a surety may charge for bail is set by the California Insurance Commissioner (CIC). According to the CIC website:

> Bail bonds are negotiated in several ways. Bail agents usually charge ten percent of the bail amount as the fee. For example, on a $25,000 bail the ten percent fee is $2,500. However, to become more competitive, a bail agent may choose to negotiate a lower fee by rebating, as allowed by Proposition 103. This is accomplished by calculating a lower fee percentage as a 'rebate' back to the bailee. Prevailing market conditions often dictate how much a bail agent must rebate in order to remain competitive. Thus, the amount of the fee can be lowered anywhere from an eight percent fee to a two percent fee (i.e., 8% of $25,000 is $2,000 and 2% is $500.) Some bail bond companies also offer "credit bail," where a down payment is made and partial payments are accepted until fully paid.[2]

The Bail Bond Regulatory Act was first adopted in 1937 and provided the statutory framework to regulate the bail bond business under the California Department of Insurance (CDI). The law also provided CDI with the authority to adopt administrative regulations. CDI's Licensing Services Division is responsible for licensing bail agents.

In 1988, the voters approved Proposition 103, an initiative measure entitled the Insurance Rate Reduction and Reform Act. Among other provisions affecting certain types of insurance, Proposition 103 imposed a rate rollback and required that any subsequent rate increase, prior to its use, be approved by the CIC. Section 8, subdivision (b) of Proposition 103 provides: "The provisions of this act shall not be amended by the Legislature except to further its purposes."

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[1] See generally, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.insurance.ca.gov/0400-news/0100-press-releases/archives/upload/California-Department-of-Insurance-An-Exploration-of-California-s-Bail-System-Overview-1-31-17.pdf

[2] *Ibid.*

Proposition 103 also requires a system wherein the CIC must approve a rate applied for by an insurer, known as the "prior approval" system, before an insurer can implement property and casualty insurance rates. The following lines of insurance are regulated by Proposition 103: Personal automobile, dwelling fire, earthquake, homeowners, inland marine, and umbrella; Commercial aircraft, automobile, boiler and machinery, burglary and theft, business owners, earthquake, farm owners, some fidelity, fire, glass, inland marine, medical malpractice, miscellaneous, multi-peril, other liability, professional liability, special multi-peril, umbrella, and coverage under the United States Longshoremen's & Harbor Workers' Compensation Act.

In 1995, the California Supreme Court struck down a bill that would have exempted surety companies from the requirements of Proposition 103. (See *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1265.) Accordingly, surety companies, including bail sureties, are subject to CIC rate-setting.

This bill arguably changes the rate set by the CIC of 10% and allows the payee to receive all but 2% back in specific circumstances. While that may act as a ceiling, not a floor, this bill may be a mandatory rate change in any case in which a defendant is not charged in a timely fashion or the charges are dismissed. Accordingly, this bill may violate the requirements of Proposition 103. According to the author, the Insurance Commissioner suggested this does not violate Proposition 103.

4) **Bail Reform Efforts:** There are a number of challenges in the money bail system. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. In short, those who have money have the ability to confront their criminal charges while free from confinement in county jail.

   Those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody. Prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether the person will return to court. The ability to be out of custody while facing criminal charges carries a number of inherent advantages. A defendant who is released on bail is able to carry on with his or her life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are not only able to maintain employment but they are also encouraged to do so. According to a 2023 Report issued by the California Penal Code Revision Commission:

   > "(1) Pretrial detention is often the single best predictor of case outcomes. It increases the likelihood of a conviction and the severity of a conviction and sentence while reducing future employment and access to social safety nets.[3]

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[3] California Committee on Revision of the Penal Code, 2023 Annual Report and Recommendations, p. 55.

(2) Rates of pretrial detention are higher on average for people of color and bail amounts are also consistently higher for Black and Latino defendants.[4]

(3) The severity of pretrial detention and cascading negative consequences from being incarcerated can often exert undue pressure on people held in custody to plead guilty.[5]

(b) According to the Prison Policy Initiative, pretrial detention has negative consequences for public safety. Any time spent in pretrial detention beyond 23 hours is associated with a consistent and significant increase in the likelihood of future re-arrest.[6]

(c) According to Advancing Pretrial Policy and Research, excessive conditions of pretrial release do not appear to reduce re-arrest rates, but instead unnecessarily subject people to technical violations and revocation of bail.[7]

A law requiring a 60-day automatic conditions review hearing for pretrial electronic monitoring was passed in Illinois in 2021.[8] Michigan has introduced comparable policy this session.[9]

The Budget Act of 2019 (AB 74 (Ting), Ch. 23, Stats. 2019) allocated $75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts.[10] The projects sought to increase the release of arrestees before trial in a safe and efficient manner, use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances, validate and expand the use of risk assessment tools, and assess any bias. In August 2019, the Judicial Council approved and distributed funding to the 16 pilot projects selected for participation in the Pretrial Pilot Program. By the conclusion of the pilot program, 14 of 16 pilot projects had implemented a court date reminder system which provides text message and phone call notifications to all individuals as pretrial release. Initial data showed that court appearances after the implementation of a court date reminder system increased significantly.

The final report on the Pretrial Pilot Program issued in 2023 suggested an overall positive impact of the program including increased pretrial release and a decrease in re-arrest rates for misdemeanors and felonies. The Budget Act of 2021 allocated ongoing funding to the

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[4] California Committee on Revision of the Penal Code, 2022 Annual Report and Recommendations, p. 66.
[5] California Committee on Revision of the Penal Code, 2023 Annual Report and Recommendations, p. 55.
[6] Prison Policy Initiative, "Releasing people pretrial doesn't harm public safety," July 6, 2023.
[7] Advancing Pretrial Policy and Research, Pretrial Research Summary: Pretrial Monitoring, p. 3.
[8] 2021 (Illinois State Legislature, HB 3653 (Public Act 101-0652), 101st General Assembly, 2021, ilga.gov/legislation/BillStatus.asp?DocNum=3653&GAID=15&DocTypeID=HB&LegId=120371&SessionID=108&GA=101).
[9] (Michigan State House of Representatives, House Bill 4656, 102nd Legislature, 2023, legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2023-HIB-4656.pdf).
[10] https://courts.ca.gov/sites/default/files/courts/default/2024-12/pretrial-pilot-program_final-report.pdf

Judicial Council for the implementation or expansion of pretrial programs in all California courts.

In 2021, the California Supreme Court also held that mere inability to afford bail is not a constitutional basis to hold a defendant pre-trial. The court in *In re Humphreys* held:

> "The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release—such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment—can in many cases protect public and victim safety as well as assure the arrestee's appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail—and may not effectively detain the arrestee "solely because" the arrestee "lacked the resources" to post bail. (*In re Humphrey* (2021) 11 Cal.5th 135, 143.)

While California continues to allow for money bail, it also has created alternate avenues for low-income defendants who do not pose a public safety risk to be released from custody without having to post any type of bail. Importantly, low income defendants often have no means to post bail at all. Low income defendants have to either remain in jail for the duration of their case or wait for arraignment and hope for an own recognizance release. This bill appears to more likely benefit arrestees that have the means to post bail before arraignment or who are able to post bail at all.

5) **SB 10 and 2020 Referendum:** SB 10 (Hertzberg), Chapter 244, Statutes of 2018 was signed into law on August 28, 2018. SB 10 eliminated cash bail in California. In its place, SB 10 created a risk-based non-monetary pre-arraignment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person's determined to be too high a risk to assure public safety if released.

A veto referendum to overturn the law was filed on August 29, 2018. On January 16, 2019, the California Secretary of State reported that the estimated number of valid signatures exceeded 110 percent of the 365,880 required signatures, putting the targeted law, SB 10, on hold until the November 2020 election. The referendum was identified as Proposition 25 on the ballot. A "Yes" vote indicated a preference to uphold the statutory changes made by SB 10 and end the use of cash bail in California.

Voters rejected SB 10 by a margin of 55% to 45%. The voters' veto of SB 10 maintained the existing structure of cash bail for criminal defendants in California. In the case of *Assembly v. Deukmajian*, the California Supreme Court provided the following guidance to the Legislature when it seeks to enact new legislation in an area where the voters have rejected an earlier legislative effort by means of a referendum:

> "Unless the new measure is 'essentially different' from the rejected provision and is enacted 'not in bad faith, and not with

> intent to evade the effect of the referendum petition,' it is invalid.'"[11]

In this case, this bill is likely substantially different than anything having to do with direct money bail. Rather, it just allows for the return of a bail surety if a defendant is not charged or charges are dismissed in a specific timeframe. However, despite admitted concerns with the discriminatory nature of money bail, the voters appear to approve of it.

In 2022, the Legislature again attempted to address bail. SB 262 (Hertzberg) would have proposed, in part, something similar to this bill but with a few important differences. First, SB 262 spent most of the Legislature year as requiring zero bail for all offenses except serious or violent felonies, violations of specified protective orders, stalking, looting, battery against a spouse, sex offenses and driving under the influence, among others. The proposed return of bail money language similar to this bill was just one part of that bill.

Additionally, SB 262 required a court to order a return of money or property paid to a bail bond company when an individual makes all court appearances in a criminal case charged in connection with the arrest or where no charges are filed within 60 days. However, it also stated that a bail bond licensee is entitled to retain a surcharge not to exceed 10 percent of the amount paid by the arrestee or on behalf of the arrestee. This bill is different in various ways including requiring return of all but a two percent administrative fee based on the bail liability.

This bill proposes to allow the surety to retain *"two percent of the bond liability amount."* The bond liability amount refers to the total coverage of the bond, the maximum amount payable by the surety if the principal defaults on their obligations. So, if the bail amount set by the court is $1,000 – a bond in California would likely be $100 (the amount the arrestee pays plus any needed collateral to make up the entire $1000). Under the terms of this bill, two percent of the bond liability amount would be two percent of $1000, or $20.

Therefore, this bill is quite a bit different than SB 262 (Hertzberg) which attempted to address the inequities and discrimination around bail generally in the criminal justice system.

6) **Marsy's Law:** In 2008, the voters passed Proposition 7, known as Marsy's Law, to enshrine victim rights into the California Constitution. Marsy's Law requires, among other things, that victims be consulted and have input in the criminal justice system. Section 28, subdivision (f) expressly deals with bail and pre-trial release and states:

> Public Safety Bail. **A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great.** Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the

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[11] *Assembly v. Deukmejian* (1982), 30 Cal.3d 638, 678 (citing *Reagan v. City of Sausalito* (1962), 210 Cal.App.2d 618, 629-631 and *Martin v. Smith* (1959), 176 Cal.App.2d 115, 118-119.

> probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.
>
> A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.
>
> Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.
>
> When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes. (Emphasis added.) (Cal. Const., art. 1, § 28, subd. (f)(3).)

According to several bail surety groups, the exoneration of bail and the return of any premium necessarily means the defendant is released from the care and custody of the surety and either returned to custody or released on their own recognizance, regardless of any public safety considerations.

Accordingly, this bill may violate the constitutional requirements of Marsy's Law because it does not require any hearing on the record as to whether a person's risk to public safety counsels against an own recognizance release. This bill only requires, in relevant part, that a person who is arrested not been charged within 21 days and made all their appearances. In most cases, however, when a person is released on bail, their subsequent court dates may be delayed more than a month to accommodate in-custody arraignments. It is not clear whether a defendant who bails out before being charged will be returned to court in less than 21 days. According to the California District Attorneys Association:

> It is not uncommon for prosecutor's offices to delay filing charges to conduct additional investigation and properly determine whether charges are legally warranted. Law enforcement and district attorney resource issues may also delay charging beyond the 21-day period contemplated in [this] bill. When these delays occur, arrestees who have posted bond, are released from custody, and then receive a letter to appear in court. When this letter is issued, the bail company has a vested interest in securing the defendant's appearance and will make efforts to do so. Under this bill, since the bond is exonerated after 21 days, bail companies will no longer have any interest in the case, and defendants will more frequently fail to appear in court due to both inadvertence and willful absence. This in turn will increase in the issuance of warrants and only add to the already huge backlog of unserved arrest warrants. Inevitably, [this] bill will serve to increase public safety risks and create more delays in the justice system…

6) **Possible Contracts Clause Issue:** The US Constitution states that "no state shall . . . pass any . . . law impairing the obligation of contracts." (U.S. Const., art. I, Sec. 10, cl. 1.) Similarly, the California Constitution states that "A . . . law impairing the obligation of contracts may not be passed." (Cal. Const. art. I, § 9.) The U.S. Supreme Court held, "The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it." (*Wood v. Phillips* (1941) 313 U.S. 362, 370.) As Justice Holmes stated, however, "One whose rights . . . are subject to state restriction, cannot remove them from the power of the State by making a contract about them." *(Hudson County Water Co. v. McCarter* (1908) 209 U.S. 349, 357.) In a case where the Court found states have some power to pass laws that impact private contracts, the Court also wrote, "The obligations of a contract are impaired by a law **which renders them invalid, or releases or extinguishes them**." (*Home Building. & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 431.)

   The Court applies a two-part test to determine whether a law impairs a contract. (*Sveen v. Mellin* (2018) 584 U.S. 811.) The first part of the test asks whether state law must operate as a "substantial impairment" of a contractual relationship. (*Ibid.*) To determine whether a substantial impairment has occurred, the Court considers the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating [their] rights. (*Ibid.*) The second part says if substantial impairment is present, then the means and ends of the legislation is analyzed to determine whether the impairment violates the Contracts Clause. (*Ibid.*) Here, courts evaluate whether the state law is an appropriate and reasonable means of advancing "a significant and legitimate public purpose." (*Energy Reserves Group, Ltd. v. Kansas Power and Light Co.* (1983) 459 U.S. 400, 411.)

   In this case, if a prosecutor does not file charges against an arrestee within 21 days and the arrestee has made their court appearances, the court must order reimbursement of the bond amount.[12] The bail reimbursement appears to operate as a matter of law at 30 days. As noted above, there is no hearing in which a bail company may be heard as to the harm imposed if the contract is voided and the bond is reimbursed. Since California still has a money bail system, bail agencies are lawfully allowed to contract with arrestees for services at a fair price. Furthermore, bail companies are just sureties. Bail companies obtain funds from other financial institutions, such as banks and other insurance companies.

   A contracts clause claim requires a law to substantially impair a contractual agreement. While this bill states it only applies to bail set on or after January 1, 2026, surety contracts with financial institutions may pre-date a change in the law. If a bail agency is required to reimburse the bond minus the 2% administrative fee, it may impair the bail agency's agreement with their financial lender and reduce their overall capitalization, resulting in their breach of an existing lending agreement.

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[12] In a misdemeanor case, even if a defendant is out on bail, the prosecutor must file charges within 25 days, or the defendant must be re-arrested again. (Pen. Code, § 853.6, subd. (e)(3).) The Sixth Amendment right to a speedy trial demands that those arrested must be charged within 72 hours if the person is in custody. (*People v. Buchanan* (2022) 85 Cal.App.5th 186, 193.) However, on a felony, a prosecutor may delay in charging the defendant assuming they are out of custody on bail and there is sufficient probable cause to support the arrest. (See *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1373.)

7) **Argument in Support**: According to *Anti-Recidivism Coalition*: "At ARC, we work closely with system-impacted individuals and families throughout California. Some of our members have endured the stress and trauma of arrest, paid thousands of dollars to bail out, only to have charges dropped or never filed at all. Despite never being prosecuted, they are left with permanent financial consequences that can damage their credit, threaten housing opportunities, and impact their ability to support themselves and their families. SB 562 is a commonsense step toward correcting this injustice. When an individual is arrested and the court determines the bail amount, they typically have two options: pay the full bail amount directly to the court or use a bail bond agency to secure their release. Bail amounts vary greatly depending on the alleged crime, ranging from thousands to millions of dollars for more serious offenses.

   "When an individual is arrested and the court determines the bail amount, they typically have two options: Pay the full bail amount directly to the court or use a bail bond agency to secure their release. Bail amounts vary greatly depending on the alleged crime, ranging from thousands to millions of dollars for more serious offenses. Many people from low-income and marginalized communities are much more likely to secure their release through a bail bond agency, because they do not have enough money to pay the court in full. The only alternative – staying in jail – can lead to losing jobs, missing rent payments, and facing other life-altering consequences.

   "At the heart of it, SB 562 is a financial justice bill. SB 562 seeks to remedy the very narrow and unjust circumstance where someone is arrested, pays a fee to a bail bond agency to secure their release but then no charges are filed against them, or charges are dismissed before trial. By allowing the person to receive their bonded money back, excluding administration fees to the bail bond agency, SB 562 seeks to ensure a narrowly tailored group of people are not burdened with a lifetime of debt."

8) **Argument in Opposition**: According to the *San Diego County Sheriff's Office*: "This bill presents a serious and immediate threat to the effective operation of the pretrial release system and risks creating unintended consequences that will strain public safety infrastructure and undem1ine judicial efficiency. By altering the issuing bail bonds, SB 562 would disincentivize bail companies from providing timely services- particularly before charges are filed or during the early stages of court proceedings.

   "If passed, this measure will likely cause bond providers to delay or suspend services, resulting in longer detention periods for individuals who would otherwise be eligible for release. From a law enforcement perspective, this is deeply problematic: it exacerbates overcrowding in already burdened local detention facilities and removes an informal, yet critical, incentive for defendants to appear in court- potentially increasing the number of failures to appear and outstanding warrants.

   "To illustrate the impact, in 2024, the San Diego County Sheriff's Office processed over 12,500 bail postings, with an average stay of only three days. Any delay or disruption in bail service access could significantly extend these stays, adding further pressure to facilities still grappling with capacity issues following the passage of Proposition 36. While I respect the intent behind SB 562, the real-world implications are deeply concerning and ultimately counterproductive to both public safety and justice system efficiency."

9) **Prior Legislation**:

a) AB 2391 (V. Fong), of the 2023-2024 Legislative Session, would have amended the definition of "public safety" to include protection from physical or economic injury for the purpose of the court determining whether a defendant should be released on their own recognizance in a misdemeanor case. AB 2391 was referred to, but never heard in the Assembly Committee on Public Safety.

b) SB 1133 (Becker), of the 2023-2024 Legislative Session, would have required, at an automatic bail review hearing, a court to determine whether there remains clear and convincing evidence of a risk to public safety or the victim, or a risk of flight, and that no less restrictive alternative can reasonably protect against that risk, and entitles a defendant who has nonmonetary conditions of release, other than those specified, to an automatic review of those conditions at the next regularly scheduled court date after the defendant has been in compliance with those conditions for 60 days. SB 1133 was vetoed.

c) AB 329 (Bonta), of the 2021-2022 Legislative Session, would have required bail to be set at $0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. AB 329 was never heard in the Assembly Appropriations Committee.

d) SB 262 (Hertzberg), of the 2021-2022 Legislative Session, would have required zero bail for all offenses except serious or violent felonies, violations of specified protective orders, stalking, looting, battery against a spouse, sex offenses and driving under the influence, among others. SB 262 failed passage on the Assembly floor.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Anti Recidivism Coalition
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Debt Free Justice California
Ella Baker Center for Human Rights
Greater Sacramento Urban League
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
Los Angeles Community College District
Rubicon Programs

Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

**Oppose**

Afuera Bail Bonds
All Pro Bail Bonds
Alvarado Bail Bonds
American Bail Coalition
Angels Bail Bonds
Armando S. Espinoza Bail Bonds
Bail Bond Professionals
Bail Bond Woman
California Bail Agents Association
California District Attorneys Association
Cow-boy Bail Bonds
Crime Survivors Resource Center
Crime Victims United of California
Exit Bail Bonds
Gloria Mitchell Bail Bonds
Golden State Bail Agents Association, INC.
Holly Bail Bonds INC.
Homequest Bail Bonds
Iron Bail Bonds
Lexington National Insurance Corporation
Licensed Bail Agent
Mcmains Bail Bonds
Orange County Business Council
Redwood Bail Bonds INC.
Sacramento County Sheriff Jim Cooper
San Diego County Sheriff's Office
Superior Bail Bonds
T. Jennings Bail Bonds
Trinity Bail Bonds
Two Jinn INC.
Yusef Odeh Bail Bonds
Zenith Bail Bonds

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

Date of Hearing: July 15, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 571 (Archuleta) – As Amended May 23, 2025

**SUMMARY:** Eliminates the misdemeanor punishment for the crime of looting when the conduct is based on a second-degree burglary or grand theft; extends the duration of the looting statute past the termination of a state of emergency or local emergency; clarify that damage to a structure caused by a disaster does not preclude conviction for burglary; and increases the punishment for false personation of a first responder under specified circumstances. Specifically, **this bill**:

1) Extends time frame of the looting provisions to include crimes committed within 180 days after the termination of a state of emergency or local emergency.

2) Eliminates judicial discretion to reduce or waive the mandatory jail term for an individual who is granted probation for looting based on these offenses.

3) Provides that any person, other than a first responder, who willfully wears, exhibits, or uses the uniform, insignia, emblem, device, label, certificate, card, or writing of a first responder with the intent of fraudulently impersonating a first responder in an area subject to an evacuation order as defined, or who willfully and credibly impersonates a first responder on an internet website, or by other electronic means during an evacuation order or within 30 days of its termination, for purposes of defrauding another, shall be punished either by imprisonment in a county jail not to exceed one year, by a fine not to exceed $1,000, or by both that imprisonment and fine, or by imprisonment for 16 months, two years or three years and by a fine not to exceed $10,000.

4) Defines "first responder" as a peace officer, a firefighter, a paramedic, an emergency medical technician, a public safety dispatcher or telecommunicator, as specified, or any employee of the Federal Emergency Management Agency.

5) Provides that, for the purposes of applying the aggravating factors for aggravated arson, it is the intent of the Legislature that amendments to the threshold dollar amount are to applied prospectively only and shall not be interpreted to benefit any defendant who committed any crime or received any sentence before the effective date of the threshold.

6) Provides that, for purposes of burglary, the fact that the structure entered has been damaged to any extent by a natural disaster shall not, in and of itself, preclude conviction.

7) States legislative intent that amendments to the threshold dollar amount when this bill was chaptered in 2023 apply prospectively and shall not be interpreted to benefit any defendant who committed any crime or received any sentence before the effective date.

**EXISTING LAW**:

1) Provides that a person who willfully, maliciously, deliberately, with premeditation, and with intent to cause injury to one or more persons, or to cause damage to property under circumstances likely to produce injury to one or more persons, or to cause damage to one or more structures or inhabited dwellings, sets fire to, burns, or causes to be burned, or aids, counsels, or procures the burning of any residence, structure, forest land, or property, is guilty of aggravated arson if:

   a) The defendant has been previously convicted of arson on one or more occasions within the past 10 years;

   b) The fire caused property damage and other losses in excess of $10,100,000, exclusive of damage to, or destruction of, inhabited dwellings; or,

   c) The fire cause damage to, or the destruction of, five or more inhabited dwellings. (Pen Code, § 451.5, subd. (a)(1)-(3).)

2) Provides a sunset date for the aggravated arson statute of January 1, 2029.

3) Makes willfully wearing, exhibiting, or using the authorized uniform, insignia, emblem, device, label, certificate card, or writing, of a peace officer, a member of the fire department, an employee of a public utility or district, a government officer or employee, or search and rescue personnel, with the intent of fraudulently impersonating them or of fraudulently inducing the belief that the defendant is one of them, a misdemeanor punishable by imprisonment in county jail for up to six months, by a fine of $1,000, or both. (Pen. Code, §§ 538d, subd. (a); 538e, subd. (a); 538f, subd. (a); 538g, subd. (a); 538h, subd. (a); Pen. Code, § 19.)

4) Makes willfully wearing, exhibiting, or using the badge of any of the above personnel, except that of a government employee or an employee of a public utility or district, with the intent of fraudulently impersonating them or of fraudulently inducing the belief that the defendant is one of them, a misdemeanor punishable by up to one year in county jail, a fine of up to $2,000, or both. (Pen. Code, §§ 538d, subd. (b)(1); 538e, subd. (b)(1); 538h, subd. (b)(1).)

5) Provides that any person who willfully wears or uses any badge that falsely purports to be authorized for the use of one who by law is given the authority of any of the above personnel, or which so resembles the authorized badge of the above personnel as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given that authority, for the purpose of fraudulently impersonating them or of fraudulently inducing a belief that they are one of them, is guilty of a misdemeanor punishable by imprisonment in county jail for up to one year, by a fine of $2,000, or by both. (Pen. Code, §§ 538d, subd. (b)(2); 538e, subd. (b)(2); 538g, subd. (b)(2); 538h, subd. (b)(2).)

6) Provides that any person who impersonates a peace officer during the commission of a felony shall receive an additional one-year term of imprisonment to be imposed consecutive to the term imposed for the felony, in lieu of the penalty that would have been imposed for

impersonating a peace officer." (Pen. Code, § 667.17.)

7) Provides that any person who makes or sells a badge falsely purporting to be that of a peace officer, fire fighter, or government official as described above is subject to a fine up to $15,000. (Pen. Code, §§ 538d, subd. (c)(1); 538e, subd. (c); 538g, subd. (b).)

8) Provides that any uniform vendor who sells a uniform identifying a law enforcement agency or firefighting agency, without verifying that the purchaser is an employee of the agency, is guilty of a misdemeanor punishable by up to six months in county jail or by a fine of up to $1,000. (Pen. Code, §§ 538d, subd. (e)(2); 538e, subd. (e)(3).)

9) Provides that a person who commits a specified offense during and within an affected county in a state or local emergency, or under an evacuation order, is guilty of looting and subject to punishment as follows:

   a) Where the underlying offense is second-degree burglary, by imprisonment up to one year in county jail or by 16 months, two years, or three years. (Pen. Code, § 463, subd. (a).)

   b) Where the underlying offense is grand theft, except grand theft of a firearm, by imprisonment in a county jail for one year or by 16 months, two years, of three years. (Pen. Code, § 463, subd. (b).)

   c) Where the underlying offense is second-degree burglary or grand theft, a mandatory minimum term of 180 days in county jail for a person who receives probation, except that a court may reduce or eliminate the jail sentence in the interest of justice. (Pen. Code, § 463, subd. (a) & (b).)

   d) Where the underlying offense is petty theft, for a misdemeanor punishable by imprisonment in a county jail for six months. (Pen. Code, § 463, subd. (c).)

   e) Where the underlying offense is petty theft, a mandatory minimum term of 90 days in county jail for a person who receives probation, except that a court may reduce or eliminate the jail sentence in the interest of justice. (Pen. Code, § 463, subd. (c).)

10) Provides that, for purposes of a looting involving second-degree burglary, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction. (Pen. Code, § 463, subd. (a).)

11) Defines burglary as entering a specified structure, vessel, or vehicle with the intent of committing theft or any felony therein. (Pen. Code, § 459.)

12) States that burglary of an inhabited dwelling is first degree burglary, and that all other kinds of burglary are of the second degree. (Pen. Code, § 460.)

13) Provides that, for the purposes of burglary, "inhabited" means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants

to leave the premises. (Pen. Code, § 459.)

14) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

15) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified. (Pen. Code, § 487.)

16) Defines petty theft as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and makes it a misdemeanor punishable by a fine not exceeding $1,000, by imprisonment in the county jail not exceeding six months, or both, except as specified. (Pen. Code, § 490.)

17) Defines "state of emergency" as conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat. (Pen. Code, § 463, subd. (d)(1).)

18) Defines "local emergency" as conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat. (Pen. Code, § 463, subd. (d)(2).)

19) Provides that a "state of emergency" shall exist from the time of the proclamation of the condition of the emergency until terminated, as specified, and that a "local emergency" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated, as specified. (Pen. Code, § 463, subd. (d)(3).)

20) Defines "evacuation order" as an order from the Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the order are required to relocate outside of the geographic area covered by the order due to an imminent danger resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster. (Pen. Code, § 463, subd. (d)(4).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "Almost immediately, after the firestorms erupted in Southern California in January 2025, there were reports of criminals attempting to take advantage of victims displaced by the fires. While Angelenos scrambled to find alternative shelter, there were reports of predatory behavior by individuals impersonating as first responders, firefighters, and disaster relief workers, including FEMA workers, in order to scam fire victims. Additionally, many news outlets reported looting and property theft by individuals rummaging through ashes and burned buildings looking for things of value. Early reports during the emergency found 20 individuals were apprehended and faced looting charges. Looting during the emergency led the Los Angeles County Sheriff's Department to form the Looter Suppression Team to increase patrol and provide a quicker response time, diverting vital resources away from efforts to support our recovering Los Angeles

community. Governor Newsom even called for looting in fire evacuation zones to be a felony. Ensuring the public can trust first responders and local public safety officials is crucial in keeping communities safe, especially during states of emergency when victims are in disarray. Penalties for these crimes should be proportional to the egregiousness of the pain and exploitation of victims. Strengthening these penalties will protect first responders, communities, and increase trust in California's ability to respond to state of emergencies and protect victims. SB 571 will ensure California holds those who take advantage of a disaster and victims are held accountable. Strengthening penalties for looting and impersonation in evacuation zones will ensure victims feel safe and protected."

2) **False Impersonation:** Existing law punishes false impersonation of emergency personnel as a misdemeanor. (Pen. Code, §§ 538d, 538e, 538f, 538g, & 538h.) This bill would increase the penalty for false impersonation of emergency personnel in an evacuation zone to an alternate felony-misdemeanor punishable by imprisonment in county jail for up to one year or for 16 months, two years, or three years.

   Additionally, this bill provides that, in sentencing a person convicted of looting, the court may consider the fact, if plead and proven, that the defendant committed the crime while impersonating emergency personnel as a factor in aggravation in sentencing. Existing law looting as the commission of specified crimes during a state or local emergency, or in a county that is under an evacuation, and creates penalties in addition to the underlying offense for looting. (Pen. Code, § 463.) Specifically, where the underlying offense is burglary or grand theft, the punishment for looting is an alternate felony-misdemeanor punishable by imprisonment in county jail for up to one year or by imprisonment for 16 months, two years, or three years. (Pen. Code, § 463, subds. (a) & (b).) Subdivision (b) of Penal Code section 1170 provides that the court may not order imposition of the upper term unless an aggravating circumstances has been plead or proven; absent this showing, the sentence may not exceed the upper term. (Pen. Code, § 1170, subd. (b)(1)-(2).) Thus, under this bill, a person convicted of looting found to have committed the crime while impersonating emergency personnel could be found eligible for the upper term.

3) **Looting Provisions:** Existing law defines looting as the commission of specified theft-related offenses during and within an affected county during a state or local of emergency, or under an evacuation order resulting from a natural or manmade disaster. (Pen. Code, § 463.) Where the underlying offense is burglary or grand theft, the punishment for looting is an alternate felony-misdemeanor (wobbler) punishable by imprisonment in county jail for up to one year, or by imprisonment in county jail for 16 months, two years, or three years. (Pen. Code, § 463, subds. (a) & (b).) Where the underlying crime is petty theft, looting is a misdemeanor punishable by up to six months in county jail. (Pen. Code, § 463, subds. (a).) Unlike the punishment for the underlying theft crimes themselves, a person convicted of looting and granted probation must serve a mandatory minimum jail term, unless a judge exercises discretion, in the interests of justice, to reduce or eliminate that term. (Pen. Code, § 463, subds. (a)-(c).)

   In the wake of the Eaton and Palisades fires in Los Angeles County in January of this year, there were multiple reports of arrests for looting. (See e.g., S. Lin, *Los Angeles Times*, January 9, 2025, https://www.latimes.com/california/story/2025-01-09/looting-arrests-wildfire-evacuation-zones; E. Baumgaertner & R. Mac, *New York Times*, January 11, 2025, https://www.nytimes.com/2025/01/11/us/la-fires-evacuation-looting.html [as of April 6,

2025].) On January 9, 2025, Governor Newsom announced deployment of the California National Guard to support local law enforcement to combat instances of looting. (https://www.gov.ca.gov/2025/01/09/governor-newsom-deploys-california-national-guard-to-los-angeles-fires-looting-will-not-be-tolerated/ [as of April 6, 2025].) The Governor subsequently called for looting in a fire evacuation zone to be a felony. (See https://www.foxnews.com/politics/newsom-calls-looting-felony-evacuation-zones-amid-la-inferno [as of April 6, 2025].)

This bill removes the option for misdemeanor punishment when looting is based on the commission of what would otherwise be a second-degree burglary or grand theft but which occurs during and within an affected county in a "state of emergency" or a "local emergency," or under an "evacuation order." Consequently, looting under these circumstances would be punishable as a felony with incarceration in the county jail. This bill does not change the punishment for looting based on petty theft. This bill also requires a defendant to serve a mandatory minimum sentence of 180 days in jail in the event the defendant is granted probation because this bill would eliminate judicial discretion to reduce or eliminate that sanction in the interests of justice.

Significantly, for purposes of this bill, it should be noted that the looting statute applies "during and within an affected **county** in a 'state of emergency' or a 'local emergency,' or under an 'evacuation order.'" Thus the geographic area which is encompassed by the looting statute is oftentimes much larger than the area or areas affected by the natural or manmade disaster. For example, Los Angeles County is one of the nation's largest counties encompassing 4,084 square miles. (https://lacounty.gov/government/about-la-county/about/ [as of April 6, 2025].) Its territory includes Santa Catalina Island and San Clemente Island. (https://lacounty.gov/government/about-la-county/maps-and-geography/ [as of April 6, 2025].) So while a state or local emergency may apply to the entire county, large swaths of the county may not be affected by the natural or manmade disaster. Presumably, this is why the Governor called for an increased penalty to apply in an evacuation zone. If the author's stated intent is to protect homes that have been evacuated and hold those individuals who take advantage of a disaster and its victims accountable, should this bill be amended so that the proposed increased penalty applies only in an area under an evacuation order?

Finally, this bill extends the time frame for applicability of the looting statute up to 180 days past the termination of the state of emergency or local emergency. And yet 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 open state of emergency proclamations. There are currently over 50 open state of emergency proclamations, covering not only fires and storms, but also bird flu, extreme heat events, and tree mortality. Some of these proclamations of state of emergency have been in effect for years. They cover almost every county in the state. (https://www.caloes.ca.gov/office-of-the-director/policy-administration/legal-affairs/emergency-proclamations/ [as of April 15, 2025].) The enhanced penalties provided for in this bill would apply in all these situations, regardless of whether the initial emergency or disaster is now under control. What is the benefit of extending an arguably already overbroad statute for an additional six months after the Governor, the Legislature, or the local governing body have deemed that conditions warrant that the state of emergency or local emergency should be terminated?

4) **Burglary Provision:** The crime of burglary consists of an unlawful entry accompanied by the intent to commit grand or petit larceny or any felony. A burglary of an inhabited dwelling house or an inhabited portion of any building is a first-degree burglary. (Pen. Code, § 460.) "Inhabited" as used in the burglary statute means currently being used for dwelling purposes, whether occupied or not (i.e., a person is currently not present). (Pen. Code, § 459; see also *People v. Marquez* (1983) 143 Cal. App. 3d 797, 800.) Thus, one can be found guilty of first-degree burglary even when the perpetrator gains unlawful entry to an unoccupied building.

   A formerly inhabited dwelling becomes uninhabited only when its occupants have moved out permanently and do not intend to return to continue using the structure as a dwelling. (See *People v. Cardona* (1983) 142 Cal.App.3d 481, 483-484 [tenant who moved out of an apartment without intent to return and continue living there left it uninhabited despite leaving some property there]; *People v. Jackson* (1992) 6 Cal.App.4t 1185, 1187-1189 [tenant was resident of inhabited dwelling while in the midst of an uncompleted move of a burglarized apartment]; *People v. Hughes* (2002) 27 Cal.4th 287, at pp. 354–355 [the evidence reflects only that they victim had begun to move].)

   In a scenario where a dwelling lies within an evacuation zone, pursuant to case law cited above a home is still inhabited (vs occupied) because the resident intends to return after the evacuation order is lifted. However, it is unclear if this would be the case if the dwelling is damaged to such an extent as to render it uninhabitable. This bill clarifies that the fact the structure entered has been damaged to any extent by a natural or other disaster does not preclude conviction for burglary.

5) **False Impersonation Provision:** Several provisions of the Penal Code prohibit the fraudulent impersonation or attempted impersonation of peace officers, firefighters, and other public officers and employees. These provisions proscribe, among other things, willfully wearing, exhibiting, or using the authorized badge, uniform, insignia, emblem, device, label, certificate, card, or writing of those officers and employees to commit the fraudulent impersonation. (See Pen. Code, §§ 538d-538h.) The statutes criminalizing false personation of these first responders also criminalize impersonation committed on an internet website or by other electronic means when done for purposes of defrauding another. These crimes are punishable as misdemeanors. (*Ibid.*)

   This bill makes it a wobbler for a person, other than a first responder, to willfully wear, exhibit or use the uniform, insignia, emblem device, label, certificate card or writing of a first responder with the intent of fraudulently impersonating a first responder in an area subject to an evacuation order. This bill also makes it a wobbler to willfully and credibly impersonate a first responder on an internet website or by other electronic means for purposes of defrauding another.

   As drafted, false impersonation via internet or by electronic means is not subject to the "evacuation order." limitation, but rather applies at any time. Should this bill be amended to provide that the enhanced punishment for impersonation of a first responder applies only while there is an active evacuation order within the county or until shortly thereafter?

   Without this qualifying language, this bill appears to make the misdemeanor punishment currently established in the existing false personation statutes meaningless.

This bill adopts Government Code 8562's definition of "first responder", which includes a peace officer, a firefighter, a paramedic, an emergency medical technician, a public safety dispatcher or telecommunicator. This bill also includes under the definition of first responder employees of the Federal Emergency Management Agency (FEMA). False impersonation of a FEMA worker is a federal offense. Specifically, 18 U.S. Code section 912 provides: "Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both." Should FEMA workers be included in this bill given that they are already covered under federal law?

6) **Aggravated Arson Provision**: The aggravated arson statute, Penal Code section 451.5, became effective in 1995 through enactment of SB 1309 (Craven), Chapter 421, Statutes of 1994. The original statute contained a five-year sunset provision which stated that the purpose of the provision was to allow the Legislature to consider the effects of inflation on the property damage/losses threshold in the law. At the time of the aggravated arson offense's implementation in 1995, the total monetary amount of property damage and other losses was set at $5 million.

   Because of this, the cost of inflation is to be considered by the Legislature within five years when extending the sunset on the statute and/or making changes to the monetary threshold. The statute's sunset and monetary threshold has increased several times since 1995. The most recent sunset extension, SB 281 (McGuire), Chapter 706, Statutes of 2023, raised the dollar limits required to trigger the statute to account for inflation from $8.3 million to $10.1 million. Additionally, the bill established a sunset date of January 1, 2029 for this excessive damage factor.

   This bill would add legislative intent stating that amendments to the threshold dollar amount shall apply prospectively only and shall not be interpreted to benefit any defendant who committed a crime or received a sentence before the effective date of the threshold.

   Penal Code section 3, which was enacted in 1872, states that "No part of the Penal Code is retroactive unless expressly so declared." So prospective application of a statute is presumed. This includes the changes made to the aggravated arson statute by SB 281.

   However, a long-standing, limited exception to this rule has been recognized by the courts when ameliorative legislation (that which lessens punishment or reduces criminal liability) goes into effect. In this instance, courts generally presume the Legislature intends the benefits of the new enactment to apply as broadly as constitutionally permissible to all cases not yet final on appeal. (*In re Estrada* (1965) 63 Cal.2d 740, 745.) The California Supreme Court explained its reasoning as follows:

   > There is one consideration of paramount importance. It leads inevitably to the conclusion that the Legislature must have intended, and by necessary implication provided, that the amendatory statute should prevail. When the Legislature amends a statute so as to lessen the punishment it has obviously expressly

> determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology. (*Id.* at pp. 744–745.)

Recently, in *People v. Burgos* (2024) 16 Cal.5th 1, the Supreme Court discussed the broad application of *Estrada* rule:

> We have applied *Estrada*'s inference of retroactivity to legislation that created an affirmative defense, contracted a criminal offense, or otherwise lessened punishment in some meaningful manner. These laws have included statutes addressing penalty enhancements as well as statutes concerned with substantive offenses. (E.g., *People v. Prudholme* (2023) 14 Cal.5th 961, 968–969 [statute reducing maximum probation term for nonviolent offenses applies retroactively]; *People v. Wright* (2006) 40 Cal.4th 81, 95 [newly enacted affirmative defense to transporting marijuana applies retroactively]; *Nasalga, supra*, 12 Cal.4th at p. 798 (plur. opn. of Werdegar, J.) [amendments that increase monetary amount of property loss to trigger sentencing enhancements apply retroactively]; *Tapia, supra*, 53 Cal.3d at pp. 300–301 [statute specifying that certain death-penalty qualifying special circumstances must be intentional applies retroactively]; *People v. Rossi* (1976) 18 Cal.3d 295, 302 [amendatory statute decriminalizing the commission of certain sexual acts applies retroactively].) We have also applied the *Estrada* inference to statutes that give trial courts discretion to impose lesser punishment. (*People v. Stamps* (2020) 9 Cal.5th 685, 699 [statute eliminating restriction on trial court's ability to strike serious felony enhancement applies retroactively]; *People v. Francis* (1969) 71 Cal.2d 66, 76 (*Francis*) [modified treatment of marijuana possession from straight felony to either felony or misdemeanor applies retroactively].)
>
> More recently, we have applied the *Estrada* inference to statutes that, while not limited to reducing punishment for a particular crime, created a concrete avenue for certain individuals charged with a criminal offense to be treated more leniently or avoid punishment altogether. (*Frahs, supra*, 9 Cal.5th at pp. 624, 629 [statute creating pretrial diversion program in lieu of criminal prosecution for individuals suffering from qualifying mental health disorders applies retroactively]; *People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 303 (*Lara*) [statute prohibiting prosecutors from directly filing criminal charges against minors in "adult" criminal court and giving juvenile courts sole discretion to decide whether to prosecute minors as adults applies retroactively].) (*People v. Burgos*, *supra*, 16 Cal.5th at p. 13, parallel citations omitted.)

This bill states intent that the time-honored *Estrada* rule should not apply to the changes updating the monetary thresholds in the aggravated arson statute. It is unclear whether the

current Legislature can speak to the legislative intent of a bill enacted in a prior legislative session.[1] Regardless, this statement of intent undermines the efforts of the prior Legislature to update the monetary values to account for inflation, which is why there is a sunset date in the statute to begin with.

7) **Longer Sentences' Impact on Recidivism and Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime.[2] According to the National Institute of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism… Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect."[3] Rather, increasing the perception that an individual will be caught and prosecuted is a vastly more effective deterrent than increased punishment. Studies also show that custodial sanctions have no effect on recidivism or slightly increase it when compared with the effects of noncustodial sanctions such as probation.[4]

8) **Argument in Support**: According to the *California Police Chiefs Association*, "During the January 2025 fires in Southern California, we saw reports of criminals attempting to take advantage of victims who were displaced by evacuation orders. They disguised themselves as firefighters, FEMA workers, and even police officers to gain access to fire-damaged areas. They went as far as using decommissioned firetrucks to pose as firefighters including wearing firefighter turnout gear, CAL Fire t-shirts, and equipping helmets and radios.

"In addition to the impersonation of first responders, these unlawful actors engaged in looting and property theft rummaging through the ashes of victim's homes and personal belongings. The severity of these crimes forced the Los Angeles County Sheriff's Department to form the Looter Suppression Team to increase patrols and provide quicker response times, diverting vital resources away from efforts to support our recovering Los Angeles community. Current penalties for these abuses are not proportional to the pain, loss, and grievance of victims.

"The damage caused by impersonators and looters far exceeds the monetary losses to communities and victims' personal property. These abusers and their actions undermine evacuation orders, local official's authority, and victims' peace of mind. Ensuring the public can trust first responders and local public safety officials is crucial in keeping communities safe, especially during states of emergency when victims are in disarray. SB 571 will ensure California holds those who take advantage of a disaster and victims are held accountable. Strengthening penalties for looting and impersonation in evacuation zones will ensure victims feel safe and protected."

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[1] Of note, there are close to 30 newly-elected Senators and Assembly Members serving in the Legislature for this first time this year that did not vote on SB 281.
[2] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [accessed Mar. 26, 2025].
[3] Ibid.
[4] D.M. Petrich, et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review* (2021).

9) **Argument in Opposition**: According to the *Vera Institute of Justice*, "**SB 571 is alarmingly broad and invites abuse**. The bill's harsher penalties make property crimes during a state or local emergency a mandatory felony across the entire jurisdiction and for six months after the emergency. For example, the recent states of emergency declared in Los Angeles and Ventura County apply to more than 10 million people over almost 6,000 square miles—many nowhere near the fire zones—and they can be renewed for months or years. The entire State of California is also under several open states of emergency (among others, for bird flu and wildfire protection). As a result, this bill would increase the penalties for property crimes statewide regardless of their connection to an actual active emergency. This is not only vastly overbroad, but it also creates a risk for abuse. For example, during the COVID-19 state of emergency, prosecutors misused looting laws to sidestep California's bail policies, and SB 571 invites similar abuses.

"**The bill will also remove much needed judicial discretion.** We trust judges to distinguish between ordinary property crime and intentionally harming communities during emergencies. By mandating incarceration time in every case, and removing judges' abilities to waive this requirement in the interest of justice – judges will be unable to consider someone's mental health, background, or intent, to ensure appropriate sentencing outcomes.

"**Because SB 571 applies to such broad swaths of California, it also risks worsening racial disparities in the criminal legal system.** For example, Black community members in Altadena experienced racial profiling during the recent Los Angeles fires with false accusations of looting. Past experience also shows that media coverage reinforces a harmful and racialized double standard in the wake of natural disasters. SB 571 may place already vulnerable communities at even greater risk under the guise of safety.

"**Instead of responding to the expressed needs of people impacted by the fires, SB 571 prioritizes a costly criminal legal response.** The Essie Justice Group surveyed 137 Altadena residents impacted by the Eaton Canyon Fire and not a single person mentioned looting or theft. Instead, Altadena residents want public officials to provide timely cash assistance, reconstruction, and improved emergency preparedness. **Extensive research shows that SB 571 will not deter crime and improve public safety.** There is no evidence the Los Angeles District Attorney, for example, was unable to charge any looting offenses during the recent fires in Los Angeles as a felony. With the state spending more than $130,000 per year to incarcerate one person, these increased penalties are unnecessary and will only divert critical funds away from disaster relief.

"All Californians deserve safe communities, especially during emergencies. **SB 571, however, is overly broad and puts communities of color at risk with short-sighted and wasteful measures that fail to address the immediate needs of fire victims in Los Angeles**. As we face the increased impacts of climate change, we should focus on strengthening our state's emergency preparedness and working with communities to rebuild public trust."

10) **Related Legislation**:

a) AB 271 (Hoover) would make looting a straight felony and would create a two-year enhancement for any looting conviction in which the defendant impersonated a first

responder, as specified. The hearing on AB 271 was canceled at the request of the author.

b) AB 468 (Gabriel) would establish increased penalties for looting in an evacuation zone and impersonating emergency personnel in an evacuation zone. AB 468 is scheduled to be heard today in the Senate Public Safety Committee.

c) SB 265 (Valladares) would make looting where the underlying crime is second-degree burglary a straight felony. The hearing on SB 265 was canceled at the request of the author.

11) **Prior Legislation**:

a) AB 1899 (Mathis), Chapter 954, Statutes of 2022, prohibited the false impersonation of peace officers, firefighters, and other public officers and employees through, or on, an Internet website, or by other electronic means.

b) AB 1598 (Fong), of the 2019-2020 Legislative Session, would have created a new misdemeanor for knowingly and credibly impersonating another person by electronic means for the purpose of initiating a sexual relationship with another person. AB 1598 was not heard in this committee at the request of the author.

c) AB 1920 (Grayson), Chapter 252, Statutes of 2018, made it a misdemeanor for a person to intentionally and fraudulently impersonate a member of a search and rescue team.

d) AB 3078 (Gallagher), Chapter 132, Statutes of 2018, expanded the crime of looting to include theft which occurs while an area is under an evacuation order.

e) AB 2820 (Chiu), Chapter 671, Statutes of 2016, revised the definition of state of emergency and local emergency for purposes of criminal price gouging.

f) SB 702 (Anderson), Chapter 514, Statutes of 2014, increased the maximum misdemeanor fine for a person using a badge or emblem to impersonate a peace officer, from $1,000 to $2,000, and requires the local law enforcement agency that files charges to seize the item used to carry out the impersonation.

g) SB 1411 (Simitian), Chapter 335, Statutes of 2010, made it misdemeanor for a person knowingly and without consent to credibly impersonate another actual person on the Internet, or via other electronic means in order to harm, intimidate, threaten, or defraud another person.

h) AB 1448 (Niello), Chapter 241, Statutes of 2007, requires law enforcement uniform vendors to verify that a person buying a uniform is an employee of the law enforcement agency identified on the uniform, and makes it a misdemeanor to fail to verify identity.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Arcadia Police Officers' Association

Brea Police Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Fire Chiefs Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
City of Arcadia
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fire Districts Association of California
Fullerton Police Officers' Association
League of California Cities
Los Angeles County District Attorney's Office
Los Angeles County Sheriff's Department
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association

**Oppose**

ACLU California Action
All of US or None Los Angeles
California Attorneys for Criminal Justice
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Coalition for Humane Immigrant Rights (CHIRLA)
Ella Baker Center for Human Rights
Essie Justice Group
Immigrant Legal Resource Center
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
Ktown for All
LA Defensa

Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
National Day Laborer Organizing Network (NDLON)
Public Counsel
San Francisco Public Defender
Services, Immigrant Rights and Education Network (SIREN)
Smart Justice California, a Project of Tides Advocacy
Universidad Popular
Vera Institute of Justice

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