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California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, February 28, 2023
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 75	Hoover	Shoplifting: increased penalties for prior crimes.
2.	AB 78	Ward	Grand juries.
3.	AB 92	Connolly	Body armor: prohibition.
4.	AB 97	Rodriguez	PULLED BY AUTHOR
5.	AB 253	Maienschein	Child death investigations: review teams.
6.	AB 268	Weber	Board of State and Community Corrections.
7.	AB 271	Quirk-Silva	Homeless death review committees.
8.	AB 301	Bauer-Kahan	Body armor: prohibition.
9.	AB 303	Davies	Firearms: prohibited persons.
10.	AB 313	Vince Fong	Corrections: notifications.

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: February 28, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 75 (Hoover) – As Introduced December 14, 2022

SUMMARY: Reinstates the offense of petty theft with a prior as it existed before it was eliminated by Prop. 47 and makes it applicable to the offense of shoplifting created by Prop.47, subject to approval by the voters. Specifically, **this bill**:

1) Reinstates a provision of law that was repealed by Proposition 47 providing that a person who has been convicted three or more times of specified theft-related offenses, has served time in a penal institution, and who is subsequently convicted of petty theft is to receive an enhanced punishment not exceeding one year in the county jail as a misdemeanor, or in a county jail for 16 months, or two, or three years as a felony under realignment.

2) Makes this enhanced punishment applicable to a person whose prior or current conviction is for shoplifting.

3) Makes the enhanced punishment of imprisonment in the county jail not to exceed one year, or in the state prison, relating to a person with specified serious or violent felony priors, specified theft-related crimes against elders or dependent adults, or who is required to register as a sex offender, applicable to a person whose prior or current conviction is for shoplifting.

4) Requires the Secretary of State to submit the provisions of this bill that amend Prop. 47 to the voters for their approval at the November 5, 2024, general election.

5) Declares that it is to take effect only when approved by the voters.

EXISTING LAW:

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

2) 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.)

3) 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 punishable as a misdemeanor, except where a person has a prior "super strike," [1] or a registerable sex

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[1] A prior conviction of any of the following "serious" or "violent" felonies, now commonly referred to as "super strikes," will disqualify a person from receiving any benefit from the

conviction, as specified, in which case the offense is punishable as a felony by imprisonment in the county jail pursuant to realignment. This provision does not apply to theft of a firearm. (Pen. Code, § 490.2, subds. (a) & (c).)

4) States that petty theft is punishable by a fine not exceeding $1,000, by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)

5) Provides that, notwithstanding the punishment for petty theft, if a person is required to register as a sex offender, has a prior super strike conviction, or has a conviction for a specified theft-related offense against an elder or dependent adult, and also has been convicted of a specified theft-related offense for which he or she was imprisoned, and is subsequently convicted of petty theft, then the person is to receive an enhanced punishment of imprisonment in the county jail not to exceed one year, or in the state prison. (Pen. Code, § 666.)

8) Lists the theft-related offenses which qualify a defendant for enhanced status for the crime of petty theft with a prior as:

   a) Petty theft;

   b) Grand theft;

   c) Theft, embezzlement, forgery, fraud, and identity theft committed against an elder or dependent adult;

   d) Auto theft;

   e) Burglary;

   f) Carjacking;

   g) Robbery; and,

   h) Felony receiving stolen property. (Pen. Code, § 666.)

9) Defines "shoplifting" as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950 dollars. (Pen. Code, § 459.5, subd. (a).)

10) States that any act of shoplifting must be charged as such, and that a person charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)

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changes brought by Proposition 47: specified sex offenses, homicide, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment or death. (Pen. Code, § 667, subd. (e)(2)(C)(iv).)

11) Punishes shoplifting as a misdemeanor, except where a person has a prior "super strike" or a registrable sex conviction, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It's time to restore accountability in the criminal justice system, and that's what this bill aims to do. When I talk to the retailers and small businesses in my community, they are being overwhelmed by higher theft crimes in the state because of the lack consequences for repeated criminal activity. That's why I introduced AB 75, which will allow an increase in penalties on serial theft offenders – those individuals who commit this crime over and over again and yet continue to be met with a misdemeanor. This bill will allow for greater penalties and crack down on this rising theft trend. Even though the statistics show an uptick in property theft, I believe the numbers don't tell the whole story. The public is well aware of the light penalties being handed out over theft-related crimes, so many of these crimes go un-reported. We have all seen the news reports on smash and grabs, yet they continue to happen because of the lack of accountability for these repeat offenders who have very little to lose for their crime sprees. We owe this to our small businesses and we owe this to our communities. It's time to restore common sense and accountability to our criminal justice system."

2) **Background-Proposition 47 and Petty Theft with a Prior Theft Conviction**: Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf)

   Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for specified theft crimes valued at $950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 at http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf)

   Prop. 47 created the new crime of shoplifting, which is defined as "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950)." (Pen. Code, § 459.5. subd. (a).) Any other entry into a commercial establishment with intent to commit larceny is burglary. (*Ibid.*)

   Prop. 47 also added Penal Code section 490.2 to expressly define petty theft as "obtaining any property by theft where the value of the money, labor, real or personal property taken" does not exceed $950. Prop. 47 states that this new definition of petty theft applies notwithstanding "any other provision of law defining grand theft." (Pen. Code, § 490.2, subd.

(a).)

Among the theft crimes made misdemeanors by Prop. 47, where the value of the property is $950 or less, are: forgery (Pen. Code, § 473); making or delivering a check with insufficient funds (Pen. Code, § 476a); petty theft (Pen. Code, § 490.2); and receiving stolen property (Pen. Code, § 496). (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.)

The offenses made misdemeanors by Proposition 47 also include: the new offense of commercial burglary where the value of the property taken or intended to be taken is $950 or less (Pen. Code, § 459.5; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879); and petty theft with a prior theft conviction. (Pen. Code, § 666; *People v. Rivera, supra*, 233 Cal.App.4th at p. 1091.) Specifically, Proposition 47 eliminated the penalties formerly associated with the "petty theft with a prior" statute except for a narrow category of sex offenders, persons with qualifying "super strikes," and those persons convicted of theft from elders or dependent adults. Those persons are still eligible for felony punishment in state prison. (Pen. Code, § 666.)

"One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative." (*Harris v. Superior Court* (2016) 1 Cal.5th 984, 992, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) These policies are supported by a liberal construction clause in Proposition 47, sections 15 and 18. (http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47)

Neither petty theft nor shoplifting nor any of the specified prior offenses which would elevate their punishment under this bill qualify as serious or violent felonies. (Pen. Code, §§ 667.5, subd. (c) [violent felonies], 1192.7 [serious felonies].)

Moreover, according to an article by the Public Policy Institute of California (PPIC), Proposition 47 has reduced racial disparities in criminal justice outcomes. It has decreased ethnic/racial disparities in arrest and booking. And the decrease in the overall incarceration rate produced by these criminal justice reform efforts has led to a narrowing of racial disparities in the proportion of persons institutionalized on any given day. (https://www.ppic.org/publication/proposition-47s-impact-on-racial-disparity-in-criminal-justice-outcomes/.)

This bill seeks to restore the penalties for petty theft with a prior theft conviction to pre-Proposition 47 status, and to expand it to the new crime of shoplifting created by Proposition 47.

3) **Theft Rates after Proposition 47**: In 2020, the property crime rate in California reached the lowest level observed since 1960. While it ticked up in 2021 by 2.4%, it remained low. (https://www.ppic.org/publication/crime-trends-in-california/.)

Further, some complaints of retail theft were overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but couldn't be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html.)

4) **Repeat Offenders**: This bill is aimed at repeated thefts. There are currently laws that prosecutors can use to charge repeated theft crimes and that call for increased penalties.

   To begin, separate offenses may generally be punished by up to six months consecutive for each offense. And a prosecutor can consolidate similar thefts, after a case has already been filed, where the offenses possess common characteristics or attributes. (Pen. Code, § 954.) Thus, while a defendant's exposure for one theft offense might be six months in jail, an individual convicted of multiple theft offenses can face multiple six-month terms in the county jail.

   Repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (See *People v. Bailey* (1961) 55 Cal.2d 514, 518-519.) AB 2356 (Rodriguez), Chapter 22, Statutes of 2022, codified this. It specified that if the value of property taken, or intended to be taken, exceeds $950 over the course of distinct but related acts, the value of the property taken, or intended to be taken, may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan.

   Further, Penal Code section 490.4 punishes "organized retail theft" – shoplifting schemes undertaken by two or more persons who have organized themselves to commit shoplifting for financial gain. (Pen. Code, § 490.4.) The punishment ranges from one year in the county jail (misdemeanor) to 16 months, or two, or three years in the county jail (felony), depending on the specific circumstances. On February 9, 2023, the California Attorney General, along with CHP and partnering agencies, announced that eight individuals involved in a statewide organized retail theft operation, resulting in a total loss of approximately $ 1 million to date, had been arrested and charged. (https://oag.ca.gov/news/press-releases/attorney-general-bonta-charges-organized-retail-theft-suspects-theft.)

   In sum, while Proposition 47 did reduce certain theft offenses to misdemeanors, there are still legal options for charging repeated retail crime that call for increased penalties.

5) **California Constitutional Limitations on Amending a Voter Initiative**: Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

   The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

As to the Legislature's authority to amend the initiative, Proposition 47 states: "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act." (<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>.)

This bill would reinstate petty theft with a prior, a provision repealed by Proposition 47, and extend those enhanced penalties for repeat theft to the new crime of shoplifting created by Proposition 47. As such, it is inconsistent with the purpose of Proposition 47. Therefore, pursuant to the above-referenced provisions of the California Constitution, only the voters may authorize the provisions.

This bill would require the Secretary of State to submit the provisions of this bill that amend Prop. 47 to the voters for their approval at the November 5, 2024, general election. This bill would take effect only after approved by the voters.

6) **Proposed Initiative to Limit Proposition 47's Criminal Justice Reform**: A proposed initiative for the November 2022 ballot, initiative 21-0041, would have limited Proposition 47 by authorizing felony sentences for specified thefts reduced to misdemeanors under the criminal justice reform provisions and requiring longer sentences. In particular, the proposed initiative would have:

> Authorize[d] prosecutors to file felony or misdemeanor charges for thefts of any amount under $950—currently chargeable as felonies only in certain circumstances—against any person with two or more prior specified theft convictions. Add[ed] mandatory sentencing enhancement for any felony resulting in significant property loss or damage, ranging from one additional year for losses over $50,000, to four years for losses over $3,000,000, plus one year for each additional $3,000,000. Authorize[d] prosecution for theft in any county where acts in furtherance occurred.

(https://ballotpedia.org/California_Punishment_for_Repeat_Theft_Convictions_Initiative_(2022).) To be certified for the 2022 ballot, the initiative needed 623,212 signatures by July 26, 2022. The initiative failed to qualify for the ballot. (*Ibid.*)

In 2020, almost 62% of voters rejected a broader effort to roll back portions of Proposition 47. Proposition 20 was a ballot initiative of the November 2020 election which, among other things, would have created the new crime of organized retail crime, defined as: "a person, acting with one or more other persons, who commits two or more thefts of retail property or merchandise with a combined value of more than $250 during a period of 180 days would be

charged with organized retail crime."
(https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020).)

7) **Argument in Support**: According to the *California State Sheriffs' Association*, "Passed by voters in November 2014, Proposition 47 brought broad and significant changes to California's criminal justice system by classifying certain crimes as misdemeanors instead of felonies. One of these changes was to California's serial theft statute, which limited charging options, likely leading to an increase in theft with impunity."

8) **Argument in Opposition**: According to *Californians for Safety and Justice*, "AB 75 signals a return to the failed tough on crime policies of the past and would undermine public safety by increasing the costly and counterproductive incarceration in state prison for some of the lowest level crimes in the state penal code. Repealing parts of Prop. 47 would also rob our local communities of hundreds of millions of dollars that Prop 47 will save annually. This savings is reallocated back to communities for proven crime prevention programs that address the root causes and stop the cycle of crime. As of 2022, Prop. 47 has saved the state more than $600 million.

   "Prop. 47 did not affect serious or violent felonies, but instead targeted several low-level theft offenses and drug possession for personal use for reform. Political rhetoric notwithstanding, since its enactment, property crime has decreased in California. Not dissuaded, in 2020, "tough on crime" advocates tried to persuade the public to repeal Prop. 47 via Prop. 20. Again, California voters rejected the attempt to go back to mass incarceration.

   "AB 75 proposes to make it easier to charge non-violent Californians with felonies and to go back to the same shortsighted 'tough on crime' measures that have failed California for the past three decades. It is yet another attempt to go down a path that California's voters have already twice rejected. Significantly, reverting these crimes back to felonies would once again dramatically increase incarceration rates, leaving the state vulnerable to falling out of compliance with the prison system's population cap mandated by the federal judiciary.

   "AB 75 nonetheless proposes to impose long prison sentences which are not justified by actual crime data, flies in the face of sensible criminal justice reform, and would force the state to shoulder the cost of imprisoning more people for years, at great human and fiscal expense."

9) **Related Legislation**:

   a) AB 23 (Muratsuchi) amends Proposition 47 by reducing the threshold amount for petty theft and shoplifting from $950 to $400 and would provide that it shall become effective only when submitted to, and approved by, the voters. AB 23 is set to be heard in this committee on March 7, 2023.

   b) AB 329 (Ta) imposes higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 is set to be heard in this committee on March 7, 2023.

10) **Prior Legislation**:

a) AB 1597 (Waldron), of the 2021-2022 Legislative Session, was practically identical to this bill. AB 1597 failed passage in this committee.

b) AB 1599 (Kiley), of the 2021-2022 Legislative Session, would have repealed the changes made by Prop. 47, except those related to reducing the penalty for possession of concentrated cannabis, subject to approval of the voters. AB 1599 failed passage in this committee.

c) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have amended Proposition 47 by decreasing the threshold amount that constitutes grand theft and shoplifting from $950 to $400, subject to approval of the voters. AB 1603 failed passage in this committee.

d) AB 1613 (Irwin), Chapter 949, Statutes of 2022, expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to those theft offenses.

e) AB 1698 (Maienschein), of the 2021-2022 Legislative Session, would have created the crime of organized package theft, an alternate felony-misdemeanor. AB 1698 was held on the Assembly Appropriations Committee suspense file.

f) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, re-authorized the prosecuting attorney's office or county probation department to create a diversion or deferred entry of judgment (DEJ) program for persons who commit theft offenses, as modified; re-enacted various changes to existing laws related to arrest and bench warrants for theft-related offenses, as modified; and re-established a grant program to create demonstration projects to reduce recidivism to high-risk misdemeanor probationers.

g) AB 2356 (Rodriguez), Chapter 22, Statutes of 2022, specified that if the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, whether committed against one or more victims, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. These changes were declaratory of existing law.

h) AB 2543 (Fong), of the 2021-2022 Legislative Session, would have amended Proposition 47 by authorizing acts of shoplifting that occur on 2 or more separate occasions within a 12-month period, and the aggregated value of the property taken exceeds $950, to be punished as an alternate felony-misdemeanor, a "wobbler." AB 2543 was not heard in this committee at the request of the author.

i) AB 2718 (Cooper), of the 2021-2022 Legislative Session, would have amended Proposition 47 by creating the new crime of "serial theft" for the theft of property valued over $500 where the offender has two or more prior convictions for specified theft offenses, and by redefining "petty theft" and "shoplifting," subject to approval by the voters. AB 2718 failed passage in this committee.

j) SB 1108 (Bates), of the 2021-2022 Legislative Session, would have reinstated a provision of law that was repealed by Proposition 47 that provides that a person who has been convicted 3 or more times of petty theft, grand theft, or other specified crimes and who is subsequently convicted of petty theft may be punished as an alternate felony-misdemeanor, a "wobbler." SB 1108 failed passage in the Senate Public Safety Committee.

k) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft and the regional property crimes task force until January 1, 2026.

l) AB 1065 (Jones-Sawyer), Chapter 1065, Statutes of 2018, created the crime of organized retail theft; expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise; required the California Highway Patrol (CHP) to convene a regional property task force; authorized a grant program, upon appropriation by the Legislature, to create demonstration projects to reduce recidivism to high-risk misdemeanor probationers; and established a sunset date of January 1, 2021.

m) AB 875 (Cooper), of the 2017-2018 Legislative Session, would have made petty theft with a prior conviction punishable as a felony as provided in pre-Proposition 47 provisions, but would have included a deferred entry of judgment option for a defendant who has suffered three or more prior theft convictions, is a drug or alcohol addict, and has not suffered a prior serious or violent felony conviction or registerable sex offense. AB 875 was not heard in this committee.

n) AB 392 (Lackey), of the 2017-2018 Legislative Session, would have made conspiracy to commit shoplifting punishable as a felony under realignment provisions by 16 months, or two or three years in the county jail, rather than alternatively as a misdemeanor of felony. AB 392 failed passage in this committee.

o) AB 2369 (Patterson), of the 2015-2016 Legislative Session, would have limited Proposition 47 by making persons convicted of crimes reduced to misdemeanors under the provisions eligible for felony prosecution and sentencing if convicted of those crimes two times within a three-year period. AB 2369 failed passage in this committee.

p) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes, including reducing petty theft with a prior theft conviction to a misdemeanor, except in the case where the person has a prior super strike conviction or a conviction for a specified theft-related offense against an elder or dependent adult.

q) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, amended petty theft with a prior to require three prior theft-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Peace Officers Association

California State Sheriffs' Association
Orange County District Attorney
Orange County Sheriff's Department
Peace Officers Research Association of California (PORAC)
Riverside County Sheriff's Office

Opposition

Anti-recidivism Coalition (UNREG)
California Attorneys for Criminal Justice
California Consortium of Addiction Programs and Professionals
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Crop Organization
Defy Ventures
Drug Policy Alliance
Ella Baker Center for Human Rights
Faith in Action Bay Area
Forward Impact Dba Represent Justice
Friends Committee on Legislation of California
Glide
Hiv Education and Prevention Project of Alameda County (HEPPAC)
Initiate Justice
Last Prisoner Project
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership (LARRP)
Pico California
Riverside All of Us or None
Rubicon Programs
Sacramento Youth Advocacy Fellowship Pipeline
Safe Return Project
San Francisco Public Defender
Timedone
Underground Scholars Initiative at UC Berkeley
Underground Scholars Initiative, University of California, San Diego

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 78 (Ward) – As Introduced December 15, 2022

SUMMARY: Increases the compensation for individuals selected to serve as grand jurors and requires demographic data to be collected during the grand jury selection process. Specifically, **this bill:**

1) Sets the compensation for grand jurors to 70% of the county median daily income for each day a person attends as grand juror.

2) States that grand jurors shall be reimbursed for reasonable travel and other costs associated with the performance of their duties.

3) Requires the list of persons selected by the court to serve as grand jurors filed in the jury commissioner's office to contain each juror's gender, age, race or ethnicity, and residential zip code or supervisorial district.

4) Requires the jury commissioner to publish a list containing only each juror's name and the name of the judge who selected each juror, one time in a newspaper of general circulation in the county.

5) Requires the jury commissioner's list of persons recommended for grand jury duty to contain each person's name, gender, age, race or ethnicity, and residential zip code or supervisorial district. This list constitutes the list of certified names of impaneled persons.

6) Requires the prospective regular grand jurors, carry-over grand jurors, persons recommended by the jury commissioner, persons selected by the court, and the list of certified impaneled grand jurors not containing the person's name, to be published on a website used for the disclosure of demographic information for the county's grand jury.

7) Requires each superior court, on or before March 15, 2024, and on or before March 15 of each year thereafter, to provide the Judicial Council with aggregate data of prospective regular grand jurors, any carry-over grand jurors, persons recommended by the jury commissioner, persons selected by the court, and list of certified impaneled grand jurors.

8) Requires the Judicial Council, on or before June 15, 2024, and on or before June 15 of each year thereafter, to submit a report to the Legislature on the information reported by each superior court on a county and statewide basis.

9) Permits trial jury summonses to contain information on how to become a grand juror.

EXISTING LAW:

1) Requires each county to have a grand jury drawn and summoned at least once a year. (Cal. Const. Art. I, §23.)

2) Defines a "Grand jury" as a body of persons from the county sworn before a court of competent jurisdiction to inquire of public offenses committed or triable within the county. Grand juries investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation. (Pen. Code, § 888.)

3) Provides that the grand jury of a county may inquire into all public offenses committed or triable within the county, and present them to the court by indictment. (Pen. Code, § 917.)

4) Provides that the compensation for grand jurors is $15 a day for each day's attendance unless a higher fee is set by statute, county or city ordinance. (Pen. Code, § 890.)

5) Provides that the mileage reimbursement for grand jurors is the mileage applicable to county employees for each mule actually traveled in attending court, unless a higher rate of mileage is set by statute, county or city ordinance. (Pen. Code, § 890.)

6) Authorizes the board of supervisors in each county to specify by ordinance the compensation and mileage for members of the grand jury in that county. (Gov. Code, § 68091.)

7) States that the juror fees shall be paid by the treasurer of the county out of the general fund of the county. (Pen. Code, § 890.1.)

8) States that the grand juror selections shall be made of men and women who are not exempt from serving and who are suitable and competent to serve as grand jurors. (Pen. Code § 895, subd. (b).)

9) States that the court shall select the grand jurors by personal interview to ascertain whether they are competent to be a grand juror. (Pen. Code § 895, subd. (a).)

10) Provides that a person is competent be a grand juror if they meet the following qualifications:

   a) The person is a citizen of the United States;

   b) The person is over the age of 18;

   c) The person is a resident of the state and of the county or city and county for one year immediately before being selected;

   d) The person is in possession of their natural faculties, or ordinary intelligence, and is of sound judgment and fair character; and,

e) The person has proficient and sufficient knowledge of the English language. (Pen. Code, § 893.)

11) Provides that a person is not competent be a grand juror if any of the following apply:

a) The person is serving as a trial juror;

b) The person has been discharged as a grand juror within one year;

c) The person has been convicted of malfeasance in office or any felony or other high crime; and,

d) The person is serving as an elected public officer. (Pen. Code, § 893.)

12) Requires grand jurors to be selected from the different wards, judicial districts or supervisorial districts of the respective counties in proportion to the number of inhabitants therein. In counties with a population of 4,000,000 and over, the grand jurors may be selected from the county at large. (Pen. Code, § 899.)

13) Authorizes the superior court to name up to 10 regular carryover jurors who served on the previous grand jury and who consent to serve for a second year and encourages the court to consider carryover grand jury selections that ensure broad-based representation. (Pen. Code, § 901 subds. (a) & (b); Cal. Rules of Court, Standard 10.50, subd. (c).)

14) Requires the court to list the persons selected to serve as grand jurors and to place the list in the possession of the jury commissioner. (Pen. Code, § 895, subd. (b).)

15) Requires the jury commissioner to file the grand juror list in the jury commissioner's office and have the list, which includes the name of the judge who selected each person on the list, published one time in a newspaper of general circulation in the county. (Pen. Code, § 900.)

16) Establishes an alternative grand jury selection procedure, which requires the jury commissioner, annually, to furnish a list of persons qualified to serve as grand jurors to the judges of the court. (Pen. Code, §§ 903.1, 903.3.)

17) Provides that the judges shall examine the list of persons recommended by the jury commissioner for the grand jury, and may select persons from the list to serve as grand jurors. (Pen. Code, § 903.3.)

18) Provides that judges are not required to select any name from the list returned by the jury commissioner and may in their judgment, make every, or any selection from among the body of persons in the county suitable and competent to serve as jurors. (Pen. Code, § 903.4.)

19) States that judges who nominate persons for grand jury selection are encouraged to select candidates from a list returned by the jury commissioner or to otherwise employ a nomination procedure that will ensure broad-based representation from the community. (Cal. Rules of Court, Standard 10.50(d).)

20) Provides that no challenge may be made to the panel of the grand jurors or to an individual grand juror, except when made by the court on the ground that the juror is not qualified to act as a grand juror. (Pen. Code, §§ 909, 910.)

21) Requires the jury commissioner to mail trial jurors jury summonses, as specified. (Code Civ. Proc., § 207.)

22) States that trial summonses shall contain the date, time, and place of appearance required of the prospective juror, and additional juror information as deemed appropriate by the jury commissioner. (Code Civ. Proc., § 210.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Grand juries play a crucial role in California's criminal justice system and help provide municipal oversight. However, they are not always representative of the demographics of a particular area. Currently, the role of a grand juror is largely voluntary with very little compensation being given daily for their civic service. This leads to disproportionate representation within courtrooms. AB 1972 will help increase transparency around the process of jury selection and ensure jurors are fairly compensated for their time."

2) **Role of Grand Juries:** In California, the grand jury determines whether there is probable cause to believe a crime has been committed and protects citizens against unfounded criminal prosecutions. (*People v. Flores* (1969) 276 Cal.2d 61, 65.) Grand jurors have the power to investigate the possibility that a crime has been committed and act as watchdogs of the public trust by reporting on local government operations. (*People v. Cohen* (1970) 12 Cal.App.3d 298, 311.)

3) **Right to a Nondiscriminatory Grand Jury:** "The constitutional standards controlling the selection of grand jurors are the same as for [trial] jurors. ... They must be selected in a manner which does not systematically exclude, or substantially underrepresent, the members of any identifiable group in the community." (*People v. Newton* (1970) 8 Cal.App.3d 359, 388; *see e.g., Peters v. Kiff* (1972) 407 U.S. 493, [systematic exclusion of black persons from grand juries required reversal of conviction, even though defendant was white]; *Vasquez v. Hillery* (1986) 474 U.S. 254, [intentional discrimination in selection of grand jurors makes a conviction reversible]; *People v. Navarette* (1976) 54 Cal.App.3d 1064 [underrepresentation of women on grand jury was discriminatory even though there was no apparent attempt to discriminate in selection process].)

   According to materials from the author, "current data shows that grand juries are disproportionately made up of white individuals who can afford to take time off to serve. In Santa Clara County, for example, 75% of applicants for its 2022 Grand Jury identify as white, with only 1% identifying as Black or Latino despite the county's white non-Hispanic or Latino population being 30%." (Superior Court of California, County of Santa Clara, *2022 Civil Grand Jury Demographic Data*<https://www.scscourt.org/court_divisions/civil/cgj/CRC%2010.625%20Data%20for%202022%20CGJ.pdf> [as of Feb. 8, 2023].)

4) **Grand Juror Diversity:** Research shows that diverse juries "deliberated longer and considered a wider range of information than did homogeneous groups." (Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations* (2006) 90 J. Personality and Social Psychology 597, 606.) Being part of a diverse group seems to make people better jurors; for example, when white people were members of racially mixed juries, they "raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related issues." (*Ibid.*) People on racially mixed juries "are more likely to respect different racial perspectives and to confront their own prejudice and stereotypes when such beliefs are recognized and addressed during deliberations." (Ramirez, *Affirmative Jury Selection: A Proposal to Advance Both the Deliberative Ideal and Jury Diversity* (1998) 7 Univ. Chicago Legal Forum 161, 164.) In addition, the decisions diverse juries render are more likely to be viewed as legitimate by the public. (*Ibid.*)

   The California Rules of Court encourage courts to consider grand jury selections to ensure broad-based representation. However, there is no statute requiring the same. The law merely requires jury commissioners to note the supervisorial district of grand juror candidates in an effort to promote geographic diversity. There are no further requirements that would help judges create diversity on race, gender, age, or other demographic characteristics of grand juries.

   In order to facilitate the selection of diverse grand juries that represent the demographics of their counties, this bill would require each superior court, annually, to provide the Judicial Council with aggregate data on the gender, age, and race or ethnicity of persons impaneled on the grand jury and requires the Judicial Council, each year, to submit a report to the Legislature on the information. These reports intend to provide state and local governments the tools needed to both understand and address the underlying issues that cause a lack of diversity on grand juries.

5) **Grand Juror Compensation:** Grand jurors receive $15 per day for their service and mileage reimbursement applicable to county employees for each mile actually traveled in attending court. (Pen. Code, §890.)

   By comparison, federal grand jurors are paid $50 a day. Jurors can receive up to $60 a day after serving 45 days on a grand jury. Jurors also are reimbursed for reasonable transportation expenses and parking fees. Federal grand jurors also receive a subsistence allowance covering their meals and lodging if they are required to stay overnight. (U.S. Courts, *Juror Pay* <https://www.uscourts.gov/services-forms/jury-service/juror-pay#:~:text=Grand%20Jury,transportation%20expenses%20and%20parking%20fees> [as of Feb. 8, 2023].)

   California's current minimum of $15 per day was last adjusted in 2001, by AB 1161 (Papan), Chapter 218, Statutes of 2021. AB 1161 raised the minimum from $10, which was set in 1971, to $15 and set the mileage reimbursement rate to that applicable to county employees. As measured by the Consumer Price Index (CPI), $15 in 2001 is worth over $25 today based on the CPI inflation calculator of the U.S. Bureau of Labor Statistics.

   Prior to AB 1161, the mileage reimbursement rate was 15 cents per mile, one way only, which was established in 1959. Historically, jurors were compensated at levels closer to the average wage. In 1974, the minimum wage was $2.00 per hour; and $1.00 per hour in 1957.

(See, Department of Industrial Relations, *History of California Minimum Wage*, <https://www.dir.ca.gov/iwc/minimumwagehistory.htm> [as of Feb. 8, 2023].)

California's $15 current daily pay is pennies on the dollar compared to that could be earned at work— the total daily compensation for grand jury service is the minimum pay for one hour of work for most Californians[1], and well below the daily equivalent of the poverty threshold. As Californians have found it harder to make ends meet in light of inflation and increased costs of living, jury compensation has not progressed. Jurors sacrifice both their time and earnings in service of the justice system. The low compensation is felt especially by self-employed individuals, parents without the means to obtain childcare and part or fulltime workers who receive no compensation from their employers. As stated in the Assembly Floor Analysis for 1452 (Ting), Chapter 717 Statutes of 2021, "Because many low-income families cannot afford to forfeit days, weeks, or months of their salary, many minimum wage, low-income workers or workers file a claim of financial hardship and are excused from service. As a result, jury pools tend to be composed of people who can afford to serve unpaid or who have employers who'll pay them while they're serving. Diverse juries are critical to the fair delivery of justice…"

This bill seeks to remove economic barriers to jury participation by setting the fee to 70% of the county median daily income for each a person serves as a grand juror. Increasing grand juror pay will likely result in juries that are more economically and racially diverse and therefore are more reflective of the local population. Further, by tying grand juror pay to the county median daily income, this bill would establish a flexible method of determining the minimum compensation owed to jurors commensurate with the local cost of living, without need for future legislation.

6) **Argument in Support**: According to the *California Public Defenders Association* (CPDA), "This bill does two great things: it ensures that a reasonable fee would be paid for serving on a grand jury, either criminal or civil, and it requires that the grand jury membership reflect the demographic diversity of its county. The reasonable fee would enable a more diverse cross-section of the community to serve on grand juries without economic hardship. Impaneling a grand jury that reflects the diversity of the county in which they reside and provide their service will lead to more faith by the community in the criminal justice system and civil society."

7) **Argument in Opposition**: According to the *California State Association of Counties* (CSAC), "While we appreciate and understand the desire to encourage increased diversity on grand juries, we are opposed to AB 78 because it lacks a mechanism to cover our low-end estimate of $16.9 million in new and unanticipated county general fund costs. […]

"While the state is experiencing a revenue shortfall after gains that have exceeded expectations and historical precedent year after year, in most counties, per capita revenues have never recovered from the Great Recession of 2007 to 2009, in real dollars. We therefore request that the provision in Section 2 of the bill providing for increased compensation apply only in years the state budget has provided a sufficient appropriation for the purpose. Doing

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[1] As of January 1, 2023, California's minimum wage is $15.50 per hour. (Department of Industrial Relations, *Minimum Wage* <https://www.dir.ca.gov/dlse/faq_minimumwage.htm> [as of Feb. 8, 2023].)

so would provide county governments with the fiscal resources to meet their obligations under this measure."

8) **Related Legislation**: AB 881 (Ting), would raise juror pay in criminal cases from $15 to $100 per day for low-to-moderate income jurors. AB 881 is pending hearing in this Committee.

9) **Prior Legislation**:

   a) AB 1972 (Ward), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 1972 was held under submission in Senate Appropriations Committee.

   b) AB 1452 (Ting), Chapter 717, Statutes of 2021, authorized the Superior Court of San Francisco to conduct a pilot program to determine whether paying low-income trial jurors $100 per day in criminal cases promotes a more economically and racially diverse trial jury panel.

   c) SB 1673 (Romero), of the 2003-2004 Legislative Session, would have required a judge who rejects a person from serving on a grand jury to issue a written explanation of the reasons for the rejection. SB 1637 died in Senate Judiciary Committee without a hearing.

   d) AB 1161 (Papan), Chapter 218, Statutes of 2001, set the fees for grand jurors at $15 a day and the mileage reimbursement applicable to county employees for each mile actually traveled.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)
Prosecutors Alliance California

Opposition

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

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 92 (Connolly) – As Amended February 21, 2023

As Proposed to be Amended in Committee

SUMMARY: Prohibits a person from purchasing or possessing body armor if state law prohibits them from possessing a firearm. Specifically, **this bill**:

1) Makes it a misdemeanor for a person who is prohibited from possessing a firearm under California law to purchase or possess body armor.

2) Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor."

3) Requires a court to advise an individual of the body armor prohibition upon advising that person of their firearm prohibition.

4) States that a person must relinquish any body armor in their possession in the same manner as outlined for the relevant firearm prohibition.

5) Allows a prohibited person to petition a chief of police or sheriff for an exemption if their employment or safety depend on it, as specified.

EXISTING STATE LAW:

1) States that all people have inalienable rights among which are enjoying and defending life and liberty. (Cal. Const. Art. I § 1.)

2) Defines "body vest" and "body shield" in general as "any bullet-resistant material intended to provide ballistic and trauma protection for the wearer or holder." (Pen. Code, § 16290.)

3) Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor." (Pen. Code, § 16288.)

4) Prohibits a violent felon from possessing body armor unless their livelihood or safety is dependent on its possession, in which case they can petition their chief of police or sheriff to modify or eliminate the prohibition. (Pen. Code, §§ 31360& 17320.)

5) Authorizes a prohibited person whose employment or safety depends on the ability to possess body armor to petition their local chief of police or sheriff for modifications or elimination of the body armor prohibition. (Pen. Code, § 31360, subd. (b).)

6) Requires a chief of police or sheriff modifying or eliminating a body armor prohibition order to consider the following:

   a) Whether the body armor is likely to be used in a safe and lawful manner;

   b) Whether there is a reasonable need for the type of protection under the circumstances; and,

   c) The petitioner's continued employment, the interests of justice, and the totality of the circumstances. (Pen. Code, § 31360, subds. (b)(1) & (2).)

7) Provides that a law enforcement official is not required to grant relief. (Pen. Code § 31360, subd. (b)(2).)

8) States that any prohibited person authorized to possess body armor must agree to maintain a certified copy of the law enforcement official's permission to possess the body armor. (Pen. Code § 31360, subd. (c).)

9) Provides immunity from false arrest for law enforcement officials who arrest a petitioner that has been authorized to possess body armor, unless the petitioner did not have a certified copy of their permission. (Pen. Code § 31360, subd. (d).)

10) Imposes an enhancement of one, two, or five years for any person who commits a violent felony while wearing a body vest, as defined. (Pen. Code, § 12022.2.)

EXISTING FEDERAL LAW

1) Provides that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (U.S. Const. Second Amend.)

2) Prohibits states from denying any person equal protection under the law. (U.S. Const. Fourteenth Amend.)

3) Prohibits violent felons, as defined, from purchasing, owning, or possessing body armor. (18 U.S.C. § 931.)

4) Defines body armor for purposes of this prohibition as "any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment." (18 U.S.C. § 921 subd. (a)(35).)

5) Defines body armor for purposes of sentencing enhancements in violent or drug trafficking crimes, in part, as, "personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment." (34 U.S.C. § 10534.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Following the horrific shooting in Buffalo, New York last year, the state Legislature there passed restrictions on body armor to keep this military-grade gear out of the hands of violent criminals. Simply put, the widespread availability of military-grade body armor helps mass shooters and criminals kill more people and prolong their rampages. This ongoing and unnecessary epidemic of violence must be stopped, and AB 92 will help protect innocent bystanders and our peace officers."

2) **Overview of Body Armor**: The term "body armor" is commonly associated with vests that provide protection against ballistic impacts, i.e. bullets. (National Institute of Justice (NIJ). *Selection and Application Guide to Ballistic-Resistant Body Armor: For Law Enforcement, Corrections and Public Safety. NIJ Selection and Application Guide-0101.06*. (hereafter *NIJ Selection Guide*) (Dec. 2014.) <https://www.ojp.gov/pdffiles1/nij/247281.pdf> [as of Feb. 22, 2023] at p. 4.) There are generally two kinds of body armor, soft body armor and hard body armor. (*Id.* at 4.) Soft body armor is generally composed of ballistic resistant material that is layered so that when a bullet hits it, the fibers absorb and disperse the bullet's energy without letting it penetrate through to the wearer. (*Id.* at 5.) Hard body armor refers to plates that can be constructed from ceramics, metal, or other rigid material. (*Id.* at 6-7.) There are also variants that combine different types of body armor for greater protection against ballistics as well as stabbing weapons. (*Id.* at 7.)

   Since 1972, the NIJ has established a program through which they set and update standards for minimum performance levels, as well as testing body armor for compliance. (*Id.* at 8.) The NIJ developed the program to assist protecting officers from firearm deaths in the line of duty. FBI statistics from 1987 through 2015 indicated that 92% of all felonious deaths of law enforcement officers in the line of duty were due to firearms. (NIJ. *The Next Revision of the NIJ Performance Standard for Ballistic Resistance of Body Armor, NIJ Standard 0101.07: Changes to Test Methods and Test Threats*. (hereafter *NIJ Revision*) (2018) <https://nij.ojp.gov/topics/articles/next-revision-nij-performance-standard-ballistic-resistance-body-armor-nij-standard> [as of Feb. 23, 2023].) The NIJ has conducted an analysis and found that officers who were wearing body armor when shot were 76% less likely to be killed than those who were not. (*Id.*)

   In recent years, body armor is increasingly being purchased by civilians. (NPR. *Sales of body armor are on the rise. Who's buying and why?* (hereafter *NPR Body Armor Sales*) (Jun. 14, 2022) <https://www.npr.org/2022/06/14/1103935711/body-armor-sales-increase-rise-mass-shootings-bans> [as of Feb. 22, 2023].) As body armor's sales in the U.S. has apparently increased, so has the diversity of its purchasers. (*NPR Body Armor Sales.*) According to body armor retailers who spoke with NPR, although their customers used to be mainly law enforcement and journalists, there is a growing popularity among individuals who want to wear body armor in everyday life. (*Id.*) Although these purchasers commonly include gun owners, one retailer stated that the customer base also tends to be people working night shifts at liquor stores or gas stations. (*Id.*)

   Body armor has been evolving from vests to other types of attire. Body armor now takes the shape of covert bullet resistant T-shirts and even backpacks, although their protection ratings vary. (*Id.*) There are even body armor blazers and vests that have been tested and rated by the NIJ. (Vice. *After Every Mass Shooting, Americans Turn to Bogotá's 'Bulletproof Tailor'* (Jan.

13, 2016.) <https://www.vice.com/en/article/nz7bbq/after-every-mass-shooting-americans-turn-to-bogotas-bulletproof-tailor> [as of Feb. 23, 2023].)

3) **Mass Shootings, and Body Armor**: According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those occurring in the past decade. (AP. *Buffalo is latest mass shooting by gunman wearing body armor.* (hereafter *AP Buffalo Shooting.*) (May 26, 2022) <https://apnews.com/article/mass-shootings-buffalo-body-armor-f7789ba97dee4d786ac24ec5c642b7ca> [as of Feb. 23, 2023].) Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. (*Id.*) Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, but was not stopped. (*Id.*)

This bill would prohibit persons who are prohibited from possessing a firearm from possessing body armor as well. Under California law, a person can be prohibited from possessing a firearm for several reasons including a restraining order, a conviction resulting from certain offenses, and certain mental health episodes. The reason underlying these prohibitions is, in essence, that those individuals have committed acts that demonstrate they are a danger to themselves or others and therefore should not possess a firearm. This bill would extend that reasoning to body armor, while allowing for an exemption in certain scenarios. A person otherwise prohibited from possessing body armor could petition their local chief of police or sheriff for an exemption from the prohibition. The petitioner would have to demonstrate that their employment or safety reasonably depends on the ability to possess body armor and that they would likely use body armor in a safe and lawful manner. However, this bill would still leave open the question of whether the same reasoning behind firearm prohibitions should be applied in the body armor context.

4) **The Second Amendment, and Body Armor**: Self-defense has historically been recognized as an inherent right. (*District of Columbia v. Heller* (hereafter *Heller*) (2008) 554 U.S. 570, 592, 628 [quoting *United States v. Cruikshank* (1876) 92 U.S. 542, 553]; *N.Y. State Rifle & Pistol Ass'n v. Bruen* (hereafter *Bruen*) (2022) 142 S. Ct. 2111, 2157.) The right to self-defense, "is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the *central component*' of the Second Amendment right. (*McDonald v. City of Chicago* (hereafter *McDonald*) (2010) 561 U.S. 742, 767.)

Heller posited that the Second Amendment, like the First and Fourth Amendments, codified a preexisting right, and only declared that it shall not be infringed. (*Heller*, *supra*, 554 U.S. at 592.) Although *Heller*'s main focus revolved around firearms, it did discuss the meaning of "arms" as used in the Second Amendment. (*Id.* at 581.) When interpreting the meaning of the word "arms" the court stated:

> "The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined 'arms' as '[w]eapons of offence, or armour [sic] of defence [sic].' [Citations.] Timothy Cunningham's important 1771 legal dictionary defined 'arms' as 'any thing that a man wears for his defence [sic], or takes into his hands, or useth [sic] in wrath to cast at or strike another.'

[Citations].

(*Heller, supra*, 554 U.S. at 581.)

Since then, the Supreme Court has ruled that a stun gun, although not a firearm, constituted a bearable "arm" and as such was covered by the Second Amendment. (*Caetano v. Massachusetts* (2016) 577 U.S. 411.) However, the Supreme Court has not further interpreted what "arms" means as used in the Second Amendment. Lower courts seem split in their interpretation as to whether body armor was included in the definition of "arms." (*United States v. Bonner* (hereafter *Bonner*) (2008) U.S. Dist. LEXIS 80765; [holding that it did not interpret *Heller* to permit felons the ability to possess firearms or body armor.]; *U.S. v. Smith* (2009) U.S. Dist. LEXIS 93948 at 2 [finding implicitly that under *Heller* the Second Amendment protects body armor but extend to felons]; *U.S. v. Davis* 906 F.Supp.2d 545, 552-558; [rejecting a defendant's contention that the Second Amendment covered body armor].)

In its most recent Second Amendment opinion, the Supreme Court has stated, "that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (*Bruen, supra,* 92 U.S. at 15; see also *id.* at 8 ["To justify its regulation, the government may not simply posit that the regulation promotes an important interest."].) Because Second Amendment jurisprudence has generally looked to historical firearm traditions, it is unclear what body armor legislation looked like historically. Body armor has been used throughout the centuries, and there are some accounts of it being used during the Civil War. (National Museum of American History. *Failed objects: Bullet proof vests and design in the American Civil War*. (Apr. 29, 2013.) <https://americanhistory.si.edu/blog/2013/04/failed-objects-bullet-proof-vests-and-design-in-the-american-civil-war.html> [as of Feb. 24, 2023].)

5) **Equal Protection Questions**: The Fourteenth Amendment's Equal Protection Clause has been described as mandating that all persons in similar situations should be treated alike under the law. (*City of Cleburne v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 439.) A person claiming that the state has created a classification that affects two or more similarly situated groups must show that the classification was made in an unequal manner. (*People v. Valladares* (2009) 173 Cal.App.4th 1388, 1398.) If the classification draws a distinction regarding race, national origin, or a fundamental right, it will be given the most exacting scrutiny. (*Clark v. Jeter* (1988) 486 U.S. 456, 461.) Should that be the case then, "the state has the burden of establishing it has a compelling interest that justifies the law and that the distinctions, or disparate treatment, made by that law are necessary to further its purpose. (*People v. McKee* (2012) 207 Cal.App.4th 1325, 1335.) If body armor were to fall under the Second Amendment as discussed above, then it possibly could be considered a fundamental right. (*McDonald, supra* 561 U.S. at 767-68.)

If body armor is not a fundamental right then any statute that treats certain groups different from others, has to be rationally related to a legitimate governmental purpose. (*Ibid.*) Those classifications bear a strong presumption of validity and anyone seeking to attack the rationality "of the legislative classification have the burden 'to negative every conceivable basis which might support it.' " (*F.C.C. v. Beach Communications* (1993) 508 U.S. 307, 314-

315.)

This bill draws a distinction between individuals who have committed an act that caused them to lose their right to a firearm under state law and those who have not. For the most part, this distinction has survived most constitutional claims in the firearm context. (*Heller, supra,* 554 U.S. at 626-27; *People v. Delacy* (2011) 192 Cal.App.4th 1481, 1495.) As the rationale behind the body armor prohibition in this bill mirrors the same rationale for firearm prohibitions, the argument could be made that this would withstand strict scrutiny, as well as a rational basis test. However, being one of the first body armor prohibitions, it remains an open question.

6) **Argument in Support:** None submitted.

7) **Argument in Opposition**: According the *Gun Owners of California,* " U.S. Supreme Court precedent has ruled in *Heller v Washington DC, McDonald v Chicago, Caetano v Massachusetts* and most recently in *NYSRPA v Bruen*, that the right to keep and bear arms is not limited to firearms. Rather, it includes anything that is in common use by the people for lawful purposes (i.e. defense) is protected by the Second Amendment. This includes body armor.

   "The Court has held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," *District of Columbia* v. *Heller*, 554 U. S. 570, 582 (2008), and that this "Second Amendment right is fully applicable to the States," *McDonald* v. *Chicago*, 561 U. S. 742, 750 (2010). In this case, the Supreme Judicial Court of Massachusetts upheld a Massachusetts law prohibiting the possession of stun guns after examining "whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment." 470 Mass. 774, 777, 26 N. E. 3d 688, 691 (2015).

   "Magazines, ammunition, accessories, and body armor fall under the same protection.

   "It's important to note that this legislation would criminalize a significant number of people – including parents who have chosen to provide school backpacks with body armor panels for their children in order to provide some level of protection in the tragic event of a school shooting. Further, motorcycle enthusiasts often use articles of clothing constructed with body armor, which can offer significant protection in the case of an accident. Other protective garments are manufactured with body armor, including athletic wear, hats, and denim jeans…"

8) **Related Legislation**: AB 301 (Bauer-Kahan), would prohibit the selling, purchase, or taking possession of body armor unless a person is in an eligible profession. AB 301 will be heard in this Committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

Gun Owners of California, INC.
Riverside County Sheriff's Office
California Public Defenders Association (CPDA)

1 Private Individual

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

§ 31360. Proscription on possession of body armor by person convicted of violent felony; Petition for exception; Liability related to enforcement of proscription

(a) A person who has been convicted of a violent felony under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in Section 16288, except as authorized under subdivision ~~(b)~~**(c)**, is guilty of a felony, punishable by imprisonment in state prison for 16 months, or two or three years.

(b) (1) A person who is prohibited from possessing a firearm under the laws of the State of California, who purchases, owns, or possesses body armor, as defined in Section 16288, except as authorized under subdivision (c), is guilty of a misdemeanor.

(2) Upon advising a person of their firearm prohibition, a court shall also advise them of their body armor prohibition pursuant to this section. A person shall relinquish any body armor in their possession in the same manner as outlined for the relevant firearm prohibition.

~~(b)~~ **(c)** A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, **or who is prohibited as specified in subdivision (b),** may file a petition for an exception to this prohibition with the chief of police or county sheriff of the jurisdiction in which that person seeks to possess and use the body armor. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the chief of police or sheriff deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

~~(c)~~ **(d)** The chief of police or sheriff shall require, as a condition of granting an exception under subdivision ~~(b),~~**(c)** that the petitioner agree to maintain on the petitioner's person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

~~(d)~~ **(e)** Law enforcement officials who enforce the prohibition specified in subdivision (a) **or subdivision (b)** against a person who has been granted relief pursuant to subdivision ~~(b),~~ **(c)** shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision ~~(c).~~ **(d).** This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

Date of Hearing: February 28, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 97 (Rodriguez) – As Introduced January 9, 2023

PULLED BY THE AUTHOR

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

Date of Hearing: February 28, 2023
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 253 (Maienschein) – As Amended February 22, 2023

SUMMARY: Requires the Attorney General to submit an annual budget that is sufficient to fund the State Child Death Review Council and to fund county child death review teams. Specifically, **this bill**:

1) Requires the Attorney General to submit an annual budget to the Governor that is sufficient to fund the State Child Death Review Council.

2) Requires the Attorney General to annually report to the Legislature the amount of funding needed for each county to conduct child death review teams.

3) Requires the Attorney General to post its "Child Death Review Protocol" on the Department of Justice website and requires that this protocol be updated every four years no later than January 1.

4) Sets a due date of July 1 for an annual report by a county child death review team, and requires the report to be posted on the child death review team's website.

5) Allows counties to enter into agreements and arrangements with other counties or the State Department of Social Services to share resources.

6) Makes findings and declarations.

EXISTING LAW:

1) Allows each county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. (Pen. Code, § 11174.32, subd. (a).)

2) Allows each county to develop an autopsy protocol that may be used as a guideline to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32, subd. (b).)

3) Permits the following information to be disclosed to a child death review team:

   a) Medical information, unless disclosure is prohibited by federal law;

b) Mental health information;

c) Information from child abuse reports and investigations, except the identity of the person making the report, which shall not be disclosed;

d) State summary criminal history information, criminal offender record information, and local summary criminal history information, as specified;

e) Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and,

f) Records of in-home supportive services, unless disclosure is prohibited by federal law. (Pen. Code, § 11174.32, subd. (e)(2).)

4) Clarifies that an individual or agency that has information governed by these provisions is not required to disclose information; the intent is to allow the voluntary disclosure of information by the individual or agency that has the information. (Pen. Code, § 11174.32, subd. (e)(1).)

5) Maintains the confidentiality of written or oral information disclosed to a child death review team and states that it shall not be subject to disclosure or discovery by a third party, unless otherwise required by law. (Pen. Code, § 11174.32, subd. (e)(3).)

6) States that records exempt from disclosure to third parties under state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32, subd. (d).)

7) Requires each child death review team to make publicly available, at least once a year, findings, conclusions, and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths, as specified. (Pen. Code, § 11174.32, subd. (f).)

8) Requires, subject to available funding, the Attorney General to develop a protocol for the development and implementation of interagency child death review teams for use by counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases so that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has died. (Pen. Code, § 11174.33.)

9) Creates the California State Child Death Review Council to oversee the statewide coordination and integration of state and local efforts to address fatal child abuse or neglect and to create a body of information to prevent child deaths, but makes its implementation contingent on funds being appropriated for its purposes in the Budget Act. (Pen. Code, § 11174.34, subds. (b)(1) & (d)(6).)

10) Requires the Department of Social Services (DSS) to work with state and local child death review teams and child protective services agencies in order to identify child death cases that

were, or should have been, reported to or by county child protective services agencies. (Pen. Code, § 11174.35.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is unacceptable that California's child death reporting system is in disarray. There is no clear guidance in state law declaring which State department is held responsible for monitoring and reporting child fatalities. When it comes to reporting deaths of children in California, the lines of accountability should not be this blurred.

   "AB 253 would fill significant gaps in reporting of child deaths across California by making sure each Child Death Review Team makes data available to the public and prescribes a uniform way of posting and identifying the report to enable users to easily find the information."

2) **Background**: Currently in California there is no state child death review team. The mandate to the Attorney General's Office for a state team is contingent upon funds being available. (Pen. Code, § 11174.34, subd. (e)(6).) The State Child Death Review Council was disbanded in 2008 when state funds were cut. Local Child Death Review Teams have been functioning since the early 1980s, with Los Angeles County starting in 1978. Many California counties continue to maintain child death review teams, however they are formally authorized (not mandated) in statute (Pen. Code, §11174.32).

   This bill would require that existing child death review teams publish their findings annually, and no later than July 1 of each year.

3) **Death by Child Abuse and Neglect:** Child death review teams are not required in each county at this time. Therefore, each county that participates may choose how and when to publish its findings. For example, the Los Angeles County Department of Children and Family Services (DCFS) has been compiling and publishing data about abuse and neglect on a monthly basis, since 2019, and annual basis, since 2015. Their data includes, but is not limited to: age, ethnicity, gender, contact with social services, type of abuse, etc. SB 39 (Migden), Chapter 467, Statutes of 2007 provided for the streamlined process of releasing this data, while still maintaining the confidentiality of victims. This information can be critical in determining the best way to meet the needs of children throughout California.

4) **Governor's Veto:** This bill is substantially similar to AB 2660 (Maineschein), of the 2021-2022 Legislative Session. The governor's veto message is as follows:

   "I am returning Assembly Bill 2660 without my signature.

   "This bill would require each county, by no later than January 1, 2025, to establish an interagency child death review team, and to develop and adopt a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners in the identification of child abuse or neglect.

   "While I agree with the intent of this bill, it creates a large mandate, potentially costing the state millions of dollars. With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety and safety-net programs.

"The Legislature sent measures with potential costs of well over $20 billion in one-time spending commitments and more than $10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process. For these reasons, I cannot sign this bill."

While this bill does not mandate that each county have a child death review team, it would require the Attorney General to submit a budget for funding the State Child Death Review Council and for county child death review teams.

5) **Argument in Support**: According to the *Chidlren's Advocacy Center*, a Co-Sponsor of this bill, "AB 2660 from last year was vetoed at the end of the bill signing period by the Governor along with a large number of bills with standardized language citing possible costs. The major cost component of AB 2660 was changing the language that current gives counties the option to establish death review ("may") teams into a "shall". That has been deleted from AB 253. What remains is critical to merging from the Catch-22 we are in currently: because child safety advocates do not know how much even a barely adequate death review system costs, we cannot successfully advocate for the money to fund it or shape policy to reduce the projected costs. And, without the funding, no state agency has so far been willing to project the cost of an operational statewide program to prevent children from dying.

   "That Catch-22 is ended by the requirement that the Attorney General – currently responsible for leading the statewide team – simply include an amount in the office's budget request. There is no obligation the Governor will include it. The same is true of the cost projection for county-level death review teams. With these numbers we can have an informed conversation about the costs, whether they reasonable, and how to reduce them. Without these numbers, we are forever stuck in the limbo we have been in since 2008. Our children deserve better than that."

6) **Related Legislation**:

   a) AB 271 (Quirk-Silva), would allow counties to establish homeless death review committees. AB 271 is modeled after child death review teams and elder & dependent adult death review teams. AB 271 will be heard in this committee today.

   b) AB 391 (Jones-Sawyer), would require non-mandated reported to provide their contact information, including their name, telephone number, and the information that gave rise to the suspicion of child abuse or neglect. Additionally, AB 391 would prohibit the transmittal of the report unless contact information from the non-mandated reporter was provided. AB 391 is pending hearing in this committee.

7) **Prior Legislation**:

a) AB 2654 (Lackey), of the 2021-2022 Legislative Session, would have reconvened the State Child Death Review Council by removing the requirement that funds are appropriated for it in the Budget Act in order to be operative. AB 2654 was held on the Appropriations Suspense Calendar.

b) AB 2660 (Maienschein), of the 2021-2022 Legislative Session, would have required each county to establish an interagency child death review team no later than January 1, 2024. AB 2660 was vetoed by the governor.

c) SB 187 (Committee on Budget and Fiscal Review), Chapter 50, Statutes of 2022, required statistical information be recorded through the Department of Social Services in the statewide child information system on all cases of child death suspected to be related to abuse or neglect.

d) SB 863 (Min), Chapter 986, Statutes of 2022, authorizes a county domestic violence death review team to assist local agencies in identifying and reviewing domestic violence near-death cases, as defined.

e) SB 39 (Migden), Chapter 467, Statutes of 2007, provides for the release of certain information by county welfare agencies regarding a deceased child if the death is the result of abuse or neglect.

REGISTERED SUPPORT / OPPOSITION:

Support

Children Now (Co-Sponsor)
Childrens Advocacy Institute (Co-Sponsor)

Opposition

None

Analysis Prepared by: Elizabeth Potter / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 268 (Weber) – As Introduced January 23, 2023

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to develop standards for mental health care in local correctional facilities, commencing on July 1, 2024. Specifically, **this bill**:

1) Increases the membership on the BSCC to add a licensed health care provider and a licensed mental health care provider, both to be appointed by the Governor, and subject to confirmation by the Senate Rules Committee. Increased membership shall begin July 1, 2024.

2) Requires the BSCC, commencing on July 1, 2024, to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities that either meet or exceed the standards for health care services in jails established by the National Commission on Correctional Health Care.

3) Provides that these standards include:

   a) Requiring sufficiently detailed safety checks of at-risk incarcerated persons to determine that the person is still alive;

   b) Requiring that correctional officers be certified in cardiopulmonary resuscitation (CPR), and requiring that they begin CPR on a non-responsive person without obtaining approval from a supervisor or medical staff, when safe and appropriate to do so;

   c) Requiring jail supervisors to conduct random audits in a defined housing unit of no fewer than two safety checks from each prior shift, as specified;

   d) Requiring no fewer than four hours of mental and behavioral health training annually for correctional officers, with the training to be developed in conjunction with the BSCC;

   e) Requiring health care and mental health care providers who are employed by, or regularly work within, a jail to receive no fewer than 12 hours of continuing education annually relevant to correctional health care and mental health care. This training to be developed in conjunction with the applicable licensing authorities for health care and mental health care providers;

   f) Requiring that a qualified mental health care professional conduct a mental health screening of a person at intake or booking, if available; and,

g) Requiring jail staff to review the medical and mental health records and the county electronic health record of a person booked or transferred to county jail, if they are available.

4) Defines a "qualified mental health care professional" as including a physician, physician's assistant, nurse, nurse practitioner, psychologist, therapist, and clinical social worker, among others.

5) Contains legislative findings and declarations.

EXISTING LAW:

1) Establishes the BSCC to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. (Pen. Code, § 6024, subds. (a) & (b).)

2) Provides that BSCC's mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

3) States that as of July 1, 2013, the BSCC shall consist of 13 members, as specified. (Pen. Code, § 6025, subd. (b).)

4) States that it is the duty of the BSCC to collect and maintain available information and data about state and community corrections policies, practices, capacities, and needs. (Pen. Code, § 6027, subd. (a).)

5) Requires the BSCC to establish minimum standards for local correctional facilities. (Pen. Code, § 6030, subd. (a).)

6) Requires the BSCC to review those standards biennially and make any appropriate revisions. (Pen. Code, § 6030, subd. (a).)

7) Provides that the minimum standards shall include, but not be limited to, health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training. (Pen. Code, § 6030, subd. (b).)

8) Requires the BSCC to seek the advice of the State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons in establishing minimum standards related to health and sanitary conditions. (Pen. Code, § 6030, subd. (g)(1).)

9) Requires the BSCC to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. (Welf. & Inst. Code, § 210.)

10) Requires the BSCC to inspect each local detention facility in the state biennially, at a minimum. (Pen. Code, § 6031, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There's a crisis of incarcerated people dying behind bars. The California State Auditors report revealed disturbing facts regarding the inadequate statewide standards within county jails. Between 2006-2020 there were 185 in-custody deaths for San Diego County, 421 death in Los Angeles, 104 deaths in Riverside County, 124 deaths in San Bernardino. Many of these deaths were preventable. The California Board of State and Community Corrections is tasked with establishing the minimum standards for jail systems to follow, and it is time to update those practices to ensure we are preventing the loss of life due to inadequate policies and care for individuals in custody.

   "AB 2343 outlines and task the Board of State and Community Corrections to revise their policies to align with best practices related to performing intake health evaluations, training, conducting safety checks, and addressing the other deficiencies to reduce suicide risk and related health needs."

2) **Background on the BSCC**: The BSCC is an independent agency that provides leadership to the adult and juvenile criminal justice systems, expertise on Public Safety Realignment issues, acts as a data and information clearinghouse, and provides technical assistance on a wide range of community corrections issues. The BSCC promulgates regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities, develops standards for the selection and training of local corrections and probation officers. The BSCC also administers significant public safety-related grant funding. (https://www.bscc.ca.gov/m_bsccboard/; see also Pen. Code, §§ 6024-6025 & 6030-6031.)

   "Policy for the agency is set by the 13-member Board of State and Community Corrections, whose members are prescribed by statute, appointed by the Governor and the Legislature, and subject to approval by the state Senate. The Board Chair reports directly to the Governor." (https://www.bscc.ca.gov/m_bsccboard/.) The majority of the board is made up of law enforcement. (See Pen. Code, § 6025, subds. (a) & (b).)

   This bill would add two more members to the composition of the board, a licensed health care provider and a licensed mental health care provider.

3) **Current Mental Health Standards for Jails**: Title 15, section 1209 requires a county jail facility administrator to establish policies and procedures for mental health services including: (a) identification and referral of inmates with mental health needs; (b) mental health treatment programs provided by qualified staff, including the use of telehealth; (c) crisis intervention services; (d) basic mental health services provided to inmates as clinically indicated; (e) medication support services; and (f) the provision of health services provided

by the county jail facility are sufficiently coordinated so that care is appropriately integrated, medical and mental health needs are met and the impact of any of these conditions on each other is adequately addressed. (https://www.bscc.ca.gov/wp-content/uploads/Attachment-C-Title-15.pdf, at p. 59.)

4) **State Auditor's Report**: The impetus for this bill is a 2022 State Auditor report on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department. (See *San Diego County Sheriff's Department It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody* February 3, 2022, Report 2021-109 (ca.gov) <http://auditor.ca.gov/reports/2021-109/index.html> [as of February 23, 2023].)

   From 2006 through 2020, 185 people died in San Diego County's jails—one of the highest totals among counties in the State. The Joint Legislative Audit Committee requested an audit of the San Diego County Sheriff's Department to determine the reason for so many in-custody deaths.

   The audit report notes that "Significant deficiencies in the Sheriff's Department's provision of care to incarcerated individuals likely contributed to the deaths in its jails. For example, studies on health care at correctional facilities have demonstrated that identifying individuals' medical and mental health needs at intake—the initial screening process—is critical to ensuring their safety in custody. Nonetheless, our review of 30 individuals' deaths from 2006 through 2020 found that some of these individuals had serious medical or mental health needs that the Sheriff's Department's health staff did not identify during the intake process."

   The audit revealed multiple instances of individuals who requested or required medical and mental health care and did not receive it at all or in a timely manner. For example, one individual requested mental health services shortly after entering the jail. However, the intake nurse did not identify any significant mental health issues and determined that the individual did not qualify for an immediate appointment. The individual committed suicide two days later.

   The audit also found that deputies performed inadequate safety checks to ensure the well-being of incarcerated persons. State law requires hourly checks through direct visual observation. This is the most consistent means of monitoring for medical distress and criminal activity. In the Auditor's review of 30 in-custody deaths, they found instances in which deputies performed these checks inadequately.

   The audit also found that some of deficiencies of the Sheriff's Department are the result of statewide corrections standards that are insufficient for maintaining the safety of incarcerated individuals. For example, regulations established by the BSCC do not explicitly require that mental health professionals perform the mental health screenings during the intake process. They also do not describe the actions that constitute an adequate safety check: rather, the regulations simply state that safety checks must be conducted at least hourly through direct visual observation.

   The Auditor's report concluded with some key recommendations, including that BSCC should require mental health evaluations to be performed by mental health professionals at intake, and that it should clarify and improve procedures for safety checks. BSCC disagreed with the findings and recommendations but indicated that it would discuss whether amendments to its regulations were warranted. (Report 2021-109 (ca.gov).)

This bill would require BSCC to develop and adopt regulations setting minimum standards for mental health care at local correctional facilities, including mental health screenings by a qualified mental health professional at intake, and sufficiently detailed regulations on safety checks.

5) **Governor's Veto Message**: Last year AB 2343 (Weber), which was practically identical to this bill, was passed by the Legislature but vetoed by the Governor. In his veto message, Governor Newsom said:

"This bill would, commencing July 1, 2023, require the Board of State and Community Corrections (BSCC) to develop and adopt minimum mental health care standards for local correctional facilities and would add both a licensed healthcare provider and a licensed mental health provider to the Board.

"BSCC has had a thirteen-member board since 2013. I am concerned that adding two members unnecessarily grows the board and could impede its ability to timely carry out its mission."

This bill does not address the Governor's Veto Message as it adds the same two additional positions that the Governor found objectionable.

6) **Argument in Support**: According to the *San Diego County Board of Supervisors*, the sponsor of this bill, "At the direction of the California State Joint Legislative Audit Committee, the Auditor of the State of California ("State Auditor") conducted an audit of the San Diego County Sheriff's Department ("Sheriff's Department") to determine the reasons for the high number of in-custody deaths. The State Auditor issued a report in February 2022 that raised concerns about systemic issues with the Sheriff's Department's policies and practices related to its provision of medical and mental health care and its performance of visual checks to ensure the safety and health of individuals in its custody.

"To address the State Auditor's report, the San Diego County Board of Supervisors unanimously approved recommendations to sponsor state legislative action to ensure that the Sheriff's Department implements changes in accordance with the State Auditor's recommendations."

7) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "Historically, we have had concerns with growing the size of the BSCC. We feel this board has an appropriate current composition and worry that adding to it, notwithstanding the importance of the delivery of medical and mental health care services to incarcerated persons, will dilute the operational efficacy of the body. Governor Newsom noted this concern in his veto of a substantially similar bill you authored last year when he wrote: 'BSCC has had a thirteen-member board since 2013. I am concerned that adding two members unnecessarily grows the board and could impede its ability to timely carry out its mission.'

"Further, while the BSCC is the appropriate venue for setting minimum standards for detention facilities, AB 268 goes too far by installing specific standards and requirements in statute. BSCC board members, practitioners, and other stakeholders participate in a near-constant revision of Title 15 standards for both adult and juvenile incarcerated populations. This process generally results in well-negotiated and achievable standards that are subject to the scrutiny and review of experts and those who will be asked to implement and abide by them. Statutorily setting these standards interferes in this process and will preclude the BSCC and those it oversees from being nimble when changes are necessary."

8) **Prior Legislation**: AB 2343 (Weber), of the 2021-2022 Legislative Session, was almost identical to this bill. AB 2343 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego County Board of Supervisors (Sponsor)

Opposition

California State Sheriffs' Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 271 (Quirk-Silva) – As Amended February 16, 2023

SUMMARY: Allows counties to establish homeless death review committees. Specifically, **this bill**:

1) Allows each county to establish a homeless death review committee to assist local agencies in identifying the root causes of death of homeless individuals.

2) Allows each county to develop an autopsy protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on homeless individuals in the identification of the cause and mode of death for the individual.

3) Provides that written or oral communication, or, a document shared within or produced by a homeless death review committee information is confidential and not subject to third party discovery or disclosure;

4) Permits the homeless death review committee to share recommendations upon the completion of a review at the discretion of a majority of the members on the committee.

5) Allows an organization represented on the homeless death review committee to share with other members of the committee information that may be pertinent to review. Any information shared is confidential.

6) States that an individual or agency that has information governed by these provisions is not required to disclose information; the intent is to allow the voluntary disclosure of information by the individual or agency that has the information.

7) Allows an individual or agency that has information requested by the homeless death review committee to reply on the committee's request as a basis for disclosing the information.

8) Permits the following information to be disclosed to a homeless death review committee:

   a) Medical information, unless disclosure is prohibited by federal law;

   b) Mental health information;

   c) State summary criminal history information, criminal offender record information, and local summary criminal history information, as specified;

   d) Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and,

e) Information provided to probation officers in the course of the performance of their duties, including, but not limited to reports and the information on which these reports are based.

9) States that written or oral information may disclosed, notwithstanding the following:

a) Willful, unauthorized violations of professional confidences which constitute unprofessional conduct;

b) Confidential communications between a psychologist and client;

c) Confidential communications between a licensed marriage and family therapists and client

d) Attorney-client privilege;

e) Lawyer-client privilege;

f) Physician-patient privilege; and,

g) Psychotherapist-patient privilege.

10) Requires any information and recommendations gathered by the homeless death review committee be used by the county to develop education and prevention strategies that will lead to improved coordination of services for the homeless population.

EXISTING LAW:

1) Defines "homeless" as any of the following:

a) An individual or family who lacks a fixed, regular, and adequate nighttime residence;

b) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including, but not limited to, a car, park, abandoned building, bus station, train station, airport, or camping ground;

c) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements, including hotels or motels paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, congregate shelters, or transitional housing;

d) An individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where the individual temporarily resided;

e) An individual or family who will imminently lose their housing, including, but not limited to, housing they own, rent, or live in without paying rent, are sharing with others, or rooms in hotels or motels not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, if any of the following criteria are met:

i) The primary nighttime residence will be lost within 14 days, as evidenced by any of the following:

(1) A court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;

(2) The individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; and,

(3) Credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause.

ii) The individual or family has no subsequent residence identified; and,

iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing.

f) Unaccompanied youth and homeless families with children and youth defined as homeless under any other federal statute, as of the effective date of this program, who meet all of the following:

i) Have experienced a long-term period without living independently in permanent housing;

ii) Have experienced persistent instability as measured by frequent moves over that long-term period; and,

iii) Can be expected to continue in that status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment. (Welf & Inst. Code, § 16523 subd. (d).)

2) States that "homelessness" means the status of being homeless, as defined (Welf & Inst. Code, § 16523 subd. (e).)

3) Allows each county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. (Pen. Code, § 11174.32, subd. (a).)

4) Allows each county to develop an autopsy protocol that may be used as a guideline to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32, subd. (b).)

5) Permits the following information to be disclosed to a child death review team:

   a) Medical information, unless disclosure is prohibited by federal law;

   b) Mental health information;

   c) Information from child abuse reports and investigations, except the identity of the person making the report, which shall not be disclosed;

   d) State summary criminal history information, criminal offender record information, and local summary criminal history information, as specified;

   e) Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and,

   f) Records of in-home supportive services, unless disclosure is prohibited by federal law. (Pen. Code, § 11174.32, subd. (e)(2).)

6) Allows each county to establish an interagency elder and dependent adult death review team to assist local agencies in identifying and reviewing suspicious elder and dependent adult deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in elder and dependent adult abuse or neglect cases. (Pen. Code, § 11174.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Last year in one month, there were approximately 45 homeless individuals that died in my district alone. That is 45 too many. AB 271 would allow counties to establish death review committees that will specifically focus on uncovering underlying causes of deaths from our homeless population, and determine how these factors can be preventable. We must be active in making changes to ensure preventable deaths concerning homeless individuals does not occur in California."

2) **Background on Death Review Teams**: This proposed legislation is modeled after child death review teams and elder & dependent adult death review teams. Both teams authorize counties to establish death review teams for suspicious child, elder and dependent adult deaths.

   Local Child Death Review Teams have been functioning since the early 1980s, with Los

Angeles County starting in 1978. Some California counties maintain child death review teams, however while they are formally authorized in statute, they are not mandated. (Pen. Code, §11174.32.)

Elder and dependent adult death review teams were authorized in statute in 2001 (Pen. Code, § 11174.5). According to the Sacramento District Attorney's Office "In July 1999, the District Attorney's Office partnered with Sacramento County Department of Health and Human Services to form the Elder Death Review Team (EDRT). EDRT is a multidisciplinary team with members representing law enforcement, social services, the coroner and community based organizations. Their purpose is to conduct in-depth reviews of elder and dependent adult abuse and neglect cases that resulted in death. They identify systemic needs, develop strategies, policies and procedures to improve communication between the organizations, and work toward preventing elder abuse and neglect. EDRT meets six times a year, and produces a report of findings for the Board of Supervisors." (https://www.sacda.org/victim-services/elder-abuse/elder-death-interdisciplinary-review-team/)This team has reports on its website dating back to 2004.

This bill would allow counties to establish homeless death review committees with specific protocols and guidelines.

3) **Homelessness in California**: According to background information provided by the author's office, "On average, approximately over 129,000 people experience homelessness throughout the state of California. According to the National Alliance on Homelessness, in Los Angeles alone, 49,995 people fall under the definition homeless on daily basis." (California - National Alliance to End Homelessness). Given the affordable housing shortage throughout the state, this number could be higher.

   A recent study by the University of California San Francisco concluded that people who first became homeless at age 50 or later were about 60 percent more likely to die than those who had become homeless earlier in life. But homelessness was a risk for everyone, and those who remained homeless were about 80 percent more likely to die than those who were able to return to housing. (https://www.ucsf.edu/news/2022/08/423551/older-homeless-people-are-great-risk-dying) Because this study was prospective it was able to identify and gather important information prior to people dying such as medical history or drug and substance abuse problems.

   In an article by CalMatters, provided to the committee by the author's office, "Across the state, the U.S. Census shows about 6.5% of Californians identify as black or African American, but they account for nearly 40% of the state's homeless, according to a Department of Housing and Urban Development report to Congress. Nationally, black people account for 13.4% of the population but are 39.8% of the homeless population." In the same article, they point to deficiencies for those coming out of California Prisons. "Felony records, stagnant wages and a rising housing crisis combined with policies that exclude or punish marginalized groups can ensnare vulnerable black people in homelessness. Even without felony records, black people face more difficulties finding employment and housing than other races or ethnicities, the National Fair Housing Alliance (NFHA) demonstrated in a recent report." (Black people disproportionately homeless in California - CalMatters)

4) **Argument in Support**: According to the *Orange County Sheriff's Department*, the Sponsor of this bill, "Deaths among those experiencing homelessness has been on an increase in communities across our state. In Orange County, the number of homeless deaths increased from 103 in 2012 to 395 in 2021. In January 2022, in my role as Orange County Coroner, I announced the creation of Orange County's first Homeless Death Review Committee to determine what, if any, factors contributing to these deaths were preventable. The Homeless Death Review Committee consists of technical experts from both the public and non-profit sector. The committee met multiple times throughout 2022. In the course of their work it was determined the in-depth sharing of data that would be necessary to look at each individual homeless death would not be possible without authorization in statute. As a result, the Committee's first report will be based on aggregate data only.

   "If approved, AB 271 will provide the necessary authorization for a more complete review of homeless deaths. Similar mortality review committees are authorized by State law. For example the penal code authorizes counties to create a child death review team and an elder death review team. These teams have proved helpful in identifying trends where deaths could be prevented and informing the development of public policy. The committee authorized in AB 271 is also in keeping with a best practice recommended by the National Health Care for the Homeless Council."

5) **Related Legislation**: AB 253 (Maienschein), would require the Attorney General to submit to the Governor and the Legislature an annual budget that is sufficient to fund the State Child Death Review Council and county child death review teams. AB 253 is pending hearing in this committee.

6) **Prior Legislation**:

   a) AB 2654 (Lackey), of the 2021-2022 Legislative Session, would have reconvened the State Child Death Review Council by removing the requirement that funds are appropriated for it in the Budget Act in order to be operative. AB 2654 was held in the Assembly Appropriations Committee.

   b) AB 2660 (Maienschein), of the 2021-2022 Legislative Session, would have required each county to establish an interagency child death review team no later than January 1, 2024. AB 2660 was vetoed by the governor.

   c) SB 187 (Committee on Budget and Fiscal Review), Chapter 50, Statutes of 2022, required statistical information be recorded through the Department of Social Services in the statewide child information system on all cases of child death suspected to be related to abuse or neglect.

   d) SB 863 (Min), Chapter 986, Statutes of 2022, authorizes a county domestic violence death review team to assist local agencies in identifying and reviewing domestic violence near-death cases, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association
Illumination Foundation
Orange County Sheriff's Department
Tustin Police Department

Opposition

None

Analysis Prepared by: Elizabeth Potter / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 301 (Bauer-Kahan) – As Amended February 22, 2023

SUMMARY: Prohibits the purchase of body armor by, and the sale of body armor to, a person who is not employed in a specified eligible profession. Specifically, **this bill**:

1) Repeals existing laws prohibiting violent felons from possessing body armor.

2) Prohibits any person or corporation from selling or delivering body armor unless the purchaser is in an eligible profession.

3) Prohibits any person from purchasing or taking possession of body armor unless they are in an eligible profession.

4) Makes the unlawful sale, delivery, or acquisition of body armor a misdemeanor with a fine of $5,000 for a first offense and $10,000 for subsequent offenses, except in cases involving violent felons, in which case it is a felony.

5) Requires, except if the purchaser is a specified government agency employing eligible persons, a distributor of body armor to verify a purchaser's eligibility by inspecting one of the following documents:

   a) A professional license issued by a government entity;

   b) An employment card or other similar credential issued by an employer; or,

   c) A notarized form approved by the Department of Justice (DOJ) stating that the purchaser is eligible.

6) Requires that a sale or delivery of body armor be made in person, except in cases where the purchaser is a government agency furnishing body armor to employees in eligible professions.

7) Defines "eligible profession" as including:

   a) Peace officers;

   b) Military members;

   c) Federal law enforcement officers;

d) Armored car guards;

e) Security guards;

f) Firefighters;

g) Paramedics and emergency medical technicians;

h) Firearms dealers;

i) Body armor retailers or salespersons;

j) Private investigators;

k) Building safety inspectors;

l) Code enforcement officers;

m) Animal control officers;

n) Humane officers;

o) Violence intervention and prevention workers;

p) Movie actors;

q) Attorneys;

r) Journalists; and,

s) Any profession added by the DOJ.

8) Authorizes the DOJ to expand the eligible professions list if the profession exposes the employee to serious physical injury which could be prevented or mitigated by wearing body armor, or if the profession requires the employee to facilitate the distribution of body armor.

9) Allows ineligible professions to request that the DOJ add them onto the eligible professions list, as specified.

10) Defines "body armor" as "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor."

EXISTING STATE LAW:

1) States that all people have inalienable rights among which are enjoying and defending life and liberty. (Cal. Const. Art. I § 1.)

2) Defines "body vest" and "body shield" in general as "any bullet-resistant material intended to provide ballistic and trauma protection for the wearer or holder." (Pen. Code, § 16290.)

3) Defines "body armor" as, "any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor." (Pen. Code, § 16288.)

4) Prohibits a violent felon from possessing body armor unless their livelihood or safety are dependent on its possession, in which case they can petition their chief of police or sheriff to modify or eliminate the prohibition, as outlined. (Pen. Code, §§ 31360 & 17320.)

5) Imposes an enhancement of one, two, or five years for any person who commits a violent felony while wearing a body vest, as defined. (Pen. Code, § 12022.2.)

6) Requires that the DOJ establish a testing and certification process for body armor that will be used by state peace officers. (Pen Code, § 31310 *et seq*.)

7) Defines "body armor" for DOJ certification purposes, in part, as, "those parts of a complete armor that provide ballistic resistance to the penetration of the test ammunition for which a complete armor is certified. In certain models, the body armor consists of ballistic panels without a carrier. Other models have a carrier from which the ballistic panels may be removed for cleaning or replacement." (11 C.C.R. § 942, subd. (f).)

8) Outlines the DOJ certification process for body armor. (11 C.C.R. § 941 *et seq*.)

EXISTING FEDERAL LAW

1) Provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (U.S. Const. Second Amend.)

2) Prohibits states from denying any person equal protection under the law. (U.S. Const. Fourteenth Amend.)

3) Prohibits violent felons, as defined, from purchasing, owning, or possessing body armor. (18 U.S.C. § 931.)

4) Defines body armor for purposes of this prohibition as, "any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment." (18 U.S.C. § 921 subd. (a)(35).)

5) Defines body armor for purposes of sentencing enhancements in violent or drug trafficking crimes, in part, as, "personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment." (34 U.S.C. § 10534.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 301 is a crucial step to protect the safety of our communities and ensure that law enforcement have the necessary resources to protect us. The use of body armor by perpetrators of mass terror acts has increased in the past decade, and its purchase is largely unregulated, with no background checks or permit requirements. This lack of regulation poses a significant obstacle to intercepting perpetrators of violence and terror. It is essential to impose regulations on body armor purchases."

2) **Overview of Body Armor**: The term "body armor" is commonly associated with vests that provide protection against ballistic impacts, i.e. bullets. (National Institute of Justice (NIJ). *Selection and Application Guide to Ballistic-Resistant Body Armor: For Law Enforcement, Corrections and Public Safety. NIJ Selection and Application Guide-0101.06.* (hereafter *NIJ Selection Guide*) (Dec. 2014.) <https://www.ojp.gov/pdffiles1/nij/247281.pdf> [as of Feb. 22, 2023] at p. 4.) There are generally two kinds of body armor, soft body armor and hard body armor. (*Ibid.*) Soft body armor is generally composed of ballistic resistant material that is layered so that when a bullet hits it, the fibers absorb and disperse the bullet's energy without letting it penetrate through to the wearer. (*Id.* at 5.) Hard body armor refers to plates that can be constructed from ceramics, metal, or other rigid material. (*Id.* at 6-7.) There are also variants that combine different types of body armor for greater protection against ballistics as well as stabbing weapons. (*Id.* at 7.)

   Since 1972, the NIJ has established a program through which they set and update standards for minimum performance levels, as well as testing body armor for compliance. (*Id.* at 8.) The NIJ developed the program to assist protecting officers from firearm deaths in the line of duty. FBI statistics from 1987 through 2015 indicated that 92% of all felonious deaths of law enforcement officers in the line of duty were due to firearms. (NIJ. *The Next Revision of the NIJ Performance Standard for Ballistic Resistance of Body Armor, NIJ Standard 0101.07: Changes to Test Methods and Test Threats.* (hereafter *NIJ Revision*) (2018) <https://nij.ojp.gov/topics/articles/next-revision-nij-performance-standard-ballistic-resistance-body-armor-nij-standard> [as of Feb. 23, 2023].) The NIJ has conducted an analysis and found that officers who were wearing body armor when shot were 76% less likely to be killed than those who were not. (*Id.*)

   In recent years, body armor has been evolving from vests to other types of attire and is increasingly being purchased by civilians. (NPR. *Sales of body armor are on the rise. Who's buying and why?* (hereafter *NPR Body Armor Sales*) (Jun. 14, 2022) <https://www.npr.org/2022/06/14/1103935711/body-armor-sales-increase-rise-mass-shootings-bans> [as of Feb. 22, 2023].) Body armor now takes the shape of covert bullet resistant T-shirts and even backpacks, although their protection ratings vary. (*Ibid.*) There are even body armor blazers and vests that have been tested and rated by the NIJ. (Vice. *After Every Mass Shooting, Americans Turn to Bogotá's 'Bulletproof Tailor'* (Jan. 13, 2016.) <https://www.vice.com/en/article/nz7bbq/after-every-mass-shooting-americans-turn-to-bogotas-bulletproof-tailor> [as of Feb. 23, 2023].)

3) **Gun Violence, Mass Shootings, and Body Armor**: According to The Violence Project, over the past forty years at least 21 mass shooters wore body armor, with a majority of those

occurring in the past decade.[1] (AP. *Buffalo is latest mass shooting by gunman wearing body armor.* (hereafter *AP Buffalo Shooting.*) (May 26, 2022) <https://apnews.com/article/mass-shootings-buffalo-body-armor-f7789ba97dee4d786ac24ec5c642b7ca> [as of Feb. 23, 2023].) Although the database does not show a clear correlation with body armor and the number of victims, a co-founder of The Violence Project stated that body armor could enable attackers to shoot longer and is a symbolic way to adhere to societal expectations of what a mass shooting looks like. Most recently, the shooter in Buffalo was wearing body armor and was in fact shot by a security guard, but was not stopped. (*Ibid.*)

According to body armor retailers who spoke with NPR, body armor sales have increased and although their customers used to be mainly law enforcement and journalists, there is a growing popularity among individuals who want to wear body armor in everyday life. (*NPR Body Armor Sales.)* One retailer stated that the customer base tends to be people working night shifts at liquor stores or gas stations. (*Id.)*

The author's stated reason for prohibiting body armor is that it has been and can be used to facilitate mass shootings. However, unlike firearms, body armor are an inherently defensive instrument.

Considering recent Supreme Court cases which have essentially cemented Americans' right to possess firearms, does it make sense to then ban all individuals from one avenue of possible protection against firearms? If anything, the unfortunate fact that approximately 19,000[2] people were killed by firearms in one year should give pause to a broad body armor ban, even when taking into account the 21 mass shooters who have worn body armor through the past four decades. Weighing all the statistics and data regarding gun violence, the evidence does not seem to support a sweeping prohibition of this nature for body armor.

This bill would prohibit a law-abiding individual from acquiring body armor unless they are in an eligible profession, but that same person would be able to then go and purchase a firearm. Take for example, as mentioned in the NPR article above, a gas station or convenience store clerk who might be apprehensive about carrying a firearm, and may be assuaged by at least having the ability to wear body armor. This can extend to teachers, retired peace officers, victims of domestic violence, and essentially any individual who worries about gun violence. Although this bill authorizes the Department of Justice to include

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[1] In terms of mass shootings in the U.S. overall, getting specific statistics proves more difficult due to different definitions. (*Pew Gun Death Data.*) The Violence Project defines a mass shooting as a shooting with four or more fatalities occurring in public and not associated with typical criminal activity like gang violence or robberies. (RAND Corporation. *Mass Shootings in the United States.* (hereafter *RAND Research*) (Apr. 15, 2021) <https://www.rand.org/research/gun-policy/analysis/essays/mass-shootings.html> [as of Feb. 23, 2023].) In contrast the Gun Violence Archive defines mass shooting as a shooting with four or more injuries in any location and with any type of motive, including gang activity or robberies. (*Ibid.*) According to the Violence Project, there were six mass shootings and sixty resulting fatalities in 2019; whereas the Gun Violence Archive states there were four hundred and eighteen mass shootings and four hundred and sixty-five resulting fatalities. *(Ibid.*) Although definitional differences makes analysis of overall mass shootings more difficult, at least one subset of those events, active shooter attacks in K-12 schools since 1970 certainly indicates a disturbing increase in frequency and fatalities. (New York Times. Texas Massacre Is the Second-Deadliest School Shooting on Record. (hereafter NYT School Shootings.) (May 24, 2022.) <https://www.nytimes.com/interactive/2022/05/24/us/texas-school-shooting-deaths.html> [as of Feb. 23, 2023].)

[2] *Pew Gun Death Data, supra.*

other professions, would this bill have the unintended consequence that those excluded could be incentivized to purchase a firearm instead?

4) **The Second Amendment, the Right to Self-Defense, and Body Armor**: Self-defense has historically been recognized as an inherent right. (*District of Columbia v. Heller* (hereafter *Heller*) (2008) 554 U.S. 570, 592, 628 [quoting *United States v. Cruikshank* (1876) 92 U.S. 542, 553]; *N.Y. State Rifle & Pistol Ass'n v. Bruen* (hereafter *Bruen*) (2022) 142 S. Ct. 2111, 2157.) The right to self-defense, "is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the *central component*' of the Second Amendment right. (*McDonald v. City of Chicago* (hereafter *McDonald*) (2010) 561 U.S. 742, 767.)

   Although *Heller*'s main focus was firearms, it discussed the meaning of "arms" as used in the Second Amendment and noted that it included defensive instruments. (*Heller*, *supra*, at 581.) When interpreting the meaning of the word "arms" the court stated:

   > "The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined 'arms' as '[w]eapons of offence, or armour [sic] of defence [sic].' [Citations.] Timothy Cunningham's important 1771 legal dictionary defined 'arms' as 'any thing that a man wears for his defence [sic], or takes into his hands, or useth [sic] in wrath to cast at or strike another.' [Citations].

   (*Ibid.*)

   Since then, the Supreme Court has ruled that a stun gun, although not a firearm, constituted a bearable "arm" and as such was covered by the Second Amendment. (*Caetano v. Massachusetts* (2016) 577 U.S. 411.) The Supreme Court has not specifically ruled on whether body armor constitutes "arms" as used in the Second Amendment.

   Lower courts are split in their interpretation as to whether body armor is included in the definition of "arms." (*United States v. Bonner* (hereafter *Bonner*) (2008) U.S. Dist. LEXIS 80765; [holding that it did not interpret *Heller* to permit felons the ability to possess firearms or body armor]; *U.S. v. Smith* (2009) U.S. Dist. LEXIS 93948 at 2 [finding implicitly that under *Heller* the Second Amendment protects body armor but extend to felons]; *U.S. v. Davis* 906 F.Supp.2d 545, 552-558 [rejecting a defendant's contention that the Second Amendment covered body armor].)

   In its most recent Second Amendment opinion, the Supreme Court has stated, "that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (*Bruen, supra,* 92 U.S. at 15; see also *id.* at 8 ["To justify its regulation, the government may not simply posit that the regulation promotes an important interest."].) Because Second Amendment jurisprudence has generally looked to historical firearm traditions, it is unclear what body armor legislation looked like historically. Body armor has been used throughout the centuries, and there are some accounts of it being used during the Civil War. (National Museum of American

History. *Failed objects: Bullet proof vests and design in the American Civil War*. (Apr. 29, 2013.) <https://americanhistory.si.edu/blog/2013/04/failed-objects-bullet-proof-vests-and-design-in-the-american-civil-war.html> [as of Feb. 24, 2023].)

5) **Equal Protection Questions**: The Fourteenth Amendment's Equal Protection Clause has been described as mandating that all persons in similar situations should be treated alike under the law. (*City of Cleburne v. Cleburne Living Ctr.* (1985) 473 U.S. 432, 439.) A person claiming that the state has created a classification that affects two or more similarly situated groups must show that the classification treats them in an unequal manner. (*People v. Valladares* (2009) 173 Cal.App.4th 1388, 1398.) If the classification draws a distinction regarding race, national origin, or a fundamental right, it will be given the most exacting scrutiny. (*Clark v. Jeter* (1988) 486 U.S. 456, 461.) In those cases, "the state has the burden of establishing it has a compelling interest that justifies the law and that the distinctions, or disparate treatment, made by that law are necessary to further its purpose. (*People v. McKee* (2012) 207 Cal.App.4th 1325, 1335.) If body armor were to fall under the Second Amendment as discussed above, then it would be considered a fundamental right. (*McDonald, supra* 561 U.S. at 767-68.)

   If body armor is not a fundamental right then any statute that treats certain groups differently from others has to be rationally related to a legitimate governmental purpose. (*McDonald, supra* 561 U.S. at 767-68. Any statute that treats groups differently but that does not regulate a fundamental right, will have a strong presumption of validity and anyone seeking to attack the rationality "of the legislative classification have the burden 'to negative every conceivable basis which might support it.' " (*F.C.C. v. Beach Communications* (1993) 508 U.S. 307, 314-315.)

   This bill lists peace officers, security guards, firefighters, humane officers, violence intervention and prevention workers, and attorneys as those in professions eligible to wear body armor. Out of this list, peace officers and security guards would likely withstand even the strictest of scrutiny by a court. On the other hand, if body armor is not a fundamental right and a court merely looked to see if a rational basis exists for the classifications on the list, would the classifications still be valid? Take for example attorneys or humane officers, do their professions inherently expose them to a greater need to wear body armor than say a late night shift clerk or even an Uber driver? (NYTimes. *At least 50 people have been killed doing gig driving since 2017, report says.* (Apr. 6, 2022) <https://www.nytimes.com/2022/04/06/business/uber-lyft-driver-deaths.html> [as of Feb. 23, 2023].) Although this bill would allow for professions to be added on to the list, if a group such as attorneys qualify, then realistically how many other professions should qualify as well, and at what point does the list continue to serve its purpose?

   Moreover, arguably there are some people that might feel the need to defend themselves with body armor, not based on their profession, but rather because of some other characteristic or classification. For example, a victim of domestic violence who has sought a restraining order against their abuser, or a person who has been the victim of a hate crime. Are these persons less deserving of protection simply because they do not fall within a protected class?

6) **Practical Considerations**: New York recently enacted legislation prohibiting the purchase or taking possession of body armor. (N.Y. CLS Penal § 270.21.) The phrasing of the language does not prohibit the outright possession of body armor. This allowed New Yorkers who

previously owned body armor to keep their armor, and it also allowed New Yorkers to simply purchase or take possession of body armor in a neighboring state. (NPR. *New body armor rules in New York miss the vest worn by the Buffalo killer*. (hereafter *NPR NY Body Armor Rules*) (Jun. 20, 2022.) <https://www.npr.org/2022/06/20/1106192556/new-body-armor-rules-in-new-york-miss-the-vest-worn-by-the-buffalo-killer> [as of Feb. 24, 2023].)

This bill uses identical language in prohibiting the purchase or taking possession of body armor as New York's legislation does. This may result in confusion when it comes to prosecution efforts. Body armor is not serialized and there are no reporting requirements for sales. An individual could have previously owned body armor prior to the prohibition taking effect, but without keeping a receipt would have severe difficulty proving their innocence. The same would apply for an individual who took possession of body armor outside of the state, unless they had evidence to prove otherwise, they could also be wrongly convicted of this crime.

When asked about this issue, the lead sponsor of the body armor bill in New York stated that he would work to eliminate those options in the next session. (*NPR NY Body Armor Rules.*) Eliminating those options would create an outright prohibition on the possession of body armor, which would criminalize all individuals possessing body armor. Which, taking into account the NPR article detailing individuals who currently own body armor T-shirts, backpacks, and other attire, should be considered carefully.

7) **Argument in Support**: According to *March for Our Lives*, "Over the past decade, body armor has become an increasingly common accessory worn by those committing mass terror acts against our communities. Without regulations, body armor will continue to be a barrier to intercepting perpetrators of violence and terror.

"According to The Violence Project, 21 mass shooters have worn body armor during their attacks, including the recent mass shooting in Buffalo, New York as well as previous attacks such as the San Bernardino shooting in 2015 and the Aurora movie theater shooting in 2012. The use of body armor by these perpetrators prolongs their attacks and makes it difficult for law enforcement to deescalate the situation.

"Body armor purchases have virtually no regulations, and they are not subject to background checks or permit requirements. Under federal law individuals convicted of a violent felony may not purchase, own, or possess body armor, however there is no screening mechanism at the point of sale so these prohibitions are rarely enforced…."

8) **Argument in Opposition**: According to the *Gun Owners of California*, "U.S. Supreme Court precedent has ruled in *Heller v Washington DC, McDonald v Chicago, Caetano v Massachusetts* and most recently in *NYSRPA v Bruen*, that the right to keep and bear arms is not limited to firearms. Rather, it includes anything that is in common use by the people for lawful purposes (i.e. defense) is protected by the Second Amendment. This includes body armor.

"The Court has held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," *District of Columbia v. Heller*, 554 U. S. 570, 582 (2008), and that this "Second Amendment right is fully applicable to the States," *McDonald v. Chicago*, 561 U. S. 742, 750

(2010). In this case, the Supreme Judicial Court of Massachusetts upheld a Massachusetts law prohibiting the possession of stun guns after examining "whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment." 470 Mass. 774, 777, 26 N. E. 3d 688, 691 (2015).

"Magazines, ammunition, accessories, and body armor fall under the same protection.

"It's important to note that this legislation would criminalize a significant number of people – including parents who have chosen to provide school backpacks with body armor panels for their children in order to provide some level of protection in the tragic event of a school shooting. Further, motorcycle enthusiasts often use articles of clothing constructed with body armor, which can offer significant protection in the case of an accident. Other protective garments are manufactured with body armor, including athletic wear, hats, and denim jeans.

"California law already stipulates that it is illegal to use body armor in the commission of a crime; thus, AB 301 will only penalize lawful citizens who choose to exercise their personal protection – using body armor – under the Second Amendment…"

9) **Related Legislation**: AB 92 (Connolly), as proposed to be amended in committee, would prohibit the possession of body armor by those prohibited from possessing a firearm. AB 92 will be heard in this Committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

Everytown for Gun Safety Action Fund
March for Our Lives Action Fund

Opposition

Gun Owners of California, INC.
Riverside County Sheriff's Office

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 303 (Davies) – As Introduced January 26, 2023

SUMMARY: Requires the Attorney General to provide local law enforcement agencies (LEAs) enumerated information related to prohibited persons in the Armed Prohibited Persons (APPS) database. Specifically, **this bill**:

1) Requires the Attorney General to provide LEAs the following information regarding prohibited persons in the APPS database:

   a) Personal identifying information;

   b) Case status;

   c) Prohibition type or reason;

   d) Prohibition expiration date;

   e) Known firearms associated to the prohibited person; and,

   f) Information regarding previous contacts with the prohibited person, if applicable.

2) Requires LEAs to designate at least one employee to receive the information listed above.

EXISTING LAW:

1) Requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File (APPS) the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code § 30000, subd. (a).)

2) Limits access to the information contained in the APPS database to certain entities specified by law, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000, subd. (b).)

3) Requires that upon entry into the Automated Criminal History System of a disposition for a specified conviction or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System (NICS), the Department of Justice (DOJ) shall determine if the subject has an entry in the Consolidated Firearms Information System

indicating possession or ownership of a firearm. (Pen. Code § 30005, subd. (a).)

4) Requires that upon an entry into any department-automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (b).)

5) Requires the DOJ, once it has determined that a subject has an entry in the Consolidated Firearms Information System to enter the following information into the file:

   a) The subject's name;

   b) The subject's date of birth;

   c) The subject's physical description;

   d) Any other identifying information regarding the subject that is deemed necessary by the Attorney General;

   e) The basis of the firearms prohibition; and,

   f) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System. (Pen. Code § 30005, subd. (c).)

6) Requires the Attorney General to provide investigative assistance to LEAs to better ensure the investigation of individuals who are in the APPS database. (Pen. Code § 30010.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The recent tragedies in both Monterey Park and Half Moon Bay illustrate a dire need for California to reform how our state's gun violence prevention programs are operating. Our Armed Prohibited Persons System (APPS) should be a tool used by local law enforcement agencies to ensure those deemed unfit to possess a firearm do not do so. Unfortunately, however, there have been reports of little to no communication between state authorities at the California Department of Justice (DOJ) and local officials. This must change. AB 303 is a common-sense measure to require all investigative notes and reports collected by DOJ regarding individuals on the APPS database be shared with our local law enforcement agencies."

2) **Background on APPS**: Existing law requires the DOJ to maintain a "Prohibited Armed Persons File," also known as the Armed and Prohibited Persons System (APPS) program. APPS went into effect in December 2006. California is the only state in the nation with an automated system for tracking firearm owners who might fall into a prohibited status.

   APPS is maintained and enforced by the Bureau of Firearms (BOF) within DOJ. BOF is responsible for education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. The purpose of APPS is to disarm individuals who are legally prohibited from possessing a firearm. These individuals include convicted felons and persons convicted of certain misdemeanor offenses for domestic violence, individuals suffering from mental illness, and others. APPS tracks subjects who lawfully purchased firearms, but then illegally retained their firearms after falling into a prohibited category. APPS cross-references firearms owners across the state against criminal history records, mental health records, and restraining orders to identify individuals who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. This is a proactive way to prevent crime and reduce violence.

3) **APPS Collaboration Efforts**: The APPS backlog has been a well-known and continuously discussed issue dating back close to the creation of APPS. (California State Auditor. *Armed Persons With Mental Illness*. (2013) <https://www.auditor.ca.gov/reports/summary/2013-103> [as of Feb. 21, 2023] at p. 3.) In 2013, the DOJ committed to eliminating the APPS backlog by 2016. (*Id.* at 74.) Since then, the APPS backlog has increased and is currently the highest it has ever been. (DOJ. *Armed and Prohibited Persons System Report 2021.* (2021) (hereafter *2021 APPS Report*) <https://oag.ca.gov/news/press-releases/california-department-justice-releases-2021-armed-and-prohibited-persons-system> [as of Feb. 21, 2023] at p. 13.)

   One of the potential factors driving the backlog may be the discrepancy between the number of staff enforcing APPS and the overall number of individuals in APPS. According to the most recent DOJ report, there are a total of 76 Special Agent positions allocated for APPS enforcement, and only 53 of those positions are filled. (*Id.* at 21.) Those 53 individuals are primarily responsible for removing firearms from the 24,509 prohibited persons currently in APPS. (*Id.* at 13.) Although the DOJ, in 2021, removed 3,221 prohibited persons from APPS through disassociating all their known firearms, the discrepancy between the number of DOJ agents enforcing APPS and the overall number of prohibited persons in APPS seems quite large. (*Id.* at 15.) Among other things, the DOJ has recommended to improve existing cooperation and use of LEAs in order to help address the backlog, calling such efforts "force multipliers." (*Id.* at 5, 11, 29-30, 34.) It noted joint efforts such as the Contra Costa County Anti-Violence Support Effort Task Force and the Tulare County Agencies Regional Gun Violence Enforcement Team, as well as funding efforts like the Gun Violence Reduction Program which financed local law enforcement agency APPS operations on their own. (*Id.* at 28-33.)

   LEA involvement with APPS seems, at least in part, to be what legislators envisioned when outlining some of the procedural details regarding APPS firearm removals. For example, existing law requires a person convicted of a felony or certain misdemeanor to relinquish all firearms. (Pen. Code § 29810 subd. (a)(1).) The process requires the defendant to submit a form detailing any firearms they possess, be informed of how to relinquish such firearms, and requires a probation officer to check the Automated Firearms System and any credible information for firearms associated to the defendant. (Pen. Code, § 29810 subds. (a)(3), (b)(1)-(7), and (c)(1).) The defendant is allowed a specified amount of time to relinquish their firearms and if they do not do so the court must issue a search warrant for retrieval of the firearm. (Pen. Code, § 29810 subd. (1)-(4).) Unfortunately, this procedure is likely not being followed; the DOJ states that 14,561, or 57%, of prohibited persons in APPS currently fall under these parameters, and the increasing yearly number of such individuals further reinforces the conclusion that the relinquishment procedures are not being enforced. (*2021 APPS Report* at 33.)

Aside from some of the LEA efforts mentioned above, there seems to be room for improving local law agencies involvement with APPS. According to a CalMatters article from 2021, the DOJ had for years prepared a monthly report for LEAs regarding APPS individuals in their respective jurisdiction. (CalMatters. *Outgunned: Why California's groundbreaking firearms law is failing.* (Jul. 21, 2021.) <https://calmatters.org/justice/2021/07/california-gun-law-failing/> [as of Feb. 21, 2023].) CalMatters asked 400 LEAs about these monthly reports; 80 of them acknowledged the reports and more than 150 agencies responded saying they didn't have such reports. (*Id.*)

This bill would require that the DOJ provide LEAs certain investigative information regarding prohibited persons. It also requires LEAs to designate a contact to receive this information. These requirements, in tandem, ensure that the DOJ will continue to inform LEAs regarding prohibited persons in their jurisdiction and that LEAs will be more aware of such information.

4) **Related Legislation**: AB 29 (Gabriel), would require the Department of Justice (DOJ) to develop an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. AB 29 is currently pending hearing in the Assembly Committee on Health.

5) **Prior Legislation**:

   a) SB 129 (Committee on Budget and Fiscal Review) Chapter 69, Statutes of 2021, allocated funds to the DOJ to disburse to local sheriffs' departments for APPS enforcement operations, and outlined reporting requirements for participating sheriffs' departments.

   b) AB 340 (Irwin), of the 2019-2020 Legislative Session, would have authorized a county or counties to establish and implement a Disarming Prohibited Persons Taskforce (DPPT) program, for the purpose of investigating and assisting in the prosecution of individuals who are armed and prohibited from possessing a firearm; and required the DOJ to award grants to jurisdictions that establish DPPT teams upon appropriation by the Legislature. AB 340 was vetoed by the Governor.

   c) SB 94 (Public Safety Omnibus) Chapter 25, Statutes of 2019, required the DOJ to send an annual report to the Legislature detailing information related to APPS including the number of individuals in the database, firearms removed, number of staff enforcing APPS, and information regarding collaborative task forces with local law enforcement agencies.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: February 28, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 313 (Vince Fong) – As Amended February 23, 2023

SUMMARY: Expands notice of a violent offender's release, escape, scheduled execution, or death to the immediate family members of the victim. Specifically, **this bill**:

1) Expands the requirement that a designated county agency supply a form to the victim, certain witnesses, or next of kin, on which to request notification from the California Department of Corrections and Rehabilitation (CDCR) of a violent offender's release, escape, scheduled execution, or death, to include supplying a form to the victim's immediate family members and advising them of their right to such notice.

2) Expands the requirement that CDCR or the Board of Parole Hearings (BPH) notify all victims, certain witnesses, or next of kin, upon request, of a violent offender's scheduled release, as specified, or scheduled execution, as specified, to include notifying the victim's immediate family members.

3) Defines "immediate family member" as the victim's spouse, parent, grandparent, brother, sister, children, or grandchildren who are related by blood, marriage, or adoption.

EXISTING LAW:

1) Requires the county district attorney, probation department and victim-witness coordinator to confer and establish an annual policy to decide, for convictions involving a violent offense, as specified, which one of their agencies shall inform each witness involved in the conviction who was threatened by the defendant, and each victim or victim's next of kin the right to request and receive a notice of the defendant's scheduled release, as specified, or scheduled execution, as specified. (Pen. Code, § 679.03, subd. (a).)

2) Requires CDCR to supply a form to the designated agency in order to enable the victim, witness, or next of kin of the victim to request and receive notification from CDCR of the release, escape, scheduled execution, or death of a violent offender. (Pen. Code, § 679.03, subd. (b).)

3) Requires the designated agency to give the form to the victim, witness, or victim's next of kin for completion, explain to that person their right to notice, and forward the completed form to CDCR. CDCR or BPH is responsible for notifying all victims, witnesses, or next of kin who request to be notified of a violent offender's scheduled release, or scheduled execution. (Pen. Code, § 679.03, subd. (b).)

4) Requires BPH or CDCR to notify the sheriff, chief of police, or both, and the district attorney who has jurisdiction over the community in which the person was convicted, of a scheduled

release. (Pen. Code, § 3058.6, subd. (a).)

5) Requires BPH, CDCR, or a designated agency to send a notice to the victim, witness, or victim's next of kin who has requested notification that a person convicted of a violent felony is scheduled to be released. Notice of the community in which the person is scheduled to reside shall also be given if it is in the county of residence or within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notification. (Pen. Code, § 3058.8.)

6) Makes the right to notice of scheduled release contingent on the requesting party keeping CDCR or BPH informed of their current contact information. (Pen. Code, 3058.8, subd. (b).)

7) Provides that in sending the notice of release, BPH or CDCR shall use the information provided in the completed form, unless it is no longer current. In that case, CDCR must make a reasonable attempt to contact the person and to notify them of the impending release. (Pen. Code, § 3058.8, subd. (c).)

8) Allows a victim's immediate family to be present at an execution. Provides that if they file a written request to be present, they have a right to be notified by the warden 30 days prior to the execution or as close to that date as possible. (Pen. Code, § 3605, subds. (a) & (b).)

9) Defines "immediate family" as those persons who are related by blood, adoption, or marriage, within the second degree of consanguinity or affinity. (Pen. Code, § 3605, subd. (b)(2).)

10) Requires CDCR to immediately notify a victim or their next of kin if the crime was homicide, and if notification was previously requested, of an incarcerated person under their jurisdiction's escape. If the person is recaptured, the department shall notify the victim or their next of kin within 30 days. (Pen. Code, § 11155, subd. (b).)

11) Provides that CDCR shall send the notice of escape to the last address provided by the requesting party. (Pen. Code, § 11155, subd. (c).)

12) Provides that if the contact information provided is no longer current, CDCR shall make a diligent, good faith effort to learn the whereabouts of the victim in order to comply with these notification requirements. (Pen. Code, § 11155, subd. (d).)

13) Provides that, notwithstanding any other law, if the victim or witness has requested additional distance in the placement of an incarcerated person on parole, and if BPH or CDCR finds that there is a need to protect the life, safety, or well-being of the victim or witness, the incarcerated person shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes: murder or voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation, lewd acts on a child under 14, any felony punishable by death or life imprisonment, stalking, felony with great bodily injury, and continuous sexual abuse of a child. (Pen. Code, § 3003, subd. (f).)

14) States that, notwithstanding any other law, a person who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or

witness has requested additional distance in the placement of the inmate, and if BPH or CDCR, or the supervising county agency finds that there is a need to protect the life, safety, or well-being of the victim. If a person who is released on postrelease community supervision cannot be placed in their county of last legal residence, the supervising county agency may transfer them to another county upon approval of the receiving county. (Pen. Code, § 3003, subd. (h).)

15) Addresses the victim's right to be present and comment at a parole eligibility hearing. As related to this right, defines "immediate family" to include the victim's spouse, parent, grandparent, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption. (Pen. Code, §§ 3043 & 3043.3.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Families of crime victims should not have their trauma resurface through contact with the same offender, when that encounter could have been avoided. Assembly Bill 313 will expand victim protection services to the family of victims impacted by a crime. The detrimental effects of a crime oftentimes extend beyond the victims and witnesses of a crime. Extra time and space to care for themselves will help victims and their families heal without the threat of a traumatic encounter with the offender. Through codifying Form 1707 protections for families of victims, those affected by a crime against a family member can access greater transparency within the CDCR system and provide certainty when perpetrators are released from prison."

2) **Background:** CDCR's Operations Manual provides that victims, witnesses, next-of-kin, or immediate family members who request notification in writing by letter or CDCR Form 1707 shall be notified of the incarcerated person's death, escape, scheduled release to parole, discharge, release from custody for any other reason, or transfer of custody to another agency. (https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2022/03/CDCR-DOM_2022.pdf) For these purposes, immediate family member means "legal spouse; registered domestic partner, natural parents; adoptive parents, if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step-parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. Aunts, uncles and cousins are not immediate family members unless a verified foster relationship exists." (*Ibid.*; Cal. Code Regs. Tit. 15, § 3000.) Victims and witnesses of specified offenses may also request that the incarcerated person not be allowed to live within 35 miles of their home address. (Pen. Code, § 3003.)

   To enable persons to request and receive notification from CDCR of the release, escape, scheduled execution, or death of a violent offender, Penal Code section 679.03 requires CDCR to supply a form to designated county agencies (the county district attorney, probation department, or victim-witness coordinator depending on their annual policy and existing resources). Section 679.03, in turn, requires the designated agencies to give the form to the victim, witness, or next of kin of the victim for completion, explain to that person or persons the right to be notified, and forward the completed form to CDCR. CDCR or BPH is responsible for notifying all victims, witnesses, or next of kin of victims who request to be notified of a violent offender's scheduled release, as specified, or scheduled execution, as specified. (Pen. Code, § 679.03.)

This bill would expand the existing statutory notice requirements of a violent offender's release, escape, scheduled execution, or death to include the immediate family members of the victim. The bill would define "immediate family member" as the victim's spouse, parent, grandparent, brother, sister, children, or grandchildren who are related by blood, marriage, or adoption. This appears consistent with CDCR's existing notification practice. (See also https://www.cdcr.ca.gov/victim-services/application/.) It would also require the designated county agencies to supply a form to immediate family members and advise them of their right to notification. This bill's language would not amend Penal Code section 3003 which limits who can request that an incarcerated person not be allowed to live within 35 miles of their home address to victims and witnesses.

3) **Argument in Support**: None

4) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "AB 313 violates the rights of both prisoners and victims, by providing not otherwise public information to individuals who have no cognizable interest in the case and without requiring any showing that the victim or the victim's next of kin are unable to represent the victim's interest in the case.

   "Additionally, the large number of people to be notified, with little or no actual connection to the case, whose names and contact information may or may not be known to law enforcement, would be burdensome to district attorney's office victim services units, whose resources would be better spent providing support to victims of crime. It would also be burdensome to victims who would be expected to provide exhaustive, and private, information about their immediate and extended family members."

5) **Prior Legislation**: SB 852 (Harman), Chapter 364, Statutes of 2011, authorized a crime victim to request the option of being notified of an offender's custody status by electronic mail, if that method is available, and made numerous conforming changes.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

California Attorneys for Criminal Justice

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