Date of Hearing: April 12, 2016
Counsel: Sandra Uribe

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

AB 2205 (Dodd) – As Amended March 30, 2016

**SUMMARY**: Overturns a Supreme Court case holding that a court lacks jurisdiction to adjudicate violations of probation occurring after the original term of probation ends. Specifically, **this bill**:

1) Provides that the period of time during any revocation of probation, mandatory supervision, or post-release community supervision, summary or otherwise, shall not be credited toward any period of supervision, except that such as stay cannot extend beyond five years from the date of the summary revocation unless the court finds that an even longer stay is needed based on the seriousness of the current conviction or on the defendant's past criminal record.

2) Prohibits the extended stay from lasting more than 10 years from the date of the last summary revocation.

3) States that, as to mandatory supervision and post-release community supervision, the person shall not remain in custody for a period longer than the term of supervision authorized by statute.

**EXISTING LAW**:

1) Defines "probation" as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

2) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

3) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

4) Allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, mandatory supervision, postrelease community supervision, or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision. (Pen. Code, § 1203.2, subd. (a).)

5) Authorizes a court to revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the

probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses. (Pen. Code, § 1203.2, subd. (a).)

6) Prohibits the revocation of supervision for the defendant's failure to pay restitution imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. (Pen. Code, § 1203.2, subd. (a).)

7) States that the revocation, summary or otherwise, shall serve to toll the running of the period of supervision. (Pen. Code, § 1203.2, subd. (a).)

8) Provides that a court, upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, may modify, revoke, or terminate supervision of the person pursuant to this subdivision. (Pen. Code, § 1203.2, subd. (b)(1).)

9) States that, upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. On the other hand, if the judgment has been pronounced and its execution suspended, the court may revoke the suspension and order that the judgment be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

10) Provides that the probationary period terminates automatically on the last day. (Pen. Code, § 1203.3, subd. (b)(3).)

11) States that if a probationer is committed to prison for another offense, the court which placed him or her on probation has the jurisdiction to impose sentence. (Pen. Code, § 1203.2a.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "This bill clarifies that, for all three types of supervision – probation, mandatory and post-release community supervision -- time elapsed during the revocation period shall not be credited toward any period of supervision. Thus, if a court summarily revokes supervision, this bill preserves court authority to determine the consequences of all alleged supervision violations, both those that occurred during the original supervision term and those that occurred after the court revoked supervision.

   "Under AB 2205, once a court has regained physical custody and determined that a person has violated supervision, a court may require the person to comply with court-imposed terms and conditions of supervision, whether or not the violation occurred during the original term of supervision. As a result this bill not only enhances public safety, but also supports the goal of Criminal Justice Realignment to reduce recidivism through rehabilitative supervision."

2) **Expiration of Supervision**: In the absence of an order revoking probation, probation expires by operation of law on the last day of the probationary period. (Pen. Code, § 1203.3, subd. (b)(3).) After that, the court has no jurisdiction over the person. (*In re Griffin* (1967) 67

Cal.2d 343, 346; *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 772-773.) However, an agreement by defense counsel or the defendant to a probationary period longer than the maximum statutory period estops a claim that probation has expired. (*People v. Ford* (2015) 61 Cal.4th 282, 286-288; *People v. Jackson* (2005) 134 Cal.App.4th 929, 933.)

A term of mandatory supervision lasts for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

A term of post-release community supervision lasts for three years from the date of the initial entry onto post-release community supervision, except where the supervision has been tolled. (Pen. Code, § 3455, subd. (e).)

3) **Summary Revocation**: A trial court has the authority to modify, revoke or terminate probation at any time during the probationary period. (Pen. Code, §§ 1203.2, subd. (b)(1); 1203.3, subd. (a).) This power includes the power to extend the probationary term. "A change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation." (*People v. Cookson* (1991) 54 Cal.3d 1091, 1095.)

   The revocation process is generally divided into two components: the summary revocation and a subsequent formal revocation hearing where a final decision is made whether to reinstate, permanently revoke or terminate probation. The court may summarily revoke a defendant's probation at any time during the period of probation if it believes the defendant has violation probation. (Pen. Code, § 1203.2, subd. (a).) A summary revocation serves to toll the running of the probationary period. (*Id.*)

   Revocation, modification, and tolling of post-release community supervision functions similarly. (See Pen. Code, § 3455, citing Pen. Code, § 1203.2.)

4) **Tolling of Probation:** Courts were divided regarding the effect of the tolling provision in Penal Code § 1203.2, subdivision (a). Specifically, the question courts had disagreed on is whether the tolling provision permits a trial court to find a violation of probation and then reinstate or terminate probation based solely on conduct that occurred *after* the original probationary period had expired. In *People v. Tapia* (2001), 91 Cal.App.4th 738, the court held that "a summary revocation of probation suspends the running of the probationary period and permits extension of the term of probation if, and only if, the probation is reinstated based upon a violation that occurred during the unextended period of probation. (*Tapia, supra*, 91 Cal.App.4th at p. 741.) In *People v. Salas* (2012) 210 Cal.App.4th 974, the court disagreed with the *Tapia* court and held that the summary revocation suspended the running of defendant's probationary term until a future date where the trial court either reinstates probation, executes sentence or discharges the defendant from probation. (*Salas, supra*, 210 Cal.App.4th at pp. 979-980.)

   In *People v. Leiva* (2013) 56 Cal.4th 498, the California Supreme Court resolved the issue and held that the tolling provision preserves the trial court's authority to adjudicate in a subsequent formal probation violation hearing whether the probationer violated probation during, but not after, the court-imposed probationary period. (*Id.* at p. 502.).

5) ***People v. Leiva, supra*, 56 Cal.4th 498**: In *Leiva*, the defendant was placed on probation for a period of three years on April 11, 2000. (*Leiva, supra*, 56 Cal.4th at p. 502.) Among the

probation conditions imposed were orders that the defendant report to the probation officer following his release from county jail and that he not reenter the county illegally if he was deported. (*Ibid.*) On the day defendant was released from jail, he was deported to El Salvador. (*Ibid.*) In September 2001, the trial court summarily revoked probation and issued a bench warrant after defendant failed to report to the probation officer. (*Ibid.*) At the time, neither the probation department nor the court knew that the reason for the failure to report or to appear in court was the deportation. (*Ibid.*)

In November 2008, defendant was brought to court on the probation violation following his arrest on a traffic matter. (*Leiva, supra*, 56 Cal. 4th at p. 503.) By the time of the formal violation hearing on February 13, 2009, the court and parties knew of defendant's involuntary deportation and the prosecutor conceded that he could not show that the 2001 failure to report had been a willful probation violation. (*Ibid.*) Defense counsel argued that probation must be terminated since there was no evidence of any probation violation during the original term of probation. (*Ibid.*) However, the court found that defendant did violate probation when he failed to report to probation following his return to the United States. The court reinstated probation and ordered it extended until June 6, 2011 and additionally ordered that, if defendant voluntarily left the country again or was deported, he must report to his probation officer within 24 hours of his return to the United States and present proof that he was in the country legally. Defendant appealed. (*Ibid.*)

Defendant was deported again in March of 2009, and in June of 2009 the court summarily revoked his probation based on failure to report to the probation officer and issued a bench warrant for his arrest. (*Leiva, supra*, 56 Cal. 4th at pp. 503-504.) Defendant later returned to California and was arrested on the outstanding warrant. On October 9, 2009, the trial court held a formal probation violation hearing and found that defendant had violated his probation for re-entering the country illegally in 2009. The court ordered that probation remain revoked and sentenced defendant to two years in state prison based on one of the counts to which defendant had pleaded no contest in 2000. (*Id.* at p. 504.) On appeal, defendant argued that the trial court erred by finding a violation of probation based on conduct that occurred after his original three-year probationary period expired. (*Ibid.*) The Court of Appeal rendered a split decision with the majority upholding the trial court's decisions. The California Supreme Court reversed the judgments of the Court of Appeal. (*Ibid.*)

In construing the tolling provision in Penal Code Section 1203.2, subdivision (a), the California Supreme Court held that the statute "preserves the trial court's authority to adjudicate, in a subsequent formal probation violation hearing, whether the probationer violated probation during, but not after, the court-imposed probationary period." (*Leiva, supra*, 56 Cal. 4th at p. 502.) The Court rejected a reading of the tolling provision "as allowing a trial court, through summary revocation, to extend indefinitely the conditions and terms of probation until a formal revocation proceeding can be held." (*Id.* at p. 509.) The Court stated that such interpretation "raises serious due process concerns because . . . [it] would extend a defendant's probationary term indefinitely without notice or a hearing as to the propriety of such an increase." (*Ibid.*)

The Court also relied on legislative history to determine that the tolling language was added to Penal Code Section 1203.2, subdivision (a) to address jurisdictional problems that can arise when a formal revocation hearing cannot be held during the court-imposed period of probation. (*Leiva, supra*, 56 Cal. 4th at p. 511.) The Court referenced "the Assembly

Committee on Criminal Justice's comments to Senate Bill 426 to support the conclusion that the Legislature in 1977 was focused on preserving the jurisdiction of the trial court to hold formal probation violation hearings that met . . . [due process] requirements after the period of probation had expired. . . . [The Legislature] expressed concern that former section 1203.2 did not address the situation in which a trial court summarily revoked probation and the defendant did not appear in court on the violation. Senate Bill 426 was considered a 'cleanup measure' (citation omitted), designed to preserve a trial court's authority to hold a full hearing on an alleged probation violation that occurred during the court-imposed probationary period." (*Id.* at pp. 512-513.)

The ruling in *Leiva* is supported by long-standing case law. As early as 1918, a Court of Appeal held that the trial court loses jurisdiction or power to make an order revoking or modifying the order after the probationary period has expired. (*People v. O'Donnell* (1918) 37 Cal.App. 192, 196-197.) Once a revocation order is in effect, the trial court retains jurisdiction in the case only to pronounce judgment by imposing the sentence if imposition of sentence had been suspended, or by ordering execution of the previously ordered but suspended sentence. (*People v. Williams* (1944) 24 Cal.2d 848, 851-854.) The court must find that the probationer violated probation during the original period of probation, even if the term of probation was tolled, in order for the trial court to retain jurisdiction to revoke probation after the expiration of the probation term. (*People v. Burton* (2009) 177 Cal.App. 4th 194, 200; *People v. Tapia*, *supra*, 91 Cal.App.4th at p. 741.)

The *Leiva* decision does not prevent a court from holding absconders accountable. If a probationer absconds at any time during the period of probation and the court summarily revokes probation, the probationer is not relieved of the duty to comply with the probation terms and conditions. There is "no 'window' during the probationary term which allows the probationer to be free from the terms and conditions originally imposed or later modified." (*People v. Lewis* (1992) 7 Cal.App.4th 1949, 1954.) Therefore, all terms and conditions of probation including restitution orders, search and seizure, and the requirement to obey all laws would still be in effect during the court-imposed term of probation after a summary revocation. Once the absconder is found and brought back to court, the court has the jurisdiction to find that the person violated probation for all conduct that occurred during the original probation term.

Overturning *Leiva* would mean that the terms and conditions of probation could remain in effect for years after the original term of probation has expired. As stated in the *Leiva* case, this "would result in absurd consequences and present constitutional concerns. . ." (*Leiva*, *supra*, 56 Cal. 4th at p.509.) Even if a probation violation within the original term of probation is not proven, the person would still be subject to all of the terms and conditions during the entire time that the probation term is tolled.

This bill would overturn *People v. Leiva*, *supra*, 56 Cal.4th 498. The bill extends the period of supervision after a summary revocation by requiring all terms and conditions of supervision to remain in effect during the tolling time period, regardless of whether the originally imposed period of supervision has expired. But rather than extending the supervisory period indefinitely, as was the concern in *Leiva*, the bill provides that the supervisory period can be extended for up to 5 years, unless the court decides that based on the defendant's record, the supervisory period should last for up to 10 years.

That the supervisory period will last 5 or 10 years, rather than indefinitely, does not alleviate the due process concerns. Notably, this potential stay will be double, or triple (or more) the original term of supervision. The court can impose additional sanctions perhaps a decade after the supervision should have ended. And this decade-long extension will have occurred without notice or a hearing as to the propriety of such an increase. (*People v. Leiva*, *supra*, 56 Cal.4th at p. 509.)

It bears repeating that the court can still hold a defendant accountable for any violations committed during the mandated supervisory period. And if a person commits a new violation of law after that period of supervision, the prosecutor is authorized to file new charges.

6) **Argument in Support**: According to the *Judicial Council of California*, the sponsor of this bill, "AB 2205 clarifies that, for all three types of supervision—probation, mandatory and post-release community supervision—time elapsed during the revocation period shall not be credited toward any period of supervision. Thus, if a court summarily revokes supervision, AB 2205 preserves court authority to determine the consequences of all alleged supervision vioaltions, both those that occurred during the original supervision term and those that occurred after the court revoked supervision.

"Under AB 2205, once a court has regained physical custody and determined that a person has violated supervision, a court may require the person to comply with court-imposed terms and conditions of supervision, whether or not the violation occurred during the original term of the supervision. As a result, this bill not only enhances public safety, but also supports the goal of Criminal Justice Realignment to reduce recidivism through rehabilitative supervision.

"Finally, AB 2205 enhances judicial discretion by preserving court jurisdiction to adjudicate revocations of probation, mandatory supervision, and postrelease community supervision."

7) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "For all forms of supervised release, the court may summarily revoke the supervised release based on an allegation that the defendant violated the terms and conditions of release. If the defendant is not present in court when the supervised release is summarily revoked, the court issues a bench warrant for the person's arrest. The court must eventually hold a hearing to determine if there is a factual basis for the alleged violation of the conditions of release. (See *People v. Leiva* (2013) 56 Cal.4th 498, 504-505.)

"The question raised by the bill is what happens when the hearing on the summary revocation is held after the original period of supervised release has ended. AB 2205 seeks to overturn a recent ruling of the California Supreme Court which held that, in the case of probation specifically, if there is no evidence that the defendant violated the terms of probation during the original period of probation, the court may not place the defendant back on probation after the original term has lapsed. (*People v. Leiva*, 56 Cal.4th at pp. 502.) On the other hand, the *Leiva* court made clear that the judge may reinstate and extend probation if there is evidence that the defendant violated the terms and conditions of probation during the period of supervised release, even if the violation is not adjudicated until years later. (*Ibid.*) AB 2205 seeks to undo that ruling and allow a court to place a person back on probation, based on evidence that he or she did not comply with the conditions of probation after the probationary period had lapsed, and seeks to extend that new rule to the other forms of court

supervised release: mandatory supervision and postrelease community supervision.

"We believe that the rule announced by the California Supreme Court in *Leiva* is fair and should not be changed. The *Leiva* decision made clear that if a person violates the terms of probation during the probationary period, the court may reinstate and extend probation, even if the defendant is not brought before the court for the hearing on the summary revocation until years later. We agree with the California Supreme Court that is it unfair to allow the court to place someone back on probation based on conduct that did not occur during the original probationary term. This rule provides the court with the ability to respond to proven, willful violations of probation that occur during the probationary period, even if the defendant evades the jurisdiction of the court for some time. At the same time, the rule prevents the unfairness of placing people back on probation years later, when there is no actual evidence that they violated the conditions of supervised release during the period originally imposed by the court. (*Id.* at pp. 516-517.) …

"The sponsor of AB 2205, the Judicial Council, appears to think that the *Leiva* ruling prevents the court from placing a defendant back on supervised release after the original term has ended if the defendant 'absconded.' If by 'absconded,' the Council means the person intentionally absented himself or herself from the courts' jurisdiction, then we disagree with this interpretation. If a person intentionally avoids the jurisdiction of the supervising court, that is a violation of the terms and conditions of supervised release and, under *Leiva*, a sound basis for reinstating and extending the period of supervised release."

8) **Related Legislation**: AB 2477 (Patterson) would overturn case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely AB 2477 failed passage and reconsideration was granted in this committee.

9) **Prior Legislation**: AB 2339 (Quirk), of the 2013-2014 Legislative Session, would have required that all the terms and conditions of probation supervision remain in effect during the time period that the running of probation supervision is tolled as a result of a summary revocation by the court. AB 2339 was pulled by the author.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Judicial Council (Sponsor)
California District Attorneys Association
California Judges Association
California State Sheriffs' Association
Chief Probation Officers of California

**Opposition**

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

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

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 2221 (Cristina Garcia) – As Amended April 6, 2016

**SUMMARY**: Increases authority for law enforcement to make arrests when they have probable cause to believe that solicitation of a minor has occurred and requires minor victims of human trafficking to be provided with victim witness assistance prior to testifying. Specifically, **this bill**:

1) Authorizes a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed the misdemeanor offense of soliciting a minor for prostitution.

2) Specifies that prior to being subpoenaed as a witness in a human trafficking case, a minor who is a victim of human trafficking must be provided with assistance from the local county Victim Witness Assistance Center.

**EXISTING LAW**:

1) States that a peace officer may arrest a person in obedience to a warrant, or without a warrant, may arrest a person whenever any of the following circumstances occur:

   a) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence; (Pen. Code, § 836, subd. (a)(1).)

   b) The person arrested has committed a felony, although not in the officer's presence.; or (Pen. Code, § 836, subd. (a)(2).)

   c) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836, subd. (a)(3).)

2) Specifies that any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest, unless the peace officer makes an arrest for specified domestic violence offenses. (Pen. Code, § 836, subd. (b).)

3) Provides that when a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued as specified, and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation

occurred in the presence of the arresting officer. (Pen. Code, § 836, subd. (c)(1).)

4) Specifies that in situations where mutual protective orders have been issued as specified, liability for arrest applies only to those persons who are reasonably believed to have been the dominant aggressor. (Pen. Code, § 836, subd. (c)(3).)

5) States that the dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense. (Pen. Code, § 836, subd. (c)(3).)

6) Provides that if a suspect commits an assault or battery upon a current or former spouse, fiance, fiancee, a current or former cohabitant, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, a person with whom the suspect has parented a child, or other specified individuals, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

   a) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed; and (Pen. Code, § 836, subd. (d)(1).)

   b) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. (Pen. Code, § 836, subd. (d)(2).)

7) States that a peace officer may, without a warrant, arrest a person for a violation of carrying a concealed firearm when all of the following apply:

   a) The officer has reasonable cause to believe that the person to be arrested has committed the violation of carrying a concealed firearm; (Pen. Code, § 836, subd. (e)(1).)

   b) The violation of carrying a concealed firearm occurred within an airport, in an area to which access is controlled by the inspection of persons and property; and (Pen. Code, § 836, subd. (e)(2).)

   c) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of carrying a concealed firearm. (Pen. Code, § 836, subd. (e)(3).)

8) Provides that a private person may arrest another:

   a) For a public offense committed or attempted in his presence; and (Pen. Code, § 837.)

   b) When the person arrested has committed a felony, although not in his presence. (Pen. Code, § 837.)

c) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. (Pen. Code, § 837.)

9) States that any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. (Pen. Code, § 839.)

10) Specifies that a private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. (Pen. Code, § 847.)

11) Specifies that a prosecuting witness in a case involving a violation or attempted violation of specified offenses, including human trafficking, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. (Pen. Code, § 868.5.)

12) States that only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. (Pen. Code, § 868.5.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 2221 would allow law enforcement the authority to arrest any adult when there is probable cause to believe they solicited sex from a minor. Currently, law enforcement officials can only arrest an adult for soliciting sex from a minor if they witness the solicitation. If police come upon a situation where there is probable cause to believe an adult has solicited a minor for sex, an officer can only issue a ticket, because this is a misdemeanor crime."

2) **Individuals Can Be Prosecuted for the Crime of Solicitation Whether or Not an Arrest is Made:** If there is sufficient evidence to establish that the crime of solicitation of a minor for prostitution has occurred, the adult responsible for the crime can be charged in court. Assuming sufficient evidence, the individual would be convicted in court and receive punishment appropriate to their criminal conduct. To the extent an arrest can provide a deterrent effect to individuals soliciting prostitutes, that deterrent effect can be achieved through prosecution and punishment through the court process. Needless to say, the process of arrest should not be used as punishment itself, or as a pretext to obtain further evidence. A court proceeding provides a full opportunity to present evidence and administer punishment in a forum that ensures due process.

3) **Citizen's Arrest:** If a misdemeanor offense occurs outside an officers presence, current law allows citizen's to make arrest. In order for a citizen to make an arrest for a misdemeanor, the crime must committed in the citizen's presence. (Pen. Code, § 837.) If the citizen makes the arrest law enforcement can take custody of the individual at that point. The Alameda County District Attorney's Office has published materials providing guidelines for police officers when taking custody of an individual placed under citizen's arrest.

> "If the suspect is present when officers initially meet with the citizen, and if the citizen arrests him or has already done so, officers must 'receive' him, meaning they must take custody of him. The purpose of this requirement is to 'minimize the potential for violence when a private person restrains another by a citizen's arrest by requiring that a peace officer (who is better equipped by training and experience) accept custody of the person arrested from the person who made the arrest.'" (http://le.alcoda.org/publications/files/CITIZENSARREST.pdf.)

The mechanism of citizen's arrest provides an avenue to apprehend a suspect that has committed a misdemeanor, even if the offense has not been committed in an officer's presence.

4) **Peace Officers are Mandated Reporters of Child Abuse or Neglect:** The California Child Abuse Neglect Reporting Act (CANRA) requires mandatory reporting when certain individuals suspect that a child has been abused or neglected. Law enforcement officers are one of the groups which have mandatory reporting responsibilities.

   A mandated reporter must make a report whenever, in his/her professional capacity or within the scope of his/her employment, he/she has knowledge of, or observes a child (a person under 18) whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Abuse includes the sexual exploitation of a child.

   When law enforcement suspects abuse or neglect they inform child protective services and the district attorney's office of the suspected abuse.

   Those responsibilities are triggered whether or not an arrest is made of an individual suspected committing sexual exploitation.

5) **Victim Witness Assistance Programs:** Victims of crime may suffer physical, emotional, or financial harm. Victims and witnesses to a crime may face retaliation or intimidation in connection with their potential participation in the criminal justice system. Victims and witness can also be confused by a criminal justice system that is not familiar to them. Victim Witness Assistance Programs can provide assistance with these issues. These programs are frequently connected to the county district attorney's office. Victim Witness Assistance Programs generally have trained and experienced advocates provide services for victims and witnesses interacting with the criminal justice system. Services can include crisis counseling, orientation to the criminal justice system, community referrals, assistance with applying for victim compensation, a support group for family members of homicide victims, and many other services.

6) **Argument in Support**: According to *The Bakersfield Police Department*, "Human Trafficking is a growing problem in Kern County and the City of Bakersfield is not immune. Kern County has three major state highways that dissect the County. This facilitates the smuggling and transport of human victims. Runaway juveniles are forced into prostitution by "Pimps", who lure the juveniles in with promises of money, clothes, and other material things they would not normally be able to afford. These pimps then force the juveniles to perform sex acts with strange men and women, and give them nothing in return. They often beat these juveniles into submission and prevent them, by means of force or fear, from leaving. These are the vulnerable victims that are sought out

by men seeking sex with underage juveniles. The deterrent effect of this bill will be instrumental in dissuading not only "Johns" from pursuing these girls but "Pimps" from trafficking them.

"In 2013, the Bakersfield Police Department investigated the first known human trafficking case in Kern County, wherein a 15 year old female juvenile was kidnapped in Bakersfield and taken to Reno, Nevada. Once in Reno, she was forced to pose nude for photographs that were uploaded onto a prostitution website. The juvenile was forced to perform sex acts with at least 15 men before Officers were able to locate her. Officers were able to glean vital information from her regarding the prevalence of human trafficking in Bakersfield and Kern County. Again in 2013, a 14 year old female was lured out of a continuation school by an adult male who subsequently forced her into multiple sex acts with adult males who sought her out because of her young age. In both cases the traffickers were convicted and sentenced to multiple years in prison.

"Data was analyzed over a three year period (2013-2015) and the Bakersfield Police Department received 27 calls for service regarding Human Trafficking, which resulted in 19 arrests. In that same time period, 1,861 people were arrested for prostitution. Based on these numbers, it is clear that we have a problem.

"The Bakersfield Police Department is committed to impacting and eliminating sex trafficking in our city. It is our intent to expose the human trafficking problem. We will also focus efforts on educating the public on the severity of the problem in Kern County and ways that they can assist law enforcement in combating the problem. We will help the victims through the entire justice process and provide them the services necessary to return them to a normal life. It is our belief that there exists a need for stiffer penalties on offenders who solicit sex from girls who are minors as they are not legally allowed to give consent to participate in sex acts. This too would have a deterrent effect as it would be known that severe punishment will be handed down."

7) **Argument in Opposition**: According to *The American Civil Liberties Union of California*, "AB 2221 seeks to expand the power of an officer to arrest a person to include "if the officer has probable cause to believe that the person to be arrested has violated subdivision (m) of Section 647. . . ." Penal Code section 647(m), in turn, proscribes a higher punishment for the offense of soliciting a person to commit an act of prostitution if "the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense."

"In order for an officer to arrest someone under the proposed language of AB 2221, the officer would have to have probable cause to believe that:

1) The suspected solicited an act of prostitution;
2) The person solicited was in fact a minor; and
3) The person solicited knew or reasonable should have known that the person solicited was a minor.

"It is difficult to imagine how an officer would have probable cause to believe all of these elements have been established unless a) the offense is committed in the officer's presence or b) a witness informs the officer that he or she witnessed the behavior. In the latter case—

when the offense was not committed in the officer's presence—the civilian witness can effectuate a citizen's arrest and the officer can assume custody. In addition, case law has made clear that "presence" does not require visual observation by the officer of the entire crime. Rather, presence includes detection of the crime through any senses, including hearing and includes observing sufficient circumstantial factors to establish that the crime was committed. AB 2221 thus appears unnecessary given the current power of law enforcement to effectuate an arrest.

"The letter of support from the Bakersfield Police Department further demonstrates this point. The Department states that between 2013 and 2015, they arrested 1,861 people for prostitution. The Department, by its own reporting, is quite effective at arresting people for prostitution.

"The ability to stop, arrest and search an individual is an enormous power that we give police. Lowering the threshold to allow an officer to arrest someone for a misdemeanor raises serious concerns about likely abuse of that power. An officer may be tempted to arrest someone as a pre-text, in order to question the suspect or conduct a search for additional evidence. Pre-text arrests are akin to stop-and-frisk programs and frequently associated with racial profiling and other abuses of power. A recent poll found that most voters in California believe that police discriminate against people of color. 71% of California voters believe police are most likely to discriminate against young black men. Similarly, voters view Latinos (58%) and young Latino men (61%) as groups that are more likely to be discriminated against. Making it easier for police to arrest people for low-level offenses will only make these problems worse.

"AB 2221 also requires the prosecution to provide a witness in a human trafficking case with victim assistance prior to testifying. We have no objection to this portion of the bill."

8) **Related Legislation**: AB 1276 (Santiago), would authorize, under specified conditions, a minor 17 years of age or younger to testify by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys if the testimony will involve the recitation of the facts of an alleged offense of human trafficking. SB 1276 is awaiting hearing in the Senate Public Safety Committee.

9) **Prior Legislation**: SB 1091 (Pavley), Chapter 148, Statutes of 2012, expanded the list of cases in which a prosecuting witness may have support persons to include, among others, cases involving human trafficking, prostitution, child exploitation, and obscenity, as specified.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bakersfield Police Department
California Police Chiefs Association
Peace Officers Research Association of California

**Opposition**

American Civil Liberties Union of California
California Public Defenders Association
Legal Services for Prisoners with Children

**Analysis Prepared by**: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2229 (Grove) – As Amended March 17, 2016

**SUMMARY**: Eliminates the 10-day waiting period for persons previously determined by the Department of Justice (DOJ) to not be prohibited from possessing a firearm and the person possesses a firearm, is authorized to carry a concealed firearm, or possesses a valid Certificate of Eligibility. Specifically, **this bill**:

1) Requires the DOJ to immediately release firearms to persons without waiting the mandated 10-days if the person is determined by the DOJ not to be prohibited from possessing, receiving, owning, or purchasing a firearm; and any of the following:

   a) The person possesses a firearm as confirmed by the Automated Firearms System (AFS); or

   b) The person is authorized to carry a concealed firearm; or

   c) The person possesses a valid Certificate of Eligibility and a firearm as confirmed by the AFS.

**EXISTING LAW**:

1) Provides that no firearm shall be delivered:

   a) Within 10 days of the application to purchase, or, after notice by the Department of Justice (DOJ), within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the DOJ of any fee required, whichever is later;

   b) Unless unloaded and securely wrapped or unloaded and in a locked container;

   c) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person's identity and age to the dealer; and,

   d) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from processing, owning, purchasing, or receiving a firearm. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the reason for the prohibition. (Pen. Code § 26815.)

2) Provides that the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state-licensed dealer or a local law enforcement agency with appropriate transfer forms being used, as specified. (Pen. Code § 27545.)

3) Allows persons who are not subject to reporting to report the acquisition, ownership, or disposal of firearms to DOJ. (Pen. Code § 28000.)

4) Requires that firearms information submitted to DOJ as to handguns in terms of who owns what handgun must be maintained within a centralized registry. (Pen. Code Section 11106) These reporting requirements will apply to all firearms as of January 1, 2014. (Pen. Code § 11106.)

5) Require the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. (Pen. Code §§ 28200 to 28250.)

6) Requires if a dealer cannot legally deliver a firearm, existing law requires the dealer to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code § 28050, subd. (d).)

7) Requires that in connection with any private party sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number, California identification card number or military identification number. A copy of the Dealers Record of Sale (DROS), containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code §§ 28160, 28210, and 28215.)

8) Provides that various categories of persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others. (Pen. Code Sections 29800 to 29825, inclusive, 29900, 29905, 30305 and WIC §§ 8100 and 8103.)

9) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code § 27500 and 30306, and WIC § 8101.)

10) Provides that no person shall sell, lease, or transfer firearms unless he or she has been issued a state firearms dealer's license. A violation is a misdemeanor (punishable by up to one year in county jail). (Pen. Code § 12070.)

11) Provides for specified exemptions including commercial transactions among licensed wholesalers, importers, and manufacturers. (Pen. Code § 12070.)

12) Allows DOJ to charge the dealer for a number of costs such as a dealer record of sale (DROS). (Pen. Code § 12076.)

13) Exempts from the requirement (that sales, loans and transfers of firearms be conducted through a dealer or local law enforcement agency) transactions with authorized peace officers, certain operation of law transactions, and intra-familial firearms transactions. However, all these exempt transactions are subject to handgun registration as a condition of the exemption. (Pen. Code § 12078.)

14) Provides that, on request, DOJ will register transactions relating to handguns (indeed all firearms) in the Automated Firearm System (AFS) Unit for persons who are exempt from dealer processing, or are otherwise exempt by statute from reporting processes. (Pen. Code § 12078, subd. (l).)

15) Requires a person moving into California (with a handgun acquired outside of California) who did not receive the gun from a California licensed gun dealer, to register the gun with the DOJ by mailing a form. (Pen. Code § 12072, subd. (f)(2).)

16) Provides for the "Armed and Prohibited" (APS) program which identifies via registration records those persons who legally acquired and are the registered owner of any firearm in DOJ's data base and subsequently become ineligible to possess firearms and creates a mechanism to disarm these persons. (Pen. Code § 12010 to 12012.)

17) Provides a county sheriff or municipal police chief may issue a license to carry a handgun capable of being concealed upon the person upon proof of all of the following.

    a) The person applying is of good moral character (Pen.Code, §§ 26150, 26155, subd. (a) (1).);

    b) Good cause exists for the issuance (Pen. Code, §§ 26150, 26155, subd. (a) (2).);

    c) The person applying meets the appropriate residency requirements (Pen. Code, §§ 26150, 26155, subd. (a) (3).); and,

    d) The person has completed the appropriate training course, as specified. (Pen. Code, §§ 26150, 26155, subd. (a) (4).

18) States that a county sheriff or a chief of a municipal police department may issue a license to carry a concealed handgun in either of the following formats:

    a) A license to carry a concealed handgun upon his or her person (Pen. Code, §§ 26150, 26155, subd. (b) (1).); or,

    b) A license to carry a loaded and exposed handgun if the population of the county, or the county in which the city is located, is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150, 26155, subd. (b) (2).

19) Provides that a chief of a municipal police department shall not be precluded from entering into an agreement with the sheriff of the county in which the city is located for the sheriff to

process all applications for licenses, or renewal of licenses, to carry a concealed handgun upon the person. (Pen. Code, § 26155, subd. (b) (3).)

20) Provides that a license to carry a concealed handgun is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)

21) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code, § 26200.)

22) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice. Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, §§ 26180, 26185.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 2229 would amend the 10-day waiting period currently required for certain firearm purchases, by exempting three groups of firearm buyers from the state requirement."

2) **Silvester v. Harris (2014) 41 F. Supp. 3d 927:** Plaintiffs filed a federal suit in the Central District of California to challenge the 10-day waiting and contended that the 18 exemptions violate the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs also contended that the 10-day waiting periods violated the Second Amendment. Specifically, Plaintiffs contend that the 10-day waiting periods violate the Second Amendment as applied to those who already lawfully possess a firearm as confirmed in the Automated Firearms System ("AFS"), to those who possess a valid Carry Concealed Weapon ("CCW") license, and to those who possess a valid Certificate of Eligibility ("COE"). In March 2014, the District Court conducted a bench trial in this matter. After considering the evidence and the arguments, the Court concludes that the 10-day waiting periods impermissibly violate the Second Amendment as applied to those persons who already lawfully possess a firearm as confirmed by the AFS, to those who possess a valid CCW license, and to those who possess both a valid COE and a firearm as confirmed by the AFS system, if the background check on these individuals is completed and approved prior to the expiration of 10 days. Because of the trial court's resolution of the Second Amendment issue, the court did not address the Fourteenth Amendment challenges. California Attorney General Kamala Harris has appealed this decision to the United States Court of Appeals for the Ninth Circuit. The matter is presently before them and they have not made a ruling on this matter.

3) **Prohibited Persons:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for six months, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat.

(Welf. & Inst. Code, § 8100 subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103 subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Armed Prohibited Persons System (APPS), an automated system for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Penal Code Section 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement may also request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons.

According to DOJ, about 50% of the persons on APPS are prohibited due to criminal history; about 30% due to mental health status, and about 20% due to active restraining orders.

4) **Argument in Support**: According to *Firearms Policy Coalition*, "California has a mandatory 10-day waiting period prior to a person's taking possession of a lawfully-acquired firearm. The State's rationale and justification of this policy has traditionally been to chill 'impulse' firearm purchases (e.g., a 'cooling-off' period). More recently, the State has argued that it requires the waiting period in order to perform an 'adequate' background check.

"However, for those law-abiding persons already known to the state to possess firearms, including those persons licensed by a California sheriff or police chief to carry a handgun in public or who have a Certificate of Eligibility [to possess or acquire firearms] issued by the California Department of Justice ("DOJ") – both of which require the passage of a Live Scan background check and continuous criminal activity monitoring – the State's justifications (and all of its evidence) have failed to meet even deferential intermediate scrutiny.

"It is a fact that the DOJ 'auto-approves' at least 20% of all firearm purchases submitted through its Dealer's Record of Sale ("DROS") firearm acquisition, disposition, and registration system. Yet, these law-abiding people are made to wait the full 10 days before they take possession of their firearm.

"A person could (quite literally) walk into a California licensed dealer having a license to carry, wearing a concealed handgun, purchase a new firearm, pass the background check, and then irrationally be made to wait the full 10 days by DOJ simply because the State's regulatory scheme is as outdated as it is unconstitutional.

"In fact, The Calguns Foundation successfully litigated this very issue in the federal civil rights lawsuit *Silvester, et al. v. Attorney General Kamala Harris*, where, following years of litigation, full discovery, and a 3-day trial, District Court Judge Anthony Ishii (appointed to the bench by President Bill Clinton) ruled that the 10-day waiting period was nothing short of an unconstitutional infringement on the plaintiffs' Second Amendment right to keep and bear arms.

"AB 2229 is a common-sense measure that closely tracks the *Silvester* ruling and, put simply, conforms State statutes to the very minimum of constitutional standards. Even under AB 2229, all firearm purchasers will still need to pass the very same DOJ-administered background check and first-time purchasers would still need to wait 10-days before taking possession of a firearm."

5) **Argument in Opposition**: According to *The California Chapters of the Brady Campaign to Prevent Gun Violence,* "California law requires that whenever a person purchases a firearm, a complete background check must be performed and a ten day waiting period observed before the purchaser can take possession of the gun. The purpose of the ten day period is to allow sufficient time to perform the background check and to provide a "cooling" period to guard against impulsive acts of violence.

"Assembly Bill 2229 would provide that if a person is authorized to carry a concealed firearm, possesses a valid Certificate of Eligibility, or owns a firearm registered with the Department of Justice *and* is determined by the Department not to be prohibited from purchasing or possessing a firearm, then the Department must notify the dealer immediately so that the firearm may be released to the purchaser without waiting the full ten days.

"The requirement to observe a waiting period for subsequent firearm purchases was challenged in court by the Calguns Foundation, the Second Amendment Foundation and by several individuals. The plaintiffs did not challenge the waiting period for first time firearm purchases or the need to perform a complete background check for subsequent purchases.

"The Federal District Court in Fresno issued final judgement in this case (*Silvester v. Harris*) on August 25, 2014. The court found that the plaintiff's Second Amendments rights were being violated by the subsequent waiting period. Attorney General Harris timely appealed the trial court judgement and the case now resides in the 9th Circuit Court of Appeals, waiting for a ruling.

"In its opening brief on appeal, the Department of Justice pointed out that each year the Bureau of Firearms performs over a million background checks. Of these, only 20 percent are cleared immediately. The remainder require varying levels of analyst intervention. We have been told by staff at the Bureau that it commonly takes up to eight days to complete a background check. It is difficult to see how having to wait ten days versus eight days constitutes a "substantial burden" on the exercise of one's constitutional rights under the Second Amendment, as required in the *Chovan v. United States* two part test.

"We believe that there is a substantial likelihood that the 9th Circuit will reverse the lower court ruling in *Silvester v. Harris.* It would be both premature and inappropriate for the legislature to pass AB 2229 at this time while the case is still being litigated.

"Accordingly, we stand in opposition to AB 2229."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Firearms Policy Coalition (Sponsor)
California Sportsman's Lobby
Gun Owners of California
Outdoor Sportsmen's Coalition of California
Safari Club International

**Opposition**

California Chapters of the Brady Campaign
California Civil Liberties Advocacy
Law Center to Prevent Gun Violence

**Analysis Prepared by:** Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2298 (Weber) – As Amended April 6, 2016

**SUMMARY:** Imposes specified due process rights on California Shared Gang Databases. Specifically, **this bill**:

1) Expands the notice requirement given to minors to include adults, by requiring notice be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database.

2) Requires databases comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases.

3) Requires local law enforcement, commencing December 1, 2017, and every December 1st thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing January 1, 2018, and every January 1st thereafter, to submit a report containing that information to the CalGang Executive Board and to the Legislature.

4) Requires that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within three years of the initial designation be removed from the database.

5) Establishes a procedure for a person designated in a shared gang database to challenge that designation through an administrative hearing and appeal to the superior court as follows:

    a) Provides that a person who is listed by a law enforcement agency in a shared gang database as a gang member, suspected gang member, associate, or affiliate may contest that designation pursuant to this section. The person may contest the designation initially pursuant to this section or a denial as specified.

    b) States that the person may request an administrative hearing to review the designation decision.

    c) Provides that an administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

    d) States that the administrative hearing shall be conducted in accordance with written procedures established by the agency. The hearing shall provide an independent, objective, fair, and impartial review of a contested designation.

e) Provides that the agency shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to conduct the administrative hearings. Examiners shall demonstrate those qualifications, training, and objectivity necessary to conduct a fair and impartial review.

f) States that the examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail, and, if the designation is not canceled, shall include a written reason for that denial.

g) Provides that within 30 calendar days after the mailing or personal delivery of the examiner's decision, the person may seek review by filing an appeal to be heard by the superior court where the appeal shall be heard de novo. A copy of the notice of appeal shall be served in person or by first-class mail upon the agency by the person.

h) Provides that the law enforcement agency has the burden of demonstrating active gang membership, associate status, or affiliate status to the court by clear and convincing evidence.

i) States that a successful challenge to the designation shall result in the removal of the person from the shared gang database.

**EXISTING LAW**:

1) Defines a "criminal street gang" as any ongoing organization, association, or group of three or more persons . . . having as one of its primary activities the commission of one or more enumerated offenses, having a common name or identifying sign or symbol, and whose members individually or collectively engage in a pattern of criminal gang activity. (Pen. Code, § 186.22, subd. (f).)

2) Provides that any person who actively participates in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who promotes, furthers, or assists in any felonious conduct by members of the gang is guilty of an alternate felony-misdemeanor. (Pen. Code, § 186.22, subd. (a).)

3) Provides that any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall receive a sentence enhancement, as specified. (Pen. Code, § 186.22, subd. (b).)

4) Provides that any person who is convicted of either a felony or misdemeanor that is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail for up to one year or by 1, 2, or 3 years in state prison. (Pen. Code, § 186.22, subd. (d).)

5) Defines "pattern of criminal gang activity" as the commission of two or more of enumerated offenses, provided at least one of the offenses occurred after the effective date of the statute and the last of the offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons. (Pen. Code, § 186.22, subd. (e).)

6) Requires any person who is convicted in criminal court or who has a petition sustained in a juvenile court of one of the specified criminal street gang offenses or enhancements to register with the local Police Chief or Sheriff within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever is first. (Pen. Code, § 186.30, subds. (a) & (b).)

7) Provides that when a minor has been tried as an adult and *convicted* in a criminal court or has had a petition sustained in a juvenile court for any of the specified criminal street gang offenses or enhancements, a law enforcement agency shall notify the minor and his or her parent that the minor belongs to a gang whose members engage in or have engaged in a pattern of criminal activity as described. (Pen. Code, § 186.32 (a)(1)(B).)

8) Requires the court, at the time of sentencing in adult court or dispositional hearing in juvenile court, to inform any person subject to registration detailed above of his or her duty to register and requires that the parole or probation officer assigned to that person to verify that the person has complied with the registration requirements. (Pen. Code, § 186.31.)

9) Requires local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation. (Pen. Code § 186.34.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "In 2013 SB 458 (Wright), which required youth under 18 and their parent or guardian had the right to be notified if they were added to a gang file and to challenge their designation, was signed into law. In just two years since the passing of SB 458, the number of people on the CalGang Database has dropped from nearly 202,000 to approximately 150,000.

   "As an indication of how powerful transparency is in achieving fair and accurate implementation AB 2298 continues the work of SB 458 by 1) Extending to adults the current requirement that youth under 18 be given notice as well as an opportunity to contest inclusion in a shared gang database; 2) Removing individuals from the gang database after three years without a convicted violation of California's Street Terrorism Enforcement and Prevention Act; and 3) Requiring that the California Department of Justice (DOJ) provide an annual report on gang databases.

   "Most important, for youth and young adults that police suspect of gang membership or association, they and their families should be both notified and flooded with intervention resources and other supports. Instead, the continued secrecy of CalGang and the increased surveillance and police contact it triggers, actually eliminate a vital and early opportunity to prevent victimization, injury, incarceration and death. In fact, CalGang and similar efforts exclude people and their families from the community when they most need that connection and support."

2) **General Effects of this Bill are to Include Due Process Rights for those Designated:** In general this bill will do the following things as applied to persons who are being added to a CalGang database:

   a) **Notice:** This bill expands the notice requirement given to minors to include adults, by requiring notice be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database.

   b) **Compliance with Federal Standards:** The legislation requires databases comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases.

   c) **Reporting Requirements:** This bill requires local law enforcement, commencing December 1, 2017, and every December 1st thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing January 1, 2018, and every January 1st thereafter, to submit a report containing that information to the CalGang Executive Board and to the Legislature.

   d) **Requires a Gang Crime Violation:** This legislation provides that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within 3 years of the initial designation be removed from the database.

   e) **Mandates Basic Due Process:** The bill establishes a procedure for a person designated in a shared gang database to challenge that designation through an administrative hearing and appeal to the superior court.

3) **History of Shared Gang Databases**: In 1987, the Los Angeles County Sheriff's Department developed the Gang Reporting, Evaluation and Tracking System (GREAT), the nation's first gang database. "Before GREAT existed, police departments collected information on gang members in locally maintained files, but could not access information that had been collected by other law enforcement agencies." (Stacey Leyton, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases* (a chapter in *Crime Control and Social Justice: The Delicate Balance*, edited by Darnell F. Hawkins, Samuel L. Myers Jr. and Randolph N. Stone, Westport, CT, 2003. *The African American Experience*, Greenwood Publishing Group, Mar. 27, 2013.[1] Using GREAT, local law enforcement could collect, store, centralize, analyze, and disperse information about alleged gang members.

   In 1988, the Legislature passed the Street Terrorism Enforcement and Prevention (STEP) Act, asserting California to be "in a state of crisis… caused by violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods." (Pen. Code, § 186.21 (1988).) The STEP Act established the nation's first definitions of "criminal street gang," "pattern of criminal gang activity," and codified penalties for participation in a criminal street gang.

---

[1] <http://testaae.greenwood.com/doc_print.aspx?fileID=GM0790E&chapterID=GM0790E-643&path=chunkbook>, citing *GREAT System Overview*, The Eighth Annual Organized Crime and Criminal Intelligence Training Conference, August 23-26, 1994.)

In 1997, less than a decade after the regional GREAT database was first created, the regional GREAT databases were integrated into a new unified statewide database, CalGang, with the goals of making the database easier to use and less expensive to access.[2] CalGang operates pursuant to the 1968 Omnibus Crime Control and Safe Streets Act, which requires that "all criminal intelligence systems … are utilized in conformance with the privacy and constitutional rights of individuals."[3]

4) **Required Parental Notification of a Minor's Duty to Register as a Gang Member**: Prior to 2013, if a minor is convicted when tried as an adult, or had a petition sustained in a juvenile court, his or her parent or guardian was required to be notified of a requirement to register with a local sheriff's office upon release from custody or moving to a new city or county. (Pen. Code, § 186.32, subd. (a)(1)(B).) Parents were notified when a minor was designated in the CalGang database as a suspected gang member, associate, or affiliate. Although a conviction or declaration of wardship was not required for a minor to be placed in the CalGang database, serious consequences to the minor could flow from that action.

   AB 458 (Wright), Chapter 797, Statutes of 2013 required a local law enforcement agency to notify any person under 18 years of age and his or her parent or guardian of the minor's designation in a shared gang database and the basis for the designation before the minor was designated as a suspected gang member, associate or affiliate in a shared gang database, regardless of conviction status.

5) **Application of Shared Gang Databases**: Today, the CalGang system is accessed by over 6,000 law enforcement officers in 58 counties. The database tracks 200 data fields including name, address, physical information, social security number, and racial makeup and records all encounters police have with the individual. (Leyton, *supra*, at 113.) CalGang is a web-based intranet system accessible by police departments by way of computer, telephone, and web browser that allows law enforcement to check an individual's record in real time. (*Ibid.*) For example, qualified law enforcement personnel may sign on to the CalGang database from a laptop in their patrol car and locate a source document regarding a specific individual about whom law enforcement seeks information.

   Concerns have been raised regarding the secrecy of the CalGang database and the accuracy of records entered into CalGang. For example, in 1999, then-Attorney General Bill Lockyer described the database as "mix[ing] verified criminal history and gang affiliations with unverified intelligence and hearsay evidence, including reports on persons who have committed no crime." "This database," he went on "cannot and should not be used, in California or elsewhere, to decide whether or not a person is dangerous or should be detained." (*Ibid.*) Moreover, with 201,094 people currently listed on CalGang, community groups have expressed concern about transparency, accountability, notification, release of

---

[2] (Leyton, *supra*, at 113, citing Patrick Thibodeau, *Cops Wield Database in War on Street Gangs*, Computerworld, Sept. 1, 1997, at 4; and Ray Dassault, *GangNet: A New Tool in the War on Gangs*, California Computer News, January 1997 <http://www.govtech.com/magazines/gt/GangNet-A-New-Tool-in-the.html?page=3>.)

[3] (Criminal Intelligence Systems, Operating Policies, 28 CFR Part 23, <http://www.iir.com/28CFR_Program/28CFR_Resources/ExecOrder12291_28CFRPart23.pdf/>.)

information to policy makers and the public, and independent evaluations regarding the effectiveness of such shared databases in reducing crime.[4]

Youth Justice Coalition states that CalGang "dramatically expands the criminalization of individuals and communities" noting that the database is used routinely to determine who should be served with civil gang injunctions, given gang enhancements during sentencing and targeted for saturation policing. With no notification system, community members say, CalGang has become a "secret surveillance tool," for monitoring children. This system dramatically impacts the way those children are seen and treated by law enforcement without notifying families who may wish to intervene, move to a new neighborhood or place their child into an intervention program. (*Id.*) Although the exact number of minors designated is unknown, approximately 10% of those listed on the CalGang database are 19 years of age or younger. (*Id.*)

Law enforcement representatives, however, have emphasized that any records which are not modified by the addition of new criteria for five years will be purged. Thus, a person need only avoid gang-qualifying criteria for five years to ensure that he or she will be stricken from the database.

However, as a practical matter, it may be difficult for a minor, or a young-adult, living in a gang-heavy community to avoid qualifying criteria when the list of behaviors includes items such as "is in a photograph with known gang members," "name is on a gang document, hit list or gang-related graffiti" or "corresponds with known gang members or writes and/or receives correspondence." In a media-heavy environment, replete with camera phones and social network comments, it may be challenging for a teenager aware of the exact parameters to avoid such criteria, let alone a teenager unaware of he or she is being held to such standards.

6) **Criminal Intelligence Systems:** According to the United States Code of Federal Regulations, title 28, section 23, a Criminal Intelligence System is allowed to collect the names of individuals or organizations not reasonably suspected of involvement in criminal activity, as "noncriminal identifying information" if the information relates to the identification of a criminal subject or criminal activity. The broad definition of criminal activity allows the database to maintain identifying information of many people, whether or not they have been involved in gang activity. According to the Criminal Intelligence Systems website, the stated qualifications limit inclusion to "criminal activity that constitutes a significant and recognized threat to the community. In general, 28 CFR Part 23 views such criminal activity to be multijurisdictional and/or organized criminal activity that involves a significant degree of permanent criminal organization or is undertaken for the purpose of seeking illegal power or profits or poses a threat to the life and property of citizens. This would normally not include traffic or other misdemeanor violations." (http://www.iir.com/Home/28CFR_Program/28CFR_FAQ/)

7) **Due Process and the Actions of Law Enforcement Agencies:** Due Process Clauses of the U.S. Constitution serve as protections from arbitrary denials of life, liberty, or property by

---

[4] (See Ana Muniz and Kim McGill, *Tracked and Trapped: Youth of Color, Gang Databases and Gang Injunctions*, Youth Justice Coalition, Dec. 2012 <http://www.youth4justice.org/wp-content/uploads/2012/12/TrackedandTrapped.pdf>.)

the government, absent law. The protections at risk regarding shared gang databases are both procedural and substantive. Procedural due process protects individuals from the coercive power of the government, which is in this case law enforcement agencies, by ensuring there are processes in place that allow a fair and impartial adjudication of issues.

Article I of the State Constitution says a person may not be deprived of life, liberty, or property without due process of law or be denied equal protection of the laws. In the 9th Circuit Court of Appeals case, *Vasquez v. Rackauckas*, the court stated that this due process clause provides greater procedural due process rights for private parties than does the federal Constitution. The defendants-appellants had been dismissed from a case to enforce a local gang injunction. The prosecution proceeded in the case and secured a gang injunction. When the injunction was being enforced, the police tried to apply the injunction to the two defendants who had been dismissed in the case. The defendant-appellants appealed the injunction on the basis that they were dismissed from the injunction case and were never afforded a due process hearing regarding the injunction. The court held that the defendant-appellants were entitled to a due process hearing prior to being subjected to the injunction order. (*Vasquez v. Rackauckas,* (2013) 734 F.3d 1025.)

8) **Limited Existing Due Process Procedures:** Currently, only minors and their parent or guardian, are allowed to be notified that the minor is being entered in the system. Adults have been totally omitted from the notification process even though they are affected by being included in the database. According to the report by the Coalition, these databases can be very harmful to anyone who is categorized as being connected to a gang, even if no such connection ever existed or they were part of a gang 20 years ago. There is no way today for an adult to find out if they have been "tagged" as a gang member by law enforcement and entered into this system. Even if that adult could discover that he or she were included in the database, there is no way today to challenge that inclusion. Finding out that you are in the system during contact with police or when you are applying for college, places the individual in an unfair position and there are not many opportunities for a person to refute the designation. Furthermore, there must also be a process for having a person's name removed from the system if the individual is not connected with a gang. What happens to a person who has a family member or relative who is associated with a gang? Is that innocent person also entered into the database because they qualify as an associate or an affiliate? Suppression of criminal activity is the job of law enforcement and there are many tools that they use to perform their jobs. However, the use of these shared databases has to be reviewed to ensure that their use doesn't destroy the constitutional rights of those who have been entered.

9) **Argument in Support**: According to the *American Civil Liberties Union*, "AB 2298 would provide due process protections for people designated as gang members by law enforcement agencies, and require that data on the demographics of people in gang databases be annually published.

"Since the early 1980s, law enforcement agencies throughout California have designated people as gang members for inclusion in gang databases that are not accurate, consistent or transparent. Most people are added to gang databases without being arrested or accused of a crime. Until the recent passage of Senate Bill 458, no person labeled as a gang member had a legal right to be notified or an opportunity to appeal their designation. Under SB 458, only

youth under the age of 18 have those rights. AB 2298 would extend this notice requirement to adults.

"Nearly 20% of the people on the CalGang Database are African-American and 66% are Latino. Since only 6.6% of Californians are African-Americans, and just 38.1% are Latino, this represents an alarming racial disparity. Databases are often used to add people to gang injunctions, support sentencing enhancements, and to deny people access to victims' compensation. An individual's gang designation can also be accessed by federal law enforcement agencies, such as the FBI and ICE, and result in negative immigration consequences.

"AB 2298 will help resolve these problems by, among other things, creating a process that allows people who are not gang members to be removed from gang databases, ensuring that people designated as gang members are notified, and by requiring that data on the demographics of people added to and removed from gang databases be annually published."

10) **Argument in Opposition**: According to According to the *California State Sheriffs' Association*, "AB 2298 would require law enforcement agencies to notify active participants of criminal street gangs that they are subject to an investigation.

"In 2013, CSSA negotiated amendments to SB 458 (Wright), which provided for parental notification when a minor was entered into a shared criminal gang database. The idea was that parents could intervene in unknown activity by their children. AB 2298 undoes the agreement reached in SB 458 and goes far beyond providing for parental notification by requiring notification to adult gang members of their entry into a shared criminal gang database. In addition, this measure would allow for active adult participants of a criminal street gang to contest their entry into the database and request a formal hearing to remove that designation from a shared criminal database.

"This measure undermines public safety by informing gang members that they are subject to investigations. In addition, this measure creates unfunded costs by requiring administrative hearings to adjudicate determinations of gang affiliation."

11) **Related Legislation:** AB 829 (Nazarian), would have outlined procedural due process rights for persons designated for inclusion in a shared gang database. AB 829 passed this committee and failed passage in the Assembly Judiciary Committee.

12) **Prior Legislation**:

a) SB 458 (Wright), Chapter 797, Statutes of 2013, required local law enforcement to notify a minor and his or her parent or guardian before designating that minor as a gang member, associate, or affiliate in a shared gang database and the basis for the designation.

b) AB 177 (Mendoza), Chapter 258, Statutes of 2011, expanded the authority of the juvenile court to order the parent or guardian of a minor to attend anti-gang violence parenting classes.

c) SB 296 (Wright), of the 2011-12 Legislative Session, would have created a process whereby a person subject to a gang injunction could petition for injunctive relief if the

person met certain criteria. SB 296 was vetoed by the Governor.

d) AB 1392 (Tran), of the 2009-10 Legislative Session, would have established the Graffiti and Gang Technology Fund, in which vandalism fines were to be deposited, to be continuously appropriated to the Department of Justice exclusively for the costs of technological advancements for law enforcement in the identification and apprehension of vandals and gang members, as specified. AB 1392 was held on the suspense file of the Assembly Committee on Appropriations.

e) AB 1291 (Mendoza), Chapter 457, Statutes of 2007, authorized anti-gang violence classes for parents of juveniles found in violation of specified gang-related offenses.

f) AB 1630 (Runner), of the 2007-08 Legislative Session, would have required those who are convicted of a street gang crime and to annually register and re-register upon changing his or her residence. AB 1630 failed passage in this committee.

g) AB 2562 (Fuller), of the 2007-08 Legislative Session, would have increased the penalty from a misdemeanor to a felony punishable by 16 months or two or three years in the state prison for failing to register as a member of a criminal street gang under specified circumstances. AB 2562 failed passage in this committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

All of Us or None
Alliance for Boys and Men of Color
American Civil Liberties Union
Arts for Incarcerated Youth Network
Asian Americans Advancing Justice
Bay Area Youth Summit
Boston Area Youth Organizing Project
California Attorneys for Criminal Justice
California Immigrant Policy Center
California Public Defenders Association
Coalition for Humane Immigrant Rights of Los Angeles
Community Asset Development Redefining Education
Critical Resistance
Community Coalition
Dream Team Los Angeles
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance
House Keys not Handcuffs
Immigrant Youth Coalition
Injustice Not Jails Immigrant Youth Coalition
Inland Empire Immigrant Youth Coalition
Khmer Girls in Action

Life After Uncivil ruthless Acts
Los Angeles Brown Berets
Los Angeles Center for Law and Justice
Motivating Individual Leadership for Public Advancement
National Association of Social Workers
National Center for Youth Law
National Immigration Law Center
National Juvenile Justice Network
New PATH
New Way of Life Re-Entry Project
Orange County Immigrant Youth United
PICO of California
Policy Link
Public Counsel
Services, Immigrant Rights, and Education Network
Southeast Asia Resource Action Center
Southwestern Law School's Immigration Law Clinic
TRUST South LA
UC Irvine, Immigrants Rights Clinic
Urban Peace Institute
Violence Prevention Coalition
W. Haywood Burns Institute
Women's Foundation of California
Youth Justice Alliance
Youth Justice Coalition

1 private individual

**Opposition**

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California Police Chiefs Association
California State Sheriffs' Association
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association

**Analysis Prepared by**: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Chief Counsel: Gregory Pagan

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

AB 2361 (Santiago) – As Introduced February 18, 2016
As Proposed to be Amended in Committee

**SUMMARY**: Authorizes security guards employed by the University of Southern California (USC) to be appointed as peace officers while enforcing the law on the USC campus and surrounding university property. Specifically, **this bill**:

1) Provides that a security guard employed by the Board of Trustees of the University of Southern California may be a peace officer, when appointed and sworn by the Board of Trustees if the primary duty of the peace officer is enforcing the law on the campus of the University of Southern California, and an area within one mile of the exterior boundaries of the campus, or in and about other grounds or properties, owned, operated, controlled, or administered by the Board of Trustees of the University of Southern California, and the University has a memorandum of understanding with the Los Angeles Police Department or the Los Angeles County Sheriff's Department that permits the exercise of the above peace officer authority.

2) States that before exercising the powers of a peace officer appointed pursuant to subdivision (a) shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training (POST).

3) Provides that notwithstanding any other law, the appointment as a USC peace officer shall serve only to define those persons as peace officers, the extent of their jurisdiction and the nature and scope of their authority, powers and duties, and their status shall not change for purposes of retirement, worker's compensation, or similar injury or death benefits, or other employee benefits.

4) A person appointed as a USC peace officer shall not be reimbursed with state funds for any training he or she receives.

5) A person appointed as a USC peace officer pursuant to subdivision (a) may carry a firearm in the course of his or her duties only if authorized and under the terms and conditions of his or her employing agency.

**EXISTING LAW**:

1) Requires that any person or persons desiring peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who, on January 1, 1990, were not entitled to be designated as peace officers under that chapter shall request the Commission on Peace Officers Standards and Training (POST) to undertake a feasibility study regarding designating that person or persons as peace officers. The request and study shall be

undertaken in accordance with regulations adopted by POST. POST may charge any person, with specified exceptions, requesting a study, a fee, not to exceed the actual cost of undertaking the study. (Pen. Code, § 13540, subd. (a).)

2) Provides that any study undertaken under this article shall include, but shall not be limited to, the current and proposed duties and responsibilities of persons employed in the category seeking the designation change, their field law enforcement duties and responsibilities, their supervisory and management structure, their proposed training methods and funding sources and the extent to which their current duties and responsibilities require additional peace officer powers and authority. (Pen. Code, § 13540, subd. (b).)

3) Defines "independent institutions of higher education" as those nonpublic higher education institutions that grant under graduate degrees, graduate degrees, or both, and are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education (USDOE). (Ed. Code § 66010, subd. (b).)

4) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training (POST) and that after July 1, 1989 satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code. § 832, subd. (a).)

5) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832, subd. (b).)

6) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832, subd. (c).)

7) Provides that the following are peace offices, who may carry firearms only if authorized and under terms and conditions specified by their employing agency, whose authority extends to any place in California for the purpose of performing their primary duty, or when making an arrest for a public offense where there is immediate danger to a person or property or to prevent the perpetrator's escape, as specified, or during a state of emergency, as specified:

   a) Members of the San Francisco Bay Area Rapid Transit District Police Department if their primary duty is enforcement of the law in or about property owned, operated or administered by the district or when performing a necessary duty with respect to patrons, employees and properties of the district.

   b) Harbor or port police if their primary duty is enforcement of law in or about property owned, operated or administered by harbor or port or when performing a necessary duty with respect to patrons, employees and properties of the harbor or port.

   c) Transit police officers or peace offices of a county, city, transit development board or district if the primary duty is the enforcement of the law in or abut property owned, operated or administered by the employing agency or when performing a necessary duty with respect to patrons, employees and properties of the employing agency.

d) Persons employed as airport law enforcement officers by a city, county or district operating the airport or a joint powers agency operating the airport if their primary duty is the enforcement of the law in or about property owned, operated and administered by the employing agency or when performing a necessary duty with respect to patrons, employees and properties of the employing agency.

e) Railroad police officers commissioned by the Governor if their primary duty is the enforcement of the law in or about property owned, operated or administered by the employing agency or when performing necessary duties with respect to patrons, employees and properties of the employing agency. (Penal Code Section 830.33.)

8) Provides that numerous types of publicly employed security officers are granted the powers of arrest of a peace officer although they are not peace officers. These persons may exercise the powers of arrest of a peace officer, as specified, during the course and within the scope of their employment if they successfully complete a course in the exercise of those powers, as specified, which has been certified by POST. Persons currently granted such powers are:

a) Persons designated by a cemetery authority, as specified;

b) Persons regularly employed as security officers for independent institutions of higher education, as specified, if the institution has concluded a MOU permitting the exercise of that authority with the sheriff or the chief of police within whose jurisdiction the institution lies;

c) Persons regularly employed as security officers for health facilities, as specified, that are owned and operated by cities, counties, and cities and counties if the facility has concluded a MOU permitting the exercise of that authority with the sheriff or the chief of police within whose jurisdiction the facility lies;

d) Employees or classes of employees of the California Department of Forestry and Fire Protection (CDFFP) designated by the CDFFP Director, provided that the primary duty of the employee shall be the enforcement of the law, as specified;

e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as specified, if the district has concluded a MOU permitting the exercise of that authority with, as applicable, the sheriff, the chief of police, or the Department of the California Highway Patrol within whose jurisdiction the district lies;

f) Non-peace officers regularly employed as county parole officers, as specified;

g) Persons appointed by the Executive Director of the California Science Center, as specified; and,

h) Persons regularly employed as investigators, as specified, by the Department of Transportation for the City of Los Angeles and designated by local ordinance as public officers to the extent necessary to enforce laws related to public transportation and authorized by a MOU with the chief of police permitting the exercise of that authority. (Pen. Code, § 830.7.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 2361 authorizes security guards employed by USC to be appointed as peace officer when enforcing the law on the USC campus, provided (1) the institution has a memorandum of understanding (MOU) with local law enforcement that permits this action and (2) the individual has completed the regular basic course as prescribed by POST. This measure will improve campus safety by affording independent college public safety departments the same status given to public university public safety departments, all while ensuring these departments remain under the control of local law enforcement."

2) **POST Feasibility Study**: In 1989, SB 353 (Presley), Chapter 1165, Statutes of 1989, was introduced as a result of interim hearings of the Senate Judiciary Subcommittee on Corrections and Law Enforcement Agencies. SB 353 regrouped peace officer categories according to the nature of their jurisdiction rather than the scope of their authority. SB 353 also required a POST review of all classification requests prior to legislative consideration of granting peace officer status in the future or where there is a request to change peace officer designation or status.

   Pursuant to SB 353, Penal Code Section 13540 provides that POST may charge a fee to the person or entity requesting a feasibility study. The study must be completed within 18 months and include a review of the proposed duties and responsibilities of the person employed in the category seeking peace officer designation. (Penal Code Sections 13541 and 13542.)

   It is a general rule that one legislative body cannot limit or restrict the power of subsequent Legislatures, and the act of one Legislature does not bind its successors (see *In re Collie* (1952) 38 Cal.2d 396, 398). Thus a statute purporting to condition future legislative action on compliance with conditions in that statute may be superseded by subsequent contrary legislative action.

3) **Argument in Support**: According to the *University of Southern California*, "In California, unlike their counterparts at public institutions, security officers at public institutions, security officers at private institutions are not classified as peace officers, limiting their ability to protect their campus community. Campus administrators need to be able to provide assurance to their communities that campus safety officials will not only take proactive measures to prevent campus violence, but will also effectively respond to any acts of violence and thereby minimize harm to the communities. Campus violence, in particular campus shooting incidents, has been occurring with increasing frequency. In addition, many universities are major centers of research and would also be considered attractive targets for acts of terrorism."

4) **Argument in Opposition**: According to the *American Civil Liberties Union*, "Penal Code section 13540 requires that "Any person or persons desiring peace officer status…shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating that person or persons as peace officers." By failing to require such a study, this bill would violate Penal Code section 13540. The requirements of Penal Code section 13540 were enacted precisely because so many groups would like peace officers authority extended to them. This reflected in the Legislature's understanding that it is frequently approached with such requests but the decision is too important to be dealt with in the absence of an objective evaluation of the need.

   "Additionally, this bill would grant the powers reserved for peace officers in making arrests and in the use of force without any of the accountability that accompanies these awesome powers. The power given to police officers should never be divorced from the democratic institutions that confer that power and regulate its use. Despite their status as peace officers, these private employees would not be accountable to the public in any way.

   "At a time when communities throughout the country are striving for greater accountability for their public police agencies, the Legislature should not be conferring police powers on private parties with no public accountability whatsoever."

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

University of Southern California
University of California, Los Angeles
Claremont College Campus Safety Department
California College and University Police Chiefs Association
California Association of Code Enforcement Officers
California Narcotics Officers Association
Los Angeles County Professional Peace Officers Association
Association of Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs Association

**Opposition**

American Civil Liberties Union
California Public Defenders Association

**Analysis Prepared by**: Gregory Pagan / PUB. S. / (916) 319-3744

**AB 2361 (Santiago) Amendments**

SECTION 1. Section 830.75 is added to the Penal Code, to read:

830.75. (a) A security guard employed by the Board of Trustees of the University of Southern California may be a peace officer, when appointed and sworn by the Board of Trustees if the primary duty of the peace officer is enforcing the law on the campus of the University of Southern California, and an area within one mile of the exterior boundaries of the campus, or in and about other grounds or properties, owned, operated, controlled, or administered by the Board of Trustees of the University of Southern California, and the University has a memorandum of understanding with the Los Angeles Police Department or the Los Angeles County Sheriff's Department that permits the exercise of the above peace officer authority.

(b) Before exercising the powers of a peace officer appointed pursuant to subdivision (a) shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training pursuant Section 832.

(c) Notwithstanding any other law, the appointment as a peace officer pursuant to subdivision (a) shall serve only to define those persons as peace officers, the extent of their jurisdiction and the nature and scope of their authority, powers and duties, and their status shall not change for purposes of retirement, worker's compensation, or similar injury or death benefits, or other employee benefits.

(d) A person appointed as a peace officer pursuant to subdivision (a) shall not be reimbursed with state funds for any training he or she receives.

(d) A person appointed as a peace officer pursuant to subdivision (a) may carry a firearm in the course of his or her duties only if authorized and under the terms and conditions of his or her employing agency.

Date of Hearing: April 12, 2016
Consultant: Matt Dean

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

AB 2417 (Cooley) – As Amended March 15, 2016

**SUMMARY**: Prohibits the Department of Justice (DOJ) from charging fees to Court Appointed Special Advocate (CASA) Programs for background checks. Specifically, **this bill**: Prohibits DOJ from charging a fee to CASA programs who submit to DOJ fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information regarding any record of child abuse investigations contained in the Child Abuse Central Index (CACI), state- or federal-level convictions, or state- or federal-level arrests for which DOJ establishes that the applicant was released on bail or on his or her own recognizance pending trial.

**EXISTING LAW**:

2) Requires that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, shall report it immediately to a specified child protection agency. (Pen. Code, § 11166, subd. (a).)

3) Requires specified local agencies to send DOJ reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Pen. Code, § 11169, subd. (a).)

4) Directs DOJ to maintain an index, referred to as CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code, § 11170, subds. (a)(1) & (a)(3).)

5) Allows DOJ to disclose information contained in CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. (Pen. Code, § 11170, subd. (b).)

6) Requires reporting agencies to provide written notification to a person reported to CACI. (Pen. Code, § 11169, subd. (c).)

7) Provide that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code, § 11169, subds. (d) & (e).)

8) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (g).)

9) Requires DOJ to remove a person's name from CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (g).)

10) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, § 11169, subd. (f).)

11) Requires the Judicial Council to establish guidelines for CASA programs, as specified. (Welf. & Inst. Code, § 100 et seq.; Cal. Rules of Court, rule 5.655.)

12) Authorizes CASA programs to request fingerprint background checks. (Pen. Code, § 11170, subd. (b)(5).)

13) Authorizes DOJ to charge fees sufficient to cover the cost of conducting fingerprint background checks. (Pen. Code, § 11005, subd. (e).)

14) Prohibits DOJ from charging a fee for fingerprint background checks for volunteers at child care facilities who are required to be fingerprinted if funding is provided in the Budget. (Health & Saf. Code, §§ 1596.871 & 1596.8713.)

15) Requires background checks for child mentors in the foster care system and prohibits DOJ from charging fees for the background checks. (Health & Saf. Code, § 1522.06.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "California has a network of 44 local CASA programs that recruit, train and supervise volunteers who are appointed by a judge to provide one-on-one mentorship and advocacy to abused and neglected children who are dependents or wards of the juvenile court. CASA volunteers advocate on behalf of the children they serve to ensure their educational, health and visitation needs are met. Additionally, volunteers ensure that children are placed in homes with families in which they will thrive.

   "Children with a CASA have better outcomes. They are more likely to find a safe permanent home, half as likely to reenter the foster care system, and more likely to succeed in school. Currently, there are not enough CASAs to advocate on behalf of the foster children in need of their services.

   "Pursuant to a policy intended to support mentorship to foster youth, the DOJ is prohibited from charging fees to qualifying nonprofit organizations, childcare facilities and foster youth mentors. CASA programs are excluded from this benefit which can limit the pool of potential volunteers and affect services provided to children in the foster care system.

   "AB 2417 includes CASAs in an existing fee exemption for State Department of Justice (DOJ) criminal history background checks which are vital to protecting these vulnerable children."

2) **Background**: CASA volunteers are deemed as officers of the court for the purpose of representing juveniles and wards of the court without other representation. This allows CASA advocates to represent children in proceedings that affect them. CASA programs recruit volunteers to serve as advocates for these children, and trains them in accordance with minimum guidelines set by the Judicial Council. These guidelines require that CASA advocates and employees be fingerprinted and run through a CACI background check to ensure the advocates and employees does not have a history of child abuse or neglect. Currently, CASA programs must pay a fee to DOJ to process this mandatory background check. This mandatory expense is burdensome, given that these programs are non-profits relying heavily on volunteers. Yet, under existing law, there is no fee for background checks of child care mentors serving youths in the foster care system and child care facility volunteers. This bill would extend the fee prohibition for background checks to CASA program volunteers and employees.

3) **Argument in Support**: According to the *California Court Appointed Special Advocates*, "California CASA Association works to ensure children in the foster care system have both a voice and the services they need for a stable future, by strengthening California's network of local CASA programs and advocating for progressive child welfare policy and practice. California CASA represents a network of 44 local programs operating in 50 different counties around the state.

"These 44 local programs recruit, train, and supervise volunteers who are appointed by a judge to provide one-on-one mentorship and advocacy to abused and neglected children who are under the jurisdiction of the juvenile court. CASA programs are required by law to fingerprint each CASA volunteer to screen for criminal background before allowing them to mentor and advocate for children.

"Currently, California nonprofits that serve children do not have to pay the California Department of Justice administrative fee for state criminal background (CORI) checks; however, as the law is currently written, CASA programs are not included in this exemption. AB 2417 (Cooley) amends Penal Code Section 11105.04 to bring CASA programs in line with similarly situated from non-profits, and exempts programs from paying this fee.

"California's CASA programs all operate on tight budgets that depend on a variety of funding streams. All budgetary pressures impact the number of children in foster care who can have the guidance and advocacy of CASA. By saving programs the administrative fees associated with a state CORI check, programs will be able to instead invest these dollars in serving additional youth.

"Based on the current DOJ fee of $32 dollars per a state CORI check and the 2,600 volunteers trained during the last fiscal year, we estimate this change would save our network approximately $83,200 annually. These network wide savings present great opportunity for our programs to grow, meeting a great need presented in many of our communities. Also, amending the law this way would stop CASA programs from being the only youth-serving nonprofit organizations required to pay this fee."

4) **Prior Legislation**:

a) AB 424 (Gaines), Chapter 71, Statutes of 2015, authorized the appointment of a CASA in a juvenile delinquency proceeding, and provides that a CASA shall be considered court personnel for purposes of inspecting the case file of a dependent child or ward of the juvenile court.

b) AB 2343 (Torres), Chapter 256, Statutes of 2012, requires DOJ to furnish a copy of criminal background information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.

c) AB 1979 (Bass) Chapter 382, Statutes of 2006, specifies that candidates for mentoring foster children shall be subject to a criminal background investigation prior to having unsupervised contact with the children. This bill would prohibit the Department of Justice and the State Department of Health Services from charging a fee for a state-level criminal offender record information search and criminal background investigation.

d) SB 618 (Chesbro) Chapter 934, Statutes of 1999, limited the prohibition on fees being charged for the processing of fingerprints or for the obtaining of certain criminal records to volunteers at a child care facility who are required to be fingerprinted.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Court Appointed Special Advocates (Sponsor)
Child Advocates of El Dorado County
Children Now

**Opposition**

None

**Analysis Prepared by**: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2440 (Gatto) – As Amended March 17, 2016
As Proposed to be Amended in Committee

**SUMMARY:** Appropriates fifteen-million-dollars ($15,000,000) to fund a County DNA Identification Fund. Specifically, this bill:

1) Appropriates fifteen-million-dollars ($15,000,000) to fund a County DNA Identification Fund.

2) Specifies funds pursuant to this section shall only be used for the following purposes:

   a) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the identification, review, and investigation of unsolved serious or violent cold cases to determine if biological evidence exists that could provide a DNA investigative lead to law enforcement, including, but not limited to, the DNA profile of a putative suspect that could be uploaded into national, state, local, or other law enforcement DNA databases, and when more than three years have elapsed since the date of violation of the cold case crime.

   b) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the investigation of cases where crime scene biological evidence has been collected and analyzed and a DNA profile that could provide an investigative lead to law enforcement agencies, including, but not limited to, the DNA profile of a putative suspect, has been generated and uploaded into national, state, local, or other law enforcement DNA databases and a DNA match has resulted in the identification of a putative suspect or a match to a DNA profile from another crime scene.

3) Requires the district attorney to publicize, as specified, when an investigation using these funds results in a solved case.

**EXISTING LAW**:

1) Specifies that the "Missing Persons DNA Database" shall be funded by a two dollar ($2) fee increase on death certificates issued by a local governmental agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs. (Pen. Code, § 14251, subd. (a).)

2) Funds shall be directed on a quarterly basis to the "Missing Persons DNA Data Base Fund," hereby established, to be administered by the department for establishing and maintaining laboratory infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the department

to various counties for the purposes of pathology and exhumation consistent with this title. The department may also use those funds to publicize the database for the purpose of contacting parents and relatives so that they may provide a DNA sample for training law enforcement officials about the database and DNA sampling and for outreach. (Pen. Code, § 14251, subd. (b).)

3) Provides that the Department of Justice (DOJ) shall develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person. (Pen. Code, § 14250, subd. (a)(1).)

4) Provides that the database shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function other than gender. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA database established by the Federal Bureau of Investigation. The sole purpose of this database shall be to identify missing persons and shall be kept separate from the database established as specified. (Pen. Code, § 14250, subd. (a)(2).)

5) Provides that DOJ shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons. (Pen. Code, § 14250, subd. (a)(3).)

6) Defines "high-risk missing person" means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency. (Pen. Code, § 14250, subd. (a)(4).)

7) Requires that DOJ shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints. (Pen. Code, § 14250, subd. (b).)

8) Specifies that all DNA samples and profiles developed therefrom shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, district attorneys, and persons who need access to a DNA sample for purposes of the prosecution or defense of a criminal case, except that a law enforcement officer or agency may publicly disclose the fact of a DNA profile match after taking reasonable measures to first notify the family of an unidentified deceased person or the family of a high-risk missing person that there has been an identification. (Pen. Code § 14250, subd. (d).) States that all DNA, forensic identification profiles, and other identification information retained by the Department of Justice pursuant to this section are exempt from any law requiring disclosure of information to the public. (Pen. Code, § 14250, subd. (e).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author "AB 2440 will ensure that local law enforcement has the necessary funding to pursue DNA matches and investigate cold cases. Funds to local law enforcement have been reduced in recent years, and the resources to investigate and follow-up on DNA cold hits is limited. Simultaneously, the value of DNA evidence has become even more apparent, and state mandates requiring expedited investigation of these leads has put additional tension on already strained local resources. AB 2440 will provide crucial funding to aid local law enforcement in the use of this valuable investigatory tool."

2) **Amendments Taken in Committee:** The amendments taken in committee today substantially change the funding source of the bill. The bill, as drafted, funds the DNA Investigation Fund by a penalty assessment of $4 for every $10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the court for specified offenses, including, among others, misdemeanor and felony offenses, misdemeanor violations of any city, county, or city and county ordinance, and violations of the Penal Code initially charged as a misdemeanor and reduced to an infraction.

   The amendments avoid creating a new penalty assessment by authorizing an appropriation of $15,000,000 from the General Fund. Penalty assessments in California are already excessively high on criminal defendants. Offenders who are forced to pay these penalty assessments are often facing loss of employment, housing, and support. Additionally, they often have to make heavy restitution to victims.

   a) **Penalty Assessments**: The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. Assuming a defendant is fined the default felony fine of $10,000 under the Penal Code, the following penalty assessments would be imposed pursuant to the Government and Penal codes:

| | |
|---|---|
| Base Fine: | $10,000.00 |
| Penal Code § 1464 assessment ($10 for every $10): | $10,000.00 |
| Penal Code § 1465.7 assessment (20% surcharge): | $2,000.00 |
| Penal Code § 1465.8 assessment ($40 per criminal offense): | $40.00 |
| Government Code § 70372 assessment ($5 for every $10): | $5,000.00 |
| Government Code § 70373 assessment ($30 for felony or misdemeanor offense): | $30.00 |

| | |
|---|---|
| Government Code § 76000 assessment ($7 for every $10): | $7,000.00 |
| Government Code § 76000.5 assessment ($2 for every $10): | $2,000.00 |
| Government Code § 76104.6 assessment ($1 for every $10): | $1,000.00 |
| Government Code § 76104.7 assessment ($4 for every $10): | $4,000.00 |
| Fine with Assessments: | $41,070.00* |

*In addition to the assessments detailed in the chart, the defendant could be subject to pay "actual administrative costs" related to his or her arrest and booking (Gov. Code, § 29550 et seq.) and victim restitution for damages impose by the court.

b) **Abnormally High Criminal Penalties and Assessments in California:** In a January 2016 report, the LAO found that California has abnormally high criminal penalties and assessments. [1] According to the report, "[c]urrently, comprehensive information is not available on the criminal fine and fee levels of other states. However, in order to compare California's fine and fee levels to the rest of the nation, we surveyed other states. Specifically, we surveyed one large jurisdiction in each of 33 states (including many states similar to California) for the fines and fees associated with two offenses: a stop sign violation and speeding at 20 miles per hour over the limit. We found that California's fines and fees associated with these common traffic offenses are relatively high. For example, the total fines and fees for a stop sign violation in California is $238, which was higher than 28 of the [33] surveyed states (about 85 percent). The total in other surveyed states ranged from $58 to $277, and averaged $157. The total fines and fees for speeding at 20 miles per hour over the limit in California was $367, which was higher than all of the states we surveyed. The total in other surveyed states ranges from $73 to $350, and averaged $203.

The LAO made a number of recommendations to improve the state's fine and fee system. "First, we recommend that the Legislature reevaluate the overall structure of the fine and fee system to ensure the system is consistent with its goals. As part of this process, the Legislature will want to determine the specific goals of the system, whether ability to pay should be incorporated into the system, what should be the consequences for failing to pay, and whether fines and fees should be regularly adjusted. Second, we recommend increasing legislative control over the use of criminal fine and fee revenue to ensure that its uses are in line with legislative priorities by (1) requiring that most criminal fine and fee revenue be deposited in the state General Fund, (2) consolidating most fines and fees into a single, statewide charge, (3) evaluating the existing programs supported by fine and fee revenues, and (4) mitigating the impacts of potential changes to the fine and fee system on local governments."

[1] Improving California's Criminal Fine and Fee System. http://www.lao.ca.gov/Publications/Report/3322

3) **Argument in Support**: According to *Los Angeles County Professional Peace Officers Association*, "AB 2440 will ensure that local law enforcement has the necessary funding to pursue DNA matches and investigate cold cases. Funds to local law enforcement have been reduced in recent years and the resources to investigate and follow-up on DNA evidence is critical to solving cases and helping reduce the backlog of cold cases."

4) **Argument in Opposition**: According to *California Public Defenders Association*[2], "As we understand this bill, it would add an additional $4 penalty assessment for every $10 in fines above the existing $1 penalty assessment for every $10 in fines. In other words this bill seeks to add a 40% penalty assessment to fines imposed on most infractions, misdemeanors and felonies.

   "Not only is this bad policy but this is bad for California. California is already notorious for imposing enormous penalty assessments on top of fines that disproportionately affect the poor in this state.

   "The majority of individuals who are charged with criminal offenses are indigent. Those who are employed typically work long hours and are paid low wages. In addition to jail time courts are required to impose victim restitution as well as fines and fees. The amount of money the indigent clients are required to pay in fines, fees, victim restitution and penalty assessments is already exorbitant and unrealistic.

   "The money defendants convicted of crimes must pay is frequently money that would otherwise go to feeding and providing support for themselves and their families. It is for this reason that the California Public Defenders Association strongly opposes this bill."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California District Attorneys Association
California Police Chiefs Association
Crime Victims United
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association

**Opposition**

American Civil Liberties Union
California Public Defenders Association

**Analysis Prepared by**: Gabriel Caswell / PUB. S. / (916) 319-3744

---

[2] The amendments to this bill were negotiated approximately the same time that the analysis was published. None of the opposition had an opportunity to review the amendments prior to publication. As a result, the opposition letters reflect the "in print" version of the bill which includes penalty assessments. All of the opposition focused on the issue of penalty assessments as reflected by this letter.

# ***** WORKING COPY *****

BILL NUMBER: AB 2440 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 17, 2016

INTRODUCED BY Assembly Member Gatto

FEBRUARY 19, 2016

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

~~SECTION 1. Section 76104.6 of the Government Code is amended to read:~~

~~76104.6. (a) (1) Except as otherwise provided in this section, for the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69), as approved by the voters at the November 2, 2004, statewide general election, there shall be levied an additional penalty of one dollar ($1) for every ten dollars ($10), or part of ten dollars ($10), in each county upon every fine, penalty, or forfeiture imposed and collected by the court for all criminal offenses, including all offenses involving a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code.~~

~~(2) The penalty imposed by this section shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. The moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the moneys collected pursuant to this section. Except as otherwise provided in Section 76104.8, the moneys of the fund shall be allocated pursuant to subdivision (b).~~

~~(3) The additional penalty does not apply to the following:~~

~~(A) A restitution fine.~~

~~(B) A penalty authorized by Section 1464 of the Penal Code or this chapter.~~

~~(C) A parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.~~

~~(D) The state surcharge authorized by Section 1465.7 of the Penal Code.~~

~~(b) (1) The fund moneys described in subdivision (a), together with any interest earned thereon, shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.~~

~~(2) Except as otherwise provided in Section 76104.8, on the last day of each calendar quarter of the year specified in this subdivision, the county treasurer shall transfer fund moneys in the county's DNA Identification Fund to the Controller for credit to the state's DNA Identification Fund, which is hereby established in the State Treasury, as follows:~~

~~(A) In the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon.~~

~~(B) In the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon.~~

~~(C) In the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts~~

~~collected, including interest earned thereon.~~

~~(3) Except as otherwise provided in Section 76104.8, funds remaining in the county's DNA Identification Fund shall be used only for the following purposes:~~

~~(A) To reimburse local sheriff or other law enforcement agencies for the collection of DNA specimens, samples, and print impressions pursuant to this chapter.~~

~~(B) For expenditures and administrative costs made or incurred to comply with the requirements of paragraph (5) of subdivision (b) of Section 298 of the Penal Code, including the procurement of equipment and software integral to confirming that a person qualifies for entry into the Department of Justice DNA and Forensic Identification Database and Data Bank Program.~~

~~(C) To reimburse local sheriff, police, district attorney, and regional state crime laboratories for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA crime scene samples from cases in which DNA evidence would be useful in identifying or prosecuting suspects, including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA crime scene samples from unsolved cases.~~

~~(D) (i) If authorized by a resolution of the board of supervisors, and after the distributions provided in subparagraphs (A), (B), and (C), a local sheriff or police department, or the district attorney's office, may use remaining funds, either independently or in combination with remaining funds from another county, to provide supplemental funding to a qualified local or regional state forensic laboratory for expenditures and administrative costs made or incurred in connection with the processing, analysis, and comparison of DNA crime scene samples and forensic identification samples, and testimony related to that analysis. This subparagraph shall apply only to those counties that do not have a local public law enforcement laboratory, and does not authorize any transfer that will interfere with the operation of subparagraph (A). Any supplemental funding provided pursuant to this subparagraph shall not be used to supplant funds already allocated to a qualified local or regional state forensic laboratory by the state's DNA Identification Fund.~~

~~(ii) For purposes of this subparagraph, a qualified local or regional state forensic laboratory is a Department of Justice regional forensic laboratory or a local law enforcement agency forensic laboratory that meets state and federal requirements for contributing DNA profiles for inclusion in California's DNA databank, including the FBI Quality Assurance Standards and accreditation requirements, and shall be accredited by an organization approved by the National DNA Index System (NDIS) Procedures Board.~~

~~(4) The state's DNA Identification Fund shall be administered by the Department of Justice. Funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General only to support DNA testing in the state and to offset the impacts of increased testing and shall be allocated as follows:~~

~~(A) Of the amount transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (b), 90 percent to the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended by Chapter 6 (commencing with~~

~~Section 295) of Title 9 of Part 1 of the Penal Code, and 10 percent to the Department of Justice Information Bureau Criminal History Unit for expenditures and administrative costs that have been approved by the Chief of the Department of Justice Bureau of Forensic Services made or incurred to update equipment and software to facilitate compliance with the requirements of subdivision (c) of Section 299.5 of the Penal Code.~~

~~(B) Of the amount transferred pursuant to subparagraph (B) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice DNA Laboratory, first, to comply with the requirements of Section 298.3 of the Penal Code and, second, for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended.~~

~~(C) Of the amount transferred pursuant to subparagraph (C) of paragraph (2) of subdivision (b), funds shall be allocated by the Department of Justice to the DNA Laboratory to comply with the requirements of Section 298.3 of the Penal Code and for expenditures and administrative costs made or incurred in connection with the processing, analysis, tracking, and storage of DNA specimens and samples including the procurement of equipment and software for the processing, analysis, tracking, and storage of DNA samples and specimens obtained pursuant to the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended.~~

~~(c) On or before April 1 in the year following adoption of this section, and annually thereafter, the board of supervisors of each county shall submit a report to the Legislature and the Department of Justice. The report shall include the total amount of fines collected and allocated pursuant to this section, and the amounts expended by the county for each program authorized pursuant to paragraph (3) of subdivision (b). The Department of Justice shall make the reports publicly available on the department's Internet Web site.~~

~~(d) All requirements imposed on the Department of Justice pursuant to the DNA Fingerprint, Unsolved Crime and Innocence Protection Act are contingent upon the availability of funding and are limited by revenue, on a fiscal year basis, received by the Department of Justice pursuant to this section and any additional appropriation approved by the Legislature for purposes related to implementing this act.~~

~~(e) Upon approval of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, the Legislature shall lend the Department of Justice General Fund in the amount of seven million dollars ($7,000,000) for purposes of implementing the act. The loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time the loan is made. Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.~~

~~(f) Notwithstanding any other law, the Controller may use the state's DNA Identification Fund, created pursuant to paragraph (2) of subdivision (b), for loans to the General Fund as provided in Sections 16310 and 16381. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with the interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the state's DNA Identification Fund was created.~~

~~SEC. 2. Section 76104.8 is added to the Government Code, to read:~~

~~76104.8. (a) Except as otherwise provided in this section, in addition to the penalties levied pursuant to Sections 76104.6 and 76104.7, there shall be levied an additional penalty of four dollars ($4) for every ten dollars ($10), or part of ten dollars ($10), in each county upon every fine, penalty, or forfeiture imposed and collected by the court for all of the following offenses:~~

~~(1) A misdemeanor or felony offense.~~

~~(2) A misdemeanor violation of any city, county, or city and county ordinance.~~

~~(3) A violation of the Penal Code initially charged as a misdemeanor and reduced to an infraction.~~

~~(4) A traffic violation of the Vehicle Code initially charged as a felony or misdemeanor and reduced to an infraction.~~

~~(5) A violation of subdivision (b) of Section 11357 of the Health and Safety Code.~~

~~(b) The penalty shall be collected together with, and in the same manner as, the amounts established by Section 1464 of the Penal Code. These funds shall be deposited into the county treasury DNA Identification Fund by the county treasurer, who shall clearly distinguish moneys collected under this section from moneys collected under Section 76104.6, and shall be disbursed upon a resolution by the board of supervisors. The objective and intent of the resolution shall be to assist the county sheriff, district attorney, and other local law enforcement agencies with the investigations of cases described in subdivision (d).~~

~~(c) The penalty does not apply to the following:~~

~~(1) A restitution fine.~~

~~(2) A penalty authorized by this chapter or by Section 1464 of the Penal Code.~~

~~(3) A parking offense subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.~~

~~(4) The state surcharge authorized by Section 1465.7 of the Penal Code.~~

~~(d) Funds collected pursuant to this section shall only be used for the following purposes:~~

~~(1) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the identification, review, and investigation of unsolved serious or violent cold cases to determine if biological evidence exists that could provide a DNA investigative lead to law enforcement, including, but not limited to, the DNA profile of a putative suspect that could be uploaded into national, state, local, or other law enforcement~~
~~DNA databases, and when more than three years have elapsed since the date of violation of the cold case crime.~~

~~(2) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the investigation of cases where crime scene biological evidence has been collected and analyzed and a DNA profile that could provide an investigative lead to law enforcement agencies, including, but not limited to, the DNA profile of a putative suspect, has been generated and uploaded into national, state, local, or other law enforcement DNA databases and a DNA match has resulted in the identification of a putative suspect or a match to a DNA profile from another crime scene.~~

~~(e) The district attorney shall publicize on its Internet Web site and notify the local media every time an investigation that receives funding from the penalty assessment described in subdivision (a) results in a solved case.~~

~~SEC. 3. If the Commission on State Mandates determines that this act~~

~~contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

SECTION 1. Section 14252 is added to the Penal Code to read:

14252.

(a) The sum of fifteen-million dollars ($15,000,000) is hereby appropriated from the General Fund in the State Treasury. These funds shall be deposited into the county treasury DNA Identification Fund by the county treasurer, who shall clearly distinguish moneys collected under this section from moneys collected under Section 76104.6, and shall be disbursed upon a resolution by the board of supervisors. The objective and intent of the resolution shall be to assist the county sheriff, district attorney, and other local law enforcement agencies with the investigations of cases described in subdivision (b).

(b) Funds collected pursuant to this section shall only be used for the following purposes:

(1) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the identification, review, and investigation of unsolved serious or violent cold cases to determine if biological evidence exists that could provide a DNA investigative lead to law enforcement, including, but not limited to, the DNA profile of a putative suspect that could be uploaded into national, state, local, or other law enforcement DNA databases, and when more than three years have elapsed since the date of violation of the cold case crime.

(2) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the investigation of cases where crime scene biological evidence has been collected and analyzed and a DNA profile that could provide an investigative lead to law enforcement agencies, including, but not limited to, the DNA profile of a putative suspect, has been generated and uploaded into national, state, local, or other law enforcement DNA databases and a DNA match has resulted in the identification of a putative suspect or a match to a DNA profile from another crime scene.

(c) The district attorney shall publicize on its Internet Web site and notify the local media every time an investigation that receives funding from the appropriation described in subdivision (a) results in a solved case.

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2459 (McCarty) – As Introduced February 19, 2016

**SUMMARY**: Imposes duties and responsibilities upon firearms retailers as specified. Specifically, **this bill**:

1) Permits the Department of Justice (DOJ) to impose a civil fine of up to $500 against firearms dealers for a breach of specified prohibitions. Additionally, provides for a fine of up to $2,000 for breaches when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence.

2) Prohibits, commencing January 1, 2018, a firearms dealer license from designating a building that is a residence, as defined, as a building where the licensee's business may be conducted.

3) Provides that the provisions of this bill would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding where the business of the licensee may be conducted.

4) Requires a licensee to ensure that its business premises are monitored by a video surveillance system that, among other requirements, visually records and archives footage of the following:

   a) Every sale or transfer of a firearm or ammunition, in a manner that makes the facial features of the purchaser or transferee clearly visible in the recorded footage;

   b) All places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred;

   c) The immediate exterior surroundings of the licensee's business premises; and

   d) All parking areas owned or leased by the licensee.

5) Specifies that the video footage must be maintained and stored for not less than 5 years.

6) Requires, commencing January 1, 2018, a licensee to obtain a policy of commercial insurance that insures the licensee against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises, in the amount of $1,000,000 per incident, as specified. Provides that these provisions would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding insurance pertaining to the licensee's business.

**EXISTING LAW**:

1) States that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license; (Pen. Code § 26805, subd. (a).)

   a) Provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if any; (Pen. Code § 26805, subd. (b)(1).)

   b) Provides an exception for a person licensed as specified may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections; (Pen. Code § 26805, subd. (c)(1).)

   c) Provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified; (Pen. Code § 26805, subd. (c)(2).)

   d) Provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places: (Pen. Code § 26805, subd. (d).)

      i) The building designated in the license;

      ii) The places specified as express exemptions; and

      iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

2) Provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

**FISCAL EFFECT**:

**COMMENTS**:

1) **Author's Statement**: According to the author, "As a local elected official, I authored successful measures to crack down on illegal gun and ammunition sales. As a State Assemblymember, I am proud to author AB 2459, which I believe will have a strong impact statewide in the effort to keep guns out of the wrong hands."

2) **Background**: According to the background submitted by the author, "Law Enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post report found that, due to limited staffing, ATF could only inspect gun dealers once per decade on average. These limitations, combined with weak state and federal laws related to gun dealers, allow many bad actor gun dealers to evade accountability.

"A New York Times article 'How They Got Their Guns,' brought to light the fact that since 2009, 15 mass shooting were committed with legally purchased firearms. This discredits the notion that only illegal firearms are used in the commission of these heinous acts. A study by the Bureau of Alcohol, Tobacco and Firearms, found that 60% of legally purchased weapons found at crime scenes came from 1% of gun dealers. Later studies have estimated that 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers. In 2014, 2,935 Californians were killed by firearms.

"Many of these gun sales were so called 'straw sales' whereby a person prohibited from purchasing a gun uses a third party, often a family member or friend, to legally purchase the gun. These sales are legal on paper, but when recorded becomes obvious that the purchaser has no interest in purchasing the gun for themselves. Video recording is a common practice in all types of retail and provides safety and security for both store employees and customers.

"In two academic studies, undercover researchers found that at least 20% of California gun dealers were willing to conduct an illegal 'straw purchase;' even when the dealer knew the gun would be used by a prohibited person. Though these transactions are a leading source of guns used during crimes, they often appear legal on paper without security cameras to visibly capture the sale. California gun dealers also reported 1,797 firearms 'missing' from their inventories from 2012-2015. Without security cameras monitoring dealers' premises and sales counters, law enforcement has few tools to investigate whether these firearms were misplaced, stolen, or illegally trafficked to criminals.

"Another source of legally purchased guns are residential dealers, which are licensed dealers who sell weapons out of their homes. To date, over 60 cities and counties in California have banned this practice, recognizing the potential for abuse and lack of adequate oversight."

3) **Content of the Bill:** This proposed legislation basically implements four changes to existing law for the stated purposes of cutting down on straw purchases in California.

   a) **Imposition of Civil Fines for Violations of Rules Related to Grounds for Forfeiture of a License to Sell Firearms:** The bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a $500 civil fine for simple violations, and up to $2,000 fines for violations when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance, checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

b) **Requiring Gun Dealers to Install Security Cameras to Monitor and Videotape their Premises and Sales**: The sponsor and author have indicated that the requirement to install video surveillance cameras in businesses that sell firearms will discourage straw purchases and illegal activities. The fact that purchasers and sellers are being recorded while sales are being conducted will arguably shed light on transactions. Retailers are opposed because it places an overly-burdensome expense on the business to maintain a security camera system, and retain and store the footage captured. The footage must be maintained for not less than five years. Additionally, the American Civil Liberties Union objects to this provision on grounds of a violation of privacy.

c) **Prohibiting Gun Dealers from Selling Weapons from their Homes**: The author's intent in this provision is to push firearms transactions into lawful places of business, where they are more likely to be legitimate. The sponsor believes that by permitting the sale of firearms from a private residence that illegal transactions such as straw purchases are much more likely. There is a legislative history to this provision. AB 988 (Lowenthal), of the 1999-2000 Legislative Session stated that no licenses to sell firearms could be granted to sell firearms out of residential buildings. AB 22 (Lowenthal), of the 2001-2002 Legislative Session, prohibited the retail sale of firearms from a residential dwelling with specific exceptions. Both bills failed passage on the Senate floor. This bill would cover specialty gun smiths, and those concerns were brought up in the prior legislative sessions in which this provision was considered.

d) **Requiring Gun Dealers to Carry Liability Insurance:** According to the sponsor, 31 localities have enacted this provision of law (including San Francisco and Los Angeles). Gun dealers would be required to carry insurance of at least a million dollars to insure them for their liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises. The Federal "Protection of Lawful Commerce in Arms Act" (PLCAA) is a United States law which protects firearms manufacturers and dealers from being held liable when crimes have been committed with their products. However, both manufacturers and dealers can still be held liable for damages resulting from defective products, breach of contract, criminal misconduct, and other actions for which they are directly responsible in much the same manner that any U.S. based manufacturer of consumer products is held responsible. They may also be held liable for negligence when they have reason to know a gun is intended for use in a crime.

4) **Argument in Support**: According to *The Law Center to Prevent Gun Violence,* "On behalf of the Law Center to Prevent Gun Violence, I strongly urge you to support AB 2459 (McCarty), legislation the Law Center is co-sponsoring to help ensure that firearms dealers operate responsibly in California. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides legal expertise in support of gun violence prevention to federal, state, and local legislators nationwide.

"AB 2549 would bring increased security, transparency, and accountability to gun sales in California by requiring gun dealers to comply with a set of responsible business practices and by authorizing DOJ to fine irresponsible dealers for illegal conduct.

"ATF data confirms that firearms dealers are the leading source of guns on the black market, responsible for 'nearly half of the total number of trafficked firearms' uncovered in ATF investigations. Though stolen firearms are also a major source of black market guns, 4.5 times as many are obtained from gun dealers as are stolen from any source. According to ATF, gun dealers' 'access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.' On average, ATF trafficking investigations implicating a gun dealer involved over 350 black market guns *per investigation*, and over 550 guns in cases in which the dealer was the sole trafficker. In the wrong hands, every one of those weapons poses a significant threat to public safety.

"Unfortunately, federal law enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post investigation found that, due to limited staffing, ATF could only inspect gun dealers *once per decade* on average. These limitations, combined with weak state and federal dealer laws, allow too many bad apple gun dealers to evade accountability for allowing dangerous people to access deadly weapons. Although California has enacted some laws to regulate gun dealers, stronger oversight is necessary to help law enforcement detect and prevent gun dealer practices that endanger our communities.

"Numerous California cities and counties have already enacted laws to promote responsible gun sales. AB 2459 would extend these best practices statewide by:

1. "Requiring gun dealers to sell weapons out of commercial storefronts instead of their homes. Existing law permits gun dealers to sell large firearm inventories out of private residences, locations that are *more* accessible to children and burglars but *less* accessible to law enforcement oversight than commercial storefronts. Home-based dealers threaten the safety and character of their communities, as neighbors and local law enforcement are often unaware that significant quantities of weapons are flowing in and out of their residential streets. As a 2012 Pinole City Council Planning Commission concluded, "The safety of residents in close proximity to home-based firearm and ammunition sales poses concerns about the negative influence of such home occupations on children, the possible increase in violence and/or criminals in residential neighborhoods, trafficked firearms, and the frequency of federal and state inspections to adequately regulate these business operations once established." In upholding Lafayette's residential dealer ban, a California Appeals Court similarly noted that, "because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas[.]" California law generally prohibits individuals from operating liquor establishments out of a private residence, and restricts the use of residential property by businesses ranging from barbers and cosmetologists to funeral parlors. Businesses that sell deadly weapons to the public should be held to a similar standard. Fifty-nine cities and counties in California have already enacted laws specifically prohibiting residential gun dealers and 58 others have enacted generally applicable laws that indirectly do the same.

2. "Requiring gun dealers to install security cameras to monitor their premises and sales. This provision would help detect and prevent theft and illegal conduct and curb the flow of guns to the black market. In two academic studies, undercover researchers found that at least 20% of California gun dealers were willing to conduct an illegal

'straw purchase,' even when dealers knew the gun was being purchased for a prohibited person such as a felon. Though straw purchases are a leading source of crime guns, they often appear legal on paper without security cameras to visibly capture the sale. California gun dealers also reported 1,797 firearms 'missing' from their inventories from 2012-2015. Without security cameras monitoring dealers' premises and sales counters, law enforcement has few tools to investigate whether these firearms were misplaced, stolen, or illegally trafficked to criminals. Five local governments in California have already enacted this type of law and responsible businesses regularly install and maintain security camera footage without significant cost or administrative burden.

3. "Requiring gun dealers to carry liability insurance. This provision would help ensure that people injured by negligent conduct receive compensation for their injuries. To be clear, this provision would *not create* any new liability for gun dealers, just as a law requiring drivers to carry car insurance does *not create* liability for roadway accidents. However, this bill would ensure that a gun dealer would be covered for valid claims if the business is found civilly liable for negligence under existing law, in cases ranging from a slip-and-fall in the dealer's store to an employee's negligent sale of a firearm to a visibly drunk or unstable individual. Because insurance is generally cheaper for responsible businesses, just as car insurance is cheaper for good drivers, this requirement would also incentive responsible behavior over time. Thirty-one localities in California have already enacted this law.

"Finally, AB 2459 would provide DOJ with discretion to fine gun dealers for violations of the law without permanently revoking a dealer's license to sell firearms. Under existing law, DOJ's enforcement powers are essentially all-or-nothing: when it discovers a significant legal violation, DOJ must either revoke a dealer's license or let the dealer continue to operate. As a result, too many irresponsible dealers face no accountability for illegal conduct; conversely, gun dealers may also fear that they will lose their license based on correctable errors. This bill would provide DOJ with tools to craft a more balanced approach to incentivize compliance and improve public safety.

"AB 2459 is consistent with the Second Amendment. Although gun lobbyists frequently argue that any and all gun safety laws violate the Second Amendment, legislation like AB 2459 is clearly constitutional. When the Supreme Court recognized an individual Second Amendment right in *District of Columbia v. Heller*, Justice Scalia made clear in writing for the Court that '*nothing in [the Court's] opinion should be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of firearms*.' This legislation proposes to do just that, placing common sense qualifications on the commercial sale of firearms by requiring gun dealers to comply with a set of responsible business practices. As such, these requirements are consistent with the Second Amendment. See *Teixeira v. County of Alameda*, 2013 U.S. Dist. LEXIS 36792, *15-18 (N.D. Cal. 2013) (rejecting a Second Amendment challenge to an Alameda County law regulating the location of firearms dealers).

5) **Argument in Opposition**: According to *The Firearms Policy Coalition*, "AB 2459 (McCarty) is a measure that will jeopardize public safety by shutting down a significant portion of the businesses that serve as agents of the state, providing the only lawful means in California to conduct firearms transactions.

"This measure seeks to completely outlaw the lawful business operations of Federal Firearms Licensees who do not operate out of a traditional commercial facility. AB 2459 does this by pre-empting all cities, counties and their respective zoning, planning and business license and revenue ordinances. By defying California's traditional local control doctrine, AB 2459 robs over 500 local elected bodies of their ability to decide what is best for their communities.

"This measure also mandates retailers to use security cameras down to a level of nuance that is disturbing in its Orwellian fascination with completely lawful and moral activities, requiring the constant recording of '*All places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred, including, but not limited to, counters, safes, vaults, cabinets, shelves, cases, and entryways.*'

"AB 2459 also requires that the customers face be clearly recorded. These are the same customers who have already provided a Firearm Safety Certificate (or License to Carry), proof of residence, valid government photo identification and submitted to one the nation's most stringent background checks. How does recording the facial features of the most already positively identified customers of any industry in the nation serve the public interest?

"The additional data storage requirement is also vexing. Storing high quality data from potentially hundreds of camera angles on-site for 5 years minimum (and up to 10) may require the consultation or employ of technology professionals and hundreds or thousands of hard drives in order to comply with this bizarre mandate that seeks to make the state a voyeur in every nook and cranny of a firearms store.

"Should a staffer pick up and move a box of ammunition without Big Brother catching every pixel, the retailer will be punished by the state. While it may sound perverse to film your own staff who have been vetted by the employer and the California Department of Justice, AB 2459 demands that all lawful, moral and mundane activity be recorded at the retailer's expense---'for transparency.'

"Requiring that retailers potentially violate their lease agreements by placing camera equipment outside of buildings or in parking lots may not be feasible for all retailers, but it's unlikely they will be able to comply with AB 2459 at any rate.

"The final portion of the measure is difficult to articulate our opposition to, given it mandates a product that does not exist. AB 2459 mandates a form of insurance-- a policy that covers the criminal acts of second, third and fourth parties, even if the retailer is in fact the victim of a crime, such as theft or kidnapping. While an amazing fantasy put in print for trial lawyers, even they know that should it ever exist, it would immediately put all insurers and retailers alike out of business.

"To summarize, AB 2459 is a clear case of 'be careful what you wish for.' The retailers and small businesses that AB 2459 seeks to either outlaw or run out of the state are the ONLY means for over 38 million Californians to comply with the state's overwhelmingly complex firearms laws. By eliminating trusted local businesses either by prohibition or by outrageous mandates, the demand for over 1 million firearms annually in California will not go with them. When there is a dearth of available options, the market will find other avenues.

"Firearms retailers are agents of the state, who process private party transactions (often at a loss) in accordance with state law, to serve the state's interest in conducting background checks and firearms registration. By shutting them down, the state risks being unable to adequately service the million of firearms lawfully transacted annually in California and therefore risks a self-created black market.

"We therefore urge the Chair and the committee to reject this measure that usurps local control and harms the state's public safety interests."

6) **Prior Legislation**:

a) AB 988 (Lowenthal), of the 1999-2000 Legislative Session, stated that no licenses to sell firearms could be granted to sell firearms out of residential buildings. Failed passage on the Senate Floor.

b) AB 22 (Lowenthal), of the 2001-2002 Legislative Session, prohibited the retail sale of firearms from a residential dwelling with specific exceptions. Failed passage on the Senate Floor.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Law Center to Prevent Gun Violence (sponsor)
California Chapters of the Brady Campaign to Prevent Gun Violence
Cleveland School Remembers
Coalition Against Gun Violence
Courage Campaign
Friends Committee on Legislation of California
Laguna Woods Democratic Club
Physicians for Social Responsibility (SF Bay Area)
Rabbis Against Gun Violence
Violence Prevention Coalition
Women Against Gun Violence
Youth Alive

**Opposition**

American Civil Liberties Union
California Association of Federal Firearms Licensees
California Pawnbroker's Association
California Sportsman's Lobby
Crossroads of the West Gun Shows
Firearms Policy Coalition
National Rifle Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International

**Analysis Prepared by**: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2478 (Melendez) – As Amended April 6, 2016

**SUMMARY:** Increases penalties for specified offenses involving straw purchasers of firearms. Specifically, **this bill**:

1) Specifies that knowingly selling, supplying, delivering, or giving possession or control of a firearm to any person who is a specified felon, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses shall be punished by two, three, or four years in state prison in lieu of county jail under existing law.

2) Increases the penalty for a person, corporation, or firearms dealer that violates selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, from an alternate misdemeanor/felony servable in the county jail for either a year (misdemeanor) or 16 months, two, or three years (felony) to a straight felony punishable by two, three, or four years in state prison.

3) Increases the punishment for specified "straw purchase" firearms offenses from alternate misdemeanor/felony servable in county jail for either a year (misdemeanor) or 16 months, two, or three years (felony), to a straight felony punishable by 16 months, two, or three years in state prison.

4) Specifies that the sentence enhancement imposed if a person commits a straw sale or transfer to a specified prohibited person and the firearm transferred is used in the commission of a felony for which a conviction is obtained is punished by one, two, or three years in state prison, in lieu of county jail as imposed by existing law.

5) Appropriates $2,200,000 to fund vertical prosecution units within the Department of Justice (DOJ) to prosecute straw purchasers of firearms.

**EXISTING LAW**:

1) States that no person, corporation, or firm shall knowingly sell, supply, deliver, or give possession or control of a firearm to any specified persons which include felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses. Provides that this offense is punishable by two, three, or four years, subject to realignment rules (i.e., the defendant would serve the sentence in county jail, not prison, unless the defendant was also convicted of a "serious" felony, a "violent" felony, or is required to register as a sex offender). (Pen. Code, § 27500, subd. (a).)

2) Provides that no person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to

believe is within any of the classes prohibited as felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses, or certain persons prohibited from possessing firearms due to mental illness-related criteria. States that this offense is punishable as an alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27500, subd. (b).)

3) Provides that a "straw purchase" sale, i.e., a person, corporation, or dealer who sells, loans, or transfer a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm will be subsequently sold, loaned, or transferred to avoid the laws relating to transfers of firearms through dealers (background check, etc.). States that this offense is punishable as an alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27515.)

4) States that a "straw purchase" acquisition, i.e., a person, corporation, or dealer who acquires a firearm for the purpose of selling, loaning, or transferring the firearm, if the person, corporation, or dealer has intent to transfer the firearm to someone prohibited from possessing it due to the age of the recipient or to bypass laws on transfers (background check, waiting period, etc.). Provides that this offense is punishable as an alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27520.)

5) Provides for an additional, consecutive sentence that applies if a person commits a straw sale or transfer to a specified prohibited person and the firearm transferred is used in the commission of a felony for which a conviction is obtained. States that the punishment for this offense is one, two, or three years, subject to realignment rules. (Pen. Code § 27590, subd. (d).)

**FISCAL EFFECT**:

**COMMENTS**:

1) **Author's Statement**: According to the author, "Since 2005, nearly 200,000 aggravated assault firearm crimes were reported statewide. According to a study by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, stolen guns accounted for 10% to 15% of guns used in crimes while 39.6% of guns were bought legally by family members or friends and lent to the perpetrator.

   "Straw-man purchase crimes are rarely prosecuted by the Department of Justice due to limited funding. Knowing this, many criminals prefer to attain firearms through this avenue.

   "Thousands of violent crimes are committed each year because straw-man purchasers slip through state background checks and loan their guns to dangerous criminals. Although this type of crime has caused hundreds of injuries and deaths, many perpetrators are only charged with a small fine, if at all."

2) **Penalty Increases and the Imposition of State Prison Sentences:** This bill increases and modifies penalties for several firearms violations related to "straw purchasers." For all of the offenses, the bill imposes state prison sentences, when the sentences under current law are served in county jail. Additionally, for some specified offenses the bill turns alternate misdemeanor/felony offenses (or "wobblers") into straight felony sentences and requires that those sentences are servable in state prison.

| Current Law | Current Penalty | Proposed AB 2478 (Melendez) Penalty |
|---|---|---|
| **Penal Code § 27500(a):** The crime of knowingly selling, supplying, delivering, or giving possession or control of a firearm to any person within any of the classes prohibited by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of the Penal Code (i.e., felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses) | 2, 3,or 4 years, subject to realignment rules (i.e., the defendant would serve the sentence in county jail, not prison, unless the defendant was also convicted of a "serious" felony, a "violent" felony, or is required to register as a sex offender). | 2, 3, or 4 years in state prison. (No realignment.) |
| **Penal Code § 27500(b):** The crimes in Penal Code § 27500(a) plus those prohibited due to Welfare and Institutions Code § 8100, § 8103 (certain legal status of persons prohibited from possessing firearms due to mental illness-related criteria) | An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules. | 2, 3, or 4 years in state prison. (No realignment.) No misdemeanor option. |
| **Penal Code § 27515:** A "straw purchase" sale, i.e., a person, corporation, or dealer who sells, loans, or transfer a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm will be subsequently sold, loaned, or transferred to avoid the laws relating to transfers of firearms through dealers (background check, etc.). | An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules. | 16 months, 2, or 3 years in state prison. (No realignment.) No misdemeanor option. |
| **Penal Code § 27520:** A "straw purchase" acquisition, i.e., a person, corporation, or dealer who acquires a firearm for the purpose of selling, loaning, or transferring the firearm, if the person, corporation, or dealer has intent to transfer the firearm to someone prohibited from possessing it due to the age of the recipient or to bypass laws on transfers (background check, waiting period, etc.) | An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules. | 16 months, 2, or 3 years. (No realignment.) No misdemeanor option. |
| **Penal Code § 27590(d) enhancement.** An additional, consecutive sentence that applies if a person commits a straw sale or transfer to a prohibited person under Penal Code § 27590(b) (see description above) and the firearm transferred is used in the commission of a felony for which a conviction is obtained. | 1, 2, or 3 years, subject to realignment rules. | 1, 2, or 3 years imprisonment. (No realignment.) |

3) **Effect on Criminal Justice Realignment**: Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody (i.e., the sentence for which must be served in state prison).

   This bill specifies that a number of felony offenses that carried sentences which were servable in the county jail and mandates that they must be served in state prison. In addition, this bill eliminates a misdemeanor option for several wobbler offenses and makes them straight felony offenses.

4) **On-Going Concerns for Prison Overcrowding**: On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

   - 143% of design bed capacity by June 30, 2014;
   - 141.5% of design bed capacity by February 28, 2015; and,
   - 137.5% of design bed capacity by February 28, 2016.

   In February of last year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

   While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).

   However, even though the state has complied with the federal court order, the prison population needs to be maintained, not increased. And according to the Legislative Analyst's Office (LAO), "CDCR is currently projecting that the prison population will increase by several thousand inmates in the next few years and will reach the cap by June 2018 and exceed it by 1,000 inmates by June 2019." (http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx.) The LAO also notes that predicting the prison population is "inherently difficulty" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, creating a new exclusion for

county jail sentences when the prison population is already expected to increase seems imprudent.

5) **Argument in Support**: According to the *California State Sheriffs' Association*, "Currently it is illegal to sell and/or deliver firearms to prohibited persons and a violation of the law is punishable as a felony carrying a county jail term. This bill enhances the punishment for those individuals that disregard the law and make the conscious decision to promote the dangerous and oftentimes deadly enterprise of firearm sales and distribution."

6) **Argument in Opposition**: According to *California Public Defenders Association,* "Existing law prohibits specified persons from owning, purchasing, receiving, or having in his or her possession, any firearm. Existing law prohibits a person, corporation, or firm from knowingly selling, supplying, delivering, or giving possession or control of a firearm to one of those prohibited persons, and makes a violation of that prohibition a felony punishable by imprisonment for 2, 3, or 4 years in the county jail.

   "This bill would make that offense punishable by imprisonment for 2, 3, or 4 years in the state prison.

   "Existing law prohibits a person, corporation, or firearms dealer from selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, and makes a violation of that prohibition punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed $1,000, or by both that fine and imprisonment. Under existing law, for each felony case, a court is required to hold, and a prosecutor is required to attend, a preliminary hearing.

   "This bill would make that offense a felony punishable by imprisonment for 2, 3, or 4 years in the state prison. By imposing additional duties on local prosecutors by increasing the number of preliminary hearings, and by increasing the penalties of an existing crime, this bill would impose a state-mandated local program.

   "Existing law prohibits a person, corporation, or dealer from selling, loaning, or transferring a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm is to be subsequently sold, loaned, or transferred to avoid provisions of law requiring firearms transfers to be conducted through a firearms dealer and other requirements pertaining to dealer transactions, or to avoid provisions establishing exemptions from those requirements, as specified. Existing law makes this offense punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed $1,000, or by both that fine and imprisonment.

   "This bill would make that offense a felony punishable by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

   "Existing law prohibits a person, corporation, or firearms dealer from acquiring a firearm for the purpose of selling, loaning, or transferring the firearm if, for a dealer, he or she has the intent to transfer the firearm to a minor or to evade specified requirements on the transfer of

firearms, or in the case of a person or corporation, the person or corporation intends to violate the requirement, or provisions of an exception to the requirement, that the transaction be conducted through a licensed firearms dealer. Existing law makes this offense punishable as a misdemeanor by imprisonment in the county jail not exceeding one year, or as a felony punishable by imprisonment in the county jail for 16 months, or 2 or 3 years, or by a fine not to exceed $1,000, or by both that fine and imprisonment.

"This bill would make that offense punishable as a felony by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

"Over the past several years, Criminal Justice Realignment (AB 109) and Proposition 47 have been passed in order to reduce state prison population. Proposition 47 was passed by 59.6 percent of California voters less than 2 years ago. The voters have spoken on this issue. At this point, other than lowering jail and prison population, the effects on crime of Proposition 47 are unknown.

"In addition, as previously stated, Proposition 47 has helped to reduce prison population, as ordered by the United States Supreme Court. Our Governor and our Legislature have worked very hard to reduce the constitutionally impermissible overcrowding in California prisons, this bill would undo some of that hard work by increasing prison and/or local jail population."

7) **Prior Legislation**: AB 1084 (Melendez), of the 2013-2014 Legislative Session, increased the penalties for numerous offenses related to the illegal possession of firearms, and requires that many related sentences be served in the state prison rather than county jail under realignment. AB 1084 failed passage in this committee.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

SFSCME, Local 685
Association for Los Angeles Deputy Sheriffs
California Sportsman's Lobby
California State Sheriffs' Association
Crossroads of the West
Gun Owners of California
Los Angeles County Probation Officers Union
Los Angeles Police Protective League
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)
Riverside Sheriffs' Association
Safari Club International

**Opposition**

American Civil Liberties Union
California Attorneys for Criminal Justice

California Public Defenders Association
Legal Services for Prisoners with Children

**Analysis Prepared by**: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Sandra Uribe

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

AB 2481 (Lackey) – As Introduced February 19, 2016

**SUMMARY**: Makes the use of a crossbow in the commission of specified felonies subject to a state prison enhancement of 10, 20, or 25 years to life. Specifically, **this bill**:

1) States that a person who personally uses a crossbow the commission of specified felonies shall receive an additional and consecutive 10 year prison term. The crossbow need not be operable or loaded for this enhancement to apply.

2) States that a person who personally and intentionally discharges a crossbow in the commission of specified felonies shall receive an additional and consecutive 20 year prison term.

3) States that a person who personally and intentionally discharges a crossbow in the commission of specified felonies and causes great bodily injury or death to anyone, other than an accomplice, shall receive an additional and consecutive 25 year prison term.

4) Defines "crossbow" as "any device that is designed to fire a bolt or arrow projectile by releasing a string or wire held at tension, including, but not limited to, crossbows, compound bows, and long bows."

5) Names these provisions the "Charles Emmanuel Briggs Memorial Act of 2016."

**EXISTING LAW**:

1) States that a person who personally uses a firearm in the commission of specified felonies shall receive an additional and consecutive 10 year prison term. The firearm need not be operable or loaded for this enhancement to apply. (Pen. Code, § 12022.53, subd. (b).)

2) States that a person who personally and intentionally discharges a firearm in the commission of specified felonies shall receive an additional and consecutive 20 year prison term. (Pen. Code, § 12022.53, subd. (c).)

3) States that a person who personally and intentionally discharges a firearm in the commission of specified felonies and causes great bodily injury or death to anyone, other than an accomplice, shall receive an additional and consecutive 25 year prison term. (Pen. Code, § 12022.53, subd. (d).)

4) Applies these enhancements to the following crimes:

a) Murder;

b) Mayhem;

c) Kidnapping;

d) Robbery;

e) Carjacking;

f) Assault with intent to commit a specified felony;

g) Rape;

h) Rape or sexual penetration in concert;

i) Sodomy;

j) Lewd act on a child;

k) Oral copulation;

l) Sexual penetration;

m) Assault by a life prisoner or prisoner;

n) Holding a hostage by a prisoner;

o) Any felony punishable by death or life in prison; and

p) Any attempt to commit these crimes. (Pen. Code, § 12022.53, subd. (a).)

5) Prohibits the court from striking an allegation or a finding on a personal-firearm-use enhancement. (Pen. Code, § 12022.53, subd. (h).)

6) Limits conduct credits for a defendant who receives a personal-firearm-use enhancement to 15 percent. (Pen. Code, § 12022.53, subd. (i).)

7) States that a person who is armed with a firearm in the commission of a felony or attempted felony shall receive an additional and consecutive one-year enhancement unless the arming is an element of the offense. (Pen. Code, § 12022, subd. (a)(1).)

8) States that a person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall receive an additional and consecutive one-year enhancement unless use of the weapon is an element of the offense. (Pen. Code, § 12022, subd. (b)(1).)

9) States that when two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or firearm in the commission of a single offense, only the

greatest of those enhancements shall be imposed for that offense. This shall not limit the imposition of other applicable enhancements, including an enhancement for the infliction of great bodily injury. (Pen. Code, § 1170.1, subd. (f).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Compound bows, crossbows, and traditional bows are objects that are specifically used for sports and hunting. However some individuals may intend to use these devices to inflict harm that can lead to injury or even death. Unfortunately, this was the case when on August 23, 2014, Charles Emmanuel Briggs Jr. was murdered in Lancaster, CA while intervening to stop a case of domestic violence at a neighbor's home. The perpetrator of this crime intentionally used a compound bow as a weapon on Mr. Briggs who was fatally injured after shot by a bolt from the compound bow.

   "Ensuring that equal punishment and justice is achieved for crimes committed with crossbows, compound bows, or traditional bows can be addressed by enhancing sentencing on crimes committed with these weapons. Current law adds only 1 year to a sentence when a weapon like a compound bow or crossbow is used in a crime. This bill makes California's sentence enhancement for firearms also apply to crimes committed with crossbows, compound bows, and traditional bows by applying 10, 20 or 25 years of sentence enhancements for crimes that use these objects depending on the crime. It is important to send a strong message that criminal behavior using weapons that are equally deadly as firearms will be punished with a similar sentence. The Charles Emmanuel Briggs Act of 2016 will ensure that justice is brought to future victims of this type of violence."

2) **Firearm Use Enhancement**: Penal Code section 12022.53 enhances the sentence of certain qualifying crimes when those offenses involve the use of a firearm. The statutory scheme recognizes different degrees of culpability and imposes three gradations of punishment based on increasingly serious types and consequences of firearm use. (*People v. Palacios* (2007) 41 Cal.4th 720, 725, *People v. Grandy* (2006) 144 Cal.App.4th 33.) At the lowest level of culpability, a 10-year enhancement, the personal use of a firearm may be found when the defendant intentionally displays a firearm in a menacing manner in order to facilitate the commission of the underlying crime. Next, there is a 20-year enhancement for intentionally firing the gun. Finally, there is a 25-years-to-life enhancement for intentional discharge causing great bodily injury or death to someone other than an accomplice. (*People v. Palacios*, *supra*, 41 Cal.4th 720, 725.)

   This bill applies those same enhancements to the use of a crossbow.

   The legislative intent in enacting section 12022.53 was clear: 'The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.'" (*People v. Garcia* (2002) 28 Cal.4th 1166, 1172 quoting Stats. 1997, ch. 503, § 1.) The rationale for this is because "firearms pose a potentially greater risk to safety than other weapons because of their inherent ability to harm a greater number of victims more rapidly than other weapons." (*People v. Perez* (2001) 86 Cal.App.4th 675, 678, accord *People v. Martinez* (1999) 76 Cal.App.4th 489, 497-498.)

Firearms are used more often in perpetrating crime than are other types of weapons. For example, the latest Attorney General's report on Homicide in California shows that, consistently in the past 10 years, 70% of the homicides crimes were committed with a firearm. The next most commonly used weapon in the commission of homicides is a knife. Roughly 14-15% of homicides were committed with knives. Blunt objects, such as clubs, are most common after knives. Crossbows specifically are not listed, indicating that they are not commonly used. (See *Homicide in California 2014*, California Department of Justice, p. 27, http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/homicide/hm14/hm14.pdf.)

As noted above, there are many other weapons that are equally as deadly as a crossbow. It is not apparent why a crossbow, rather than any other type of weapon, should be treated the same a firearm or that these two types of weapons share similar characteristics for purposes of punishing them equally.

3) **Impetus for This Bill**: The impetus for this bill is the death of Charles Emmanuel Briggs who was fatally injured with a bow and arrow in Lancaster, CA. Briggs tried to intervene in an argument between the man and his girlfriend. In 2015, the defendant, Garrett Taylor Adams, was facing murder charges and a possible sentence of 26 years to life in state prison. (http://theavtimes.com/2015/03/12/man-pleads-not-guilty-in-lancaster-bow-and-arrow-killing/.)

   No doubt, the death of Mr. Briggs was tragic. However, the perpetrator will face a life sentence for murder. It seems unlikely that an additional tem of 25 years to life, rather than an additional one year for the applicable weapon-use enhancement, would have deterred this crime.

4) **Argument in Support**: According to the *California Police Chiefs Association*, "In August of 2014, a compound bow was used to fatally injure Charles Emmanuel Briggs while he was trying to intervene and stop a domestic violence incident at a neighbor's home. Briggs was just 27 when he succumbed to his wounds. Regrettably, this was not an isolated incident. In 2013, two transients in Humboldt County were charged with murder after a shooting spree with a crossbow, and a Lancaster resident was killed in a random attack using a crossbow in 2008. A crossbow was also used to facilitate a murder for hire in conspiracy of a Stockton real estate agent in 1989.

   "Compound bows and crossbows are intended specifically for hunting and sport. However, some individuals intend to use these devices to inflict harm on others, causing injury or sometimes death. While current law allows serious crimes committed with a firearm to be given a tougher sentence – an additional 10, 20, or 25 years depending on the crime – similar crimes involving crossbows are treated less serious under the law by only allowing for a one-year enhancement."

5) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "CACJ believes and the reality of gun violence supports that while the use of guns in the commission of violent and serious felonies is all too common, such is not the case with the use of crossbows. While increasing the punishment for the use of firearms in the commission of serious and violent felonies has a strong potential for discouraging the use of guns in the commission of these crimes, no such deterrent effect can be established for

equating gun violence with crossbow violence. ...

"While firearms are all too easily accessed by those who would use them to commit their serious or violent crimes, such is not the case with crossbows. AB 2481 fails to acknowledge this reality. While firearms are easily concealed upon a person's body; crossbows are not. While firearms are all-too-quickly ready for use by one seeking to perpetrate a crime, crossbows require a much greater time to prepare and use. While firearms are often the 'weapon of choice' of criminal street gangs; CACJ is unaware of any of these gangs adopting crossbows as a means of carrying out their criminal activities.

"CACJ acknowledges the desire to honor and recognize the unfortunate passing of one of our community members at the hands of one unlawfully using a crossbow. This admirable desire to commemorate his memory is not sufficient grounds to equate the use of a crossbow with the use of a firearm and impose equal punishments for both.

"If our society is to ever reach a point one day where gun violence is a thing of the past, we must be steadfast in our resolve to single out those who would use the weapon most often associated with wrecking the greatest harm on our society, guns, and be vigilant in our watch to avoid equating the use of other deadly weapons, including crossbows, with the single most deadly weapon used to kill and injure innocent citizens."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Police Chiefs Association
Charles E. Briggs Memorial Foundation
Compassionate Elderly Care Management Systems
Crime Victims United of California
Peace Officers Research Association of California
Supervisor Michael Antonovich, Los Angeles Board of Supervisors

**Opposition**

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

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

Date of Hearing: April 12, 2016
Consultant: Matt Dean

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

AB 2499 (Maienschein) – As Amended March 15, 2016

**SUMMARY**: Requires the Department of Justice (DOJ), on or before July 1, 2018 and in consultation with law enforcement agencies and crime victims groups, to update SAFE-T to allow victims to access the database to review the disposition of their rape kit.

**EXISTING LAW**:

1) Establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Pen. Code, §§ 295, 295.1.)

2) Encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code, § 680, subd. (b)(6).)

3) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code, § 680, subd. (b)(7)(A)(i).)

4) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code, § 680, subds. (b)(7)(A)(ii) and (E).)

5) Encourages crime labs to do one of the following:

   a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into the combined DNA Index System (CODIS) within 120 days of receipt of the rape kit; or

   b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code, § 680, subd. (b)(7)(B).)

6) Requires law enforcement agencies to inform victims of sexual assault, as specified, to notify the victim if their rape kit is not tested six months prior to the statute of limitations for underlying sexual assault offense. (Pen. Code, § 680, subd. (d).)

7) Requires law enforcement agencies to inform victims of sexual assault, as specified, to notify the victim if the law enforcement agency intends to destroy a rape kit in an unsolved case prior to the expiration of the statute of limitations for the underlying sexual assault offense. (Pen. Code, § 680, subd. (e).)

8) Allows law enforcement agencies to inform victims of sexual assault, as specified, of the status of their rape kit when the victim requests an update. (Pen. Code, § 680, subd. (c).)

9) States that sexual assault victims have the following rights, subject to the commitment of sufficient resources to respond to requests for information:

   a) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of their rape kit or from other evidence from the crime scene,

   b) The right to be informed whether or not the DNA profile of the assailant has been entered into DOJ's Data Bank of case evidence, and

   c) The right to be informed whether or not there was a match between the DNA profile of the assailant and a DNA profile contained in CODIS, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code, § 680, subd. (c)(2).)

10) Encourages law enforcement to notify victims of information in their possession regarding victims' rape kits. (Pen. Code, § 680, subd. (c)(2).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "The upgrade required in AB 2499, will give a victim of sexual assault the ability to track the progress of their DNA kit while it is being analyzed and processed in the crime lab via a secure, electronic process. This will provide the victims with peace of mind by being able to see where their kit is in the process and ensure that law enforcement is doing their duty to analyze the DNA kit in a timely manner."

2) **SAFE-T and the Disposition of Rape Kits**: SAFE-T was created by DOJ in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants. SAFE-T is accessible only by law enforcement agencies and DOJ, due to the sensitive investigatory and privacy concerns of the information contained in the database. The database includes the disposition of rape kits both at the local law enforcement agency investigating the sexual assault allegation and the disposition of rape kits that have been sent to a crime laboratory for testing.

   Rape kits can have many dispositions. A law enforcement agency may not refer a rape kit for testing if they do not believe a crime has occurred, if the agency has already identified the suspect, or if the agency believes they do not need further evidence to prosecute. If the law enforcement agency does refer a rape kit for testing, the investigator may request that a crime lab analyze a rape kit to try to match the DNA profile to a suspect in the investigation. The

lab can then upload the profile to CODIS, a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. With access to SAFE-T, victims could see if their rape kit has been referred for testing or if testing has been completed.

This bill would allow victims access to SAFE-T to view the disposition of their rape kit.

3) **Interaction with AB 1848**: This bill would not provide information regarding why a rape kit has or has not been tested, but AB 1848 (Chiu) would require more information to be entered into SAFE-T that victims would be able to access should both AB 1848 and this bill pass. Currently, neither crime laboratories nor law enforcement agencies are required to test rape kits, nor are they currently required to include in SAFE-T the reasons why any particular rape kit has not been tested. AB 1848 (Chiu), would require law enforcement agencies to include the reason or reasons why each rape kit under their control has not been tested.

4) **Argument in Support**: According to the *Alameda County District Attorney*, "Law enforcement agencies are not required to track or report the number of sexual assault kits (SAKs) that are collected and how many go unanalyzed. Due to this lack of requirements, the total number of unanalyzed SAKs statewide is unknown, which deprives victims of justice and closure while allowing perpetrators to walk free. In 2014, faced with a mounting backlog of agencies to submit to government crime labs to process SAKs. In 2015, the Department of Justice created a program of its own that would track SAKs in the analysis process. This program is called the Sexual Assault Forensic Evidence Tracking Program, or SAFE-T, but it does not permit victims to have access to the program to get information regarding the status of their SAK.

"AB 2499 will give a victim of sexual assault to track the process of their SAK kit while it is being analyzed and processed in the crime lab via a secure, electronic process. This will provide victims with the peace of mind by being able to see where their SAK is in the process and ensure that law enforcement is doing their duty to analyze the SAK in a timely manner."

5) **Related Legislation**:

   a) AB 1848 (Chiu) would require local law enforcement agencies to periodically update SAFE-T on the disposition of all rape kits in their custody and give reasons why any rape kits have gone untested. This bill is pending hearing in the Assembly Committee on Appropriations.

   b) AB 909 (Quirk) would require a law enforcement agency responsible for taking or processing rape kit evidence to annually report, by July 1 of each year, to the Department of Justice information pertaining to the processing of rape kits, including the number of rape kits the law enforcement agency collects, the number of those rape kits that are tested, and the number of those rape kits that are not tested. For those rape kits that are not tested, the bill would require the law enforcement agency to also report the reason the rape kit was not tested. This bill is pending in the Senate Committee on Appropriations.

6) **Prior Legislation**:

a) AB 1517 (Skinner), Chapter 874, Statutes of 2014, encourages law enforcement agencies to submit sexual assault forensic evidence received by the agency to a crime lab within 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault to a crime lab within five days after the evidence is obtained from the victim.

b) AB 558 (Portantino), of the 2009-2010 Legislative Session, would have required local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits. This bill was vetoed by Governor Schwarzenegger.

c) AB 898 (Chu), Chapter 537, Statutes of 2003, established the "Sexual Assault Victims' DNA Bill of Rights."

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Natasha's Justice Project (Sponsor)
Office of the District Attorney of Alameda County (Sponsor)
California Coalition Against Sexual Assault
California Police Chiefs Association
Californians for Safety and Justice

**Opposition**

None

**Analysis Prepared by**: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Chief Counsel: Gregory Pagan

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

AB 2508 (Mathis) – As Amended April 6, 2016

**SUMMARY**: Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster, as specified. Specifically, **this bill**:

1) Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster if all of the following conditions are met:

   a) The manufacturer petitions the Attorney General (AG) for reinstatement of the handgun model;

   b) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   c) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

   d) The manufacturer pays the department for all of the reasonable costs related to the reinstatement testing of the handgun model, including the purchase price of the handguns, prior to reinstatement testing.

2) States that a handgun model reinstated pursuant to the above provisions shall only be required to meet the handgun safety definitional requirements in place at the time the handgun model was originally submitted for testing.

3) Provides that if the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

4) States that a firearm shall be deemed to be not unsafe if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in dimension, barrel length, finish, coating, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature, but is otherwise internally functionally identical to the listed firearm.

5) Provides that a firearm shall be deemed to meet the safety standards required in order to be listed on the roster of not unsafe handguns, if a manufacturer alters a listed firearm with one or more changes to the firearm's manufacturing process, materials, function, or components. This section does not exempt the firearm from the drop safety requirement for handguns or

the firing requirements for handguns.

**EXISTING LAW**:

1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).)

    a) Specifies that this section shall not apply to any of the following:

        i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.

        ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

        iii) Firearms listed as curios or relics, as defined in federal law.

        iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

3) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. (Pen. Code, § 31910.)

4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

7) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

8) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

   a) The manufacturer petitions the AG for reinstatement of the handgun model;

   b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

   c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   d) The three handguns samples shall only be tested once. If the sample fails it may not be retested;

   e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

   f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

   g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subds. (a)-(g).)

9) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

   a) Finish, including, but not limited to bluing, chrome plating or engraving;

b) The material from which the grips are made;

c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.

d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

10) States that any manufacturer seeking to have a firearm listed as being similar to a tested shall provide the DOJ with the following:

a) The model designation of the listed firearm;

b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;

c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 2508 would give law-abiding residents the opportunity to acquire previously safety-tested and Department of Justice (DOJ) approved, quality handguns that were removed from California's Handgun Roster for reasons not related to whether or not such handguns were "unsafe". Additionally, it would allow manufacturers to make minor changes, such as a safety upgrades to firearms that are already on the roster."

2) **Not Unsafe Handgun Law**: SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun as, as defined, with specific exceptions. SB 15 defined an "unsafe handgun" as a handgun that does not have requisite safety features, does not meet specified firing requirements or does meet specified drop safety requirements.

   SB 489 (Scott), Chapter 500, Statutes of 2003, added to the handgun safety requirements, effective January 1, 2007, all center-fire semiautomatic pistols not already found to be "safe" to have both a chamber load indicator and a magazine disconnect mechanism if the pistol has a detachable magazine in order to be added to the roster of approved "safe" firearms. All firearms that were not on the unsafe handgun roster prior to the effective date of this stature were grandfathered in.

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added "microstamping" as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010 provided that the DOJ certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by patent restrictions. The DOJ issued the required certification on May 17, 2013. As with chamber load indicators and magazine disconnect mechanisms, the "microstamping" requirement did not apply to firearms that were already on the roster.

This legislation makes two changes to the not unsafe handgun law. First, it would allow a firearm that was on the roster but was removed for a reason other than failing safety testing, for example, failure to pay the annual fee, to be added back the roster if it meets specified requirements. Secondly, a handgun model seeking reinstatement would only be required to meet the standards that were in place when the model was originally placed on the roster. For example, a handgun that was placed on the roster in 2002 and was removed in 2013 for a failure to pay the annual fee, could be added back to the roster without a chamber load indicator, magazine disconnect, and microstamping.

3) **Argument in Support**: According to the *Firearms Policy Coalition,* "As you know, the number of semi-automatic firearms available for sale in California is diminishing due to changes to the statutes governing the handgun roster put in place since its inception in 2000. Originally a consumer product safety testing system, over the years it has become, in practice, a total ban on new semi-automatic firearms. New models may not be submitted for testing and inclusion on the approved roster unless they have "microstamping" technology. Unfortunately, workable microstamping technology does not exist in the industry, nor does it appear that it will in the foreseeable future.

"In addition, the current statute can be interpreted to prohibit the upgrading or modification of already approved handguns- if a part or vendor in the supply chain needs to be changed or upgraded for quality or safety, the manufacturer cannot re-apply under the same testing conditions as it must then be treated as an entirely new model and tested with "microstamping", which as we stated previously- does not exist.

"Your measure, Assembly Bill 2508, clarifies that minor changes that do not change the internal functionality of the firearm will not prevent that firearm from being safety-tested in a state approved laboratory under the same requirements it was successfully submitted under originally.

"This is a win for public safety, the consumer and the manufacturer. It represents the spirit of the original enacting legislation, but clarifies those issues that prevent the consumer from having access to high quality products."

4) **Argument in Opposition**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Pursuant to the Unsafe Handgun Act (SB 15), which was enacted in 1999, California law established various requirements governing unsafe handguns. For example, existing law requires the Department of Justice to maintain a roster listing the handguns that have been tested have been determined not to be unsafe. Further, existing law allows a handgun model that has been included in the roster to be retested and allows the handgun model to be removed from the roster if it fails retesting.

"If a handgun model is removed from the roster for failing retesting, existing law allows reinstatement following a petition to the Attorney General for reinstatement and successful retesting. AB 2508, however, would allow a handgun model removed from the roster for any other reason to be reinstated to the roster upon a petition to the Attorney General. The bill further provides that a handgun model that is reinstated to the roster in this way must only meet the requirements for listing as of the date the handgun model was originally submitted for testing.

"Another provision of AB 2508 would revise the features in which the unlisted firearm may differ from the listed firearm and still be reinstated on the roster, provided that the unlisted firearm is otherwise internally functionally identical to the listed firearm. Finally, the bill would require a firearm to be deemed to satisfy the requirements of being listed on the roster if a manufacturer alters a listed firearm, and the changes are, in the opinion of the manufacturer, necessary to improve the safety or operation of the firearm.

"These provisions are objectionable because they are both too broad (an unlisted firearm can differ from the listed firearm in dimension, barrel length, finish, coating, grips, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature) and subjective (in the opinion of the manufacturer is necessary to improve the safety or operation of the firearm). The reasonable solution is to submit the unlisted guns for testing as new models, which they essentially are.

"The California Brady Campaign strongly opposes AB 2508. If a firearm has been removed from the roster because of voluntary action by a firearm manufacturer, then the manufacturer should have to live by its decision and/or actions. A manufacturer may, of course, resubmit the firearm for retesting but it should be required to comply with all the requirements in place at the time of resubmittal. In practical terms, this means that the firearm should possess an approved chamber load indicator and be equipped with micro-stamping technology. It is clear that the underlying purpose of this bill is to circumvent these newer additions to the law."

5) **Prior Legislation**: SB 916 (Correa), of the 2014-2015 Legislative Session, was substantially similar to this bill in that it allowed a firearm to be reinstated to the DOJ roster of "not unsafe handguns" if the handgun was removed from the roster for any reason other than failing handgun safety testing. SB 916 failed passage in the Senate Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Association of Federal Firearms Licensees
Crossroads of the West Gun Shows
Firearms Policy Coalition
Gun Owners of California
National Rifle Association of America
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International

**Opposition**

Michael Feuer, Los Angeles City Attorney
California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent Gun Violence

**Analysis Prepared by**: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 2533 (Santiago) – As Introduced February 19, 2016
As Proposed to be Amended in Committee

**SUMMARY**: Requires a public safety officer to be provided a minimum of three business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer. Specifically, **this bill**:

1) Requires a public safety officer to be provided a minimum of three business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer.

2) Authorizes the public safety officer, based upon that reasonable belief, to notify the public safety department or other public agency to cease and desist from disclosing on the Internet any audio or video of the officer that is recorded by the officer.

3) Allows the officer, a district attorney, or a United States Attorney to seek an injunction to prohibit the release of that audio or video on the Internet.

**EXISTING LAW**:

1) Specifies that no public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family. (Gov. Code, § 3307.5, subd. (a).)

2) States that based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. (Gov. Code, § 3307.5, subd. (b).)

3) States that after the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. (Gov. Code, § 3307.5, subd. (b).)

4) Provides that the court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day commencing two working days after the date of receipt of the notification to cease and desist. (Gov. Code, § 3307.5, subd. (b).)

5) Defines "public safety officer" as all peace officers, except as specified. (Gov. Code, § 3301.)

6) Specifies that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights under the Public Safety Officers Procedural Bill of Rights, or the exercise of any rights under any existing administrative grievance procedure. (Gov. Code, § 3304.)

7) States that administrative appeal by a public safety officer Public Safety Officers Procedural Bill of Rights shall be conducted in conformance with rules and procedures adopted by the local public agency. (Gov. Code, § 3304.5.)

8) California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et. seq.)

9) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253)

10) California Public Records Act does not require disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254, subd. (f).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "When a public agency, such as a law enforcement department, decides or is ordered by a court to release audio or video from an officer-involved incident, the release of that information may result in heightened threats against the officer or his/her family.

   "In most cases, it is the officer's responsibility to pursue legal action to prevent immediate disclosure of the audio and/or video. If the officer is receiving threats, this process can create a state of panic as the officer scrambles to find an attorney, complete all the necessary paperwork, and obtain a restraining order before it is released.

   "AB 2533 ensures officers are provided with five business days' notice before the release of any audio or video recorded of the officer, allowing the officer to complete the necessary legal arrangements. This measure updates current law to be more appropriate for today's digital age, while continuing to provide an avenue of safety for threatened officers."

2) **Peace Officers Bill of Rights (POBOR):** POBOR provides peace officers with procedural protections relating to investigation and interrogations of peace officers, self-incrimination, privacy, polygraph exams, searches, personnel files, and administrative appeals. When the Legislature enacted POBOR in 1976 it found and declared "that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern." The statute this bill seeks to amend (Gov. Code, § 3307.5.) was incorporated into POBOR in 1999.

3) **California Public Records Act (CPRA):** The Public Records Act generally governs requests for the release of information in the hands of public agencies. It is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (Gov. Code, § 6253.) There are a number of exceptions to disclosure, but to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (Id.)

   Legislation enacting CPRA was signed in 1968. The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure. There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on a recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda). If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees. (http://ag.ca.gov/publications/summary_public_records_act.pdf)

   In response to a request for records, an agency has 10 days to decide if copies of the records will be provided. In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requesters, give itself an additional 14 days to respond. These time periods may not be used solely to delay access to the records.

4) **Exemptions to CPRA for Law Enforcement Investigative Records:** Law Enforcement investigative records are currently exempt under the CPRA. Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records. In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to

an enforcement proceeding that has become concrete and definite. Investigative and security records created for law enforcement, correctional or licensing purposes also are covered by the exemption from disclosure. The exemption is permanent and does not terminate once the investigation has been completed. Even though investigative records themselves may be withheld, CPRA mandates that law enforcement agencies disclose specified information about investigative activities. However, the agency's duty to disclose such information only applies if the request is made contemporaneously with the creation of the record in which the requested information is contained.

CPRA requires that basic information must be disclosed by law enforcement agencies in connection with calls for assistance or arrests, unless to do so would endanger the safety of an individual or interfere with an investigation. With respect to public disclosures concerning calls for assistance and the identification of arrestees, the law restricts disclosure of address information to specified persons. However, CPRA expressly permits agencies to withhold the analysis and conclusions of investigative personnel. Thus, specified facts may be disclosable pursuant to the statutory directive, but the analysis and recommendations of investigative personnel concerning such facts are exempt.

5) **As Proposed to Be Amended In Committee:** Proposed Amendments shorten the notice requirement from five business days to three business days.

6) **Argument in Support**: According to *The Peace Officers Research Association of California*, "It is very important to understand that **AB 2533 does not expand any law**; rather it builds in a procedure to provide predictability and civility to an existing law. Currently, the California Public Records Act covers when a law enforcement agency shall or shall not release information about a critical incident within their department. The courts, on a daily basis, also make decisions regarding the release of case information, including audio and video tapes of an incident.

"Oftentimes, officers involved in critical incidents face real and tangible threats from criminals or angry members of the public. When a department decides or is required by a court order to release audio or video coverage from an incident, the release of that information may enhance the danger of threats against the officer or his/her family.

"Officers currently have the right to go to court and file an injunction so that the department cannot release an audio or video recording if there is a true threat to their safety. These filings by officers are rare, and judicial approval of these injunctions are even more rare. Generally, a judge will decide whether or not the information should be released based on the threat level and evidence of an actual threat to the officer. In most cases, it is the officer's responsibility to bring legal action to stop the disclosure. If the officer is receiving death threats, this process, understandably, will create a state of panic as the officer rushes to get an attorney, do all the necessary paperwork and get a restraining order before it is released.

"In the past, it could take a department a couple of days to release any video/audio to the public or media; thereby, giving the officer a small window to file a court order if threatened. However, because of modern technology, the time frame in which this information can be released is a matter of minutes, instead of days. We are simply building in a reasonable time frame so the officer isn't forced to file an injunction **after** the release of a potentially threatening medium.

"This bill proposes a five business day period before the video/audio can be released, giving the officer time to do the necessary legal preparation to seek judicial review. **Again, this bill does not expand a law. This simply updates a current law to be more appropriate for today's digital age, while continuing to provide an avenue of safety for a threatened officer or his/her family.**

7) **Argument in Opposition**: According to *The California Newspaper Publishers Association*, "AB 2533 would *allow a self-interested individual to have a stranglehold over information that the public has an overwhelming interest in obtaining and that a law enforcement agency may want to disclose immediately for the good of the community.*

"Under current law, the CPRA presumes that the public has a right of access to documents created, used or maintained in the course of the public's business unless an exemption applies. This presumption of access allows the public to obtain information in order to monitor government activities and there is no better tool for the public to use when trying to understand government's role and response to unfolding situations.

"When it first enacted the CPRA, the Legislature included a hallmark principle that nothing in the CPRA shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.

"AB 2533 would be a radical departure from this principle.

"Requiring five business days' notice to an officer before releasing a record would delay and obstruct an agency's response irrespective of the 10 day period it would otherwise have to determine whether an exemption applies or whether the agency, in the best interests of the community wants to release it.

"The consequences of this mandatory five day delay could be deadly.

"One needs only to look back to the events that followed the beating of Rodney King by LAPD officers as an example. If AB 2533 was to become law, and a similar lightening-rod event occurred, an agency would be absolutely prevented by law from releasing the officer's body cam recording of the beating while the graphic footage in the videos taken by all of the bystanders would appear on every TV and computer screen in the city. Instead of the outraged community's suspicion and doubt being allayed by the department's quick response and disclosure of the official record to avoid rioting and mayhem, it would be stoked by the city's failure to be forthcoming - for five days.

"Moreover, AB 2533 would allow the officer or officers who recorded footage of the occurrence, who would likely have a self-interest in preventing the city from disclosing potentially embarrassing or criminal behavior, to overcome the public's overwhelming right to the most crucial piece of information about a watershed event in order to understand what happened.

*"As this example demonstrates, AB 2533 would eviscerate the CPRA, wreak havoc on the public's right to know, decrease public safety and decrease public confidence in law enforcement agencies.*

"Last session, in response to an increasing number of confrontations between law enforcement and the public, the Legislature almost unanimously passed SB 411 which established that a person has a right to record an officer engaged in law enforcement activities.

"By delaying and obstructing public access to body cam footage, AB 2533 is a retreat from the strong statement the Legislature made with the passage of SB 411 about the importance of increased transparency of law enforcement agencies. This bill goes the other way.

"By handcuffing state and local law enforcement agency discretion, AB 2533 would produce unforeseen consequences that, as described above, would have lasting and devastating impacts on the public's ability to know what caused a crisis in a community and an agency's ability to respond to it."

8) **Related Legislation**:

a) AB 1957 (Quirk), would requires a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage. AB 1956 is being heard in this committee today.

b) AB 1940 (Cooper), would exempt body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure pursuant to the act unless a judicial determination is made, after the adjudication of any civil or criminal proceeding related to the use of force incident, that the interest in public disclosure outweighs the need to protect the individual right to privacy. AB 1940 is awaiting hearing in Assembly Public Safety Committee.

c) AB 1246 (Quirk), would have prohibited the disclosure of a recording made by a body worn camera, as defined, except for requiring disclosure to the person whose image is recorded by the body worn camera. AB 1246 was never heard in the Assembly Public Safety Committee.

d) AB 66 (Weber), would have stated the intent of the Legislature to enact legislation to require local police departments that utilize police body-worn cameras to follow policies and procedures that will streamline best practices to better enhance the quality of the services that those departments provide to Californians. AB 66 was held in the Assembly Appropriations Committee.

9) **Prior Legislation**: AB 1586 (Florez), Chapter 338, Statutes of 1999, prohibits a public safety officer from being required by his or her employer or any other public agency, as a condition of employment, to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if the officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Peace Officers Research Association of California (Sponsor)

**Opposition**

Americans for Civil Liberties Union of California
California Broadcasters Association
California Newspaper Publisher Association
California Police Chiefs Association
California Public Defenders Association

**Analysis Prepared by**: David Billingsley / PUB. S. / (916) 319-3744

**Amended Mock-up for 2015-2016 AB-2533 (Santiago (A))**

***********Amendments are in *BOLD************

**Mock-up based on Version Number 99 - Introduced 2/19/16**
**Submitted by: Staff Name, Office Name**

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

**SECTION 1.** Section 3307.5 of the Government Code is amended to read:

**3307.5.** (a) A public safety officer shall not be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) A public safety officer shall be entitled to a minimum of ***three*** ~~five~~ business days' notice before a public safety department or other public agency releases on the Internet any audio or video of the officer recorded by the officer.

(c) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) or (b) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars ($500) per day commencing two working days after the date of receipt of the notification to cease and desist.

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

Date of Hearing: April 12, 2016
Counsel: Sandra Uribe

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

AB 2606 (Grove) – As Introduced February 19, 2016

**SUMMARY**: Requires law enforcement to send a copy of a report alleging specified crimes committed against elderly or developmentally disabled people to state licensing agencies. Specifically, **this bill**:

1) Requires a law enforcement agency that receives or makes a report of the commission of specified crimes by a person who holds a state professional or occupational credential, a license, or permit allowing the person to provide services to children, elders, dependent adults, or persons with disabilities, to provide a copy of that report to the state agency which issued the credential, license, or permit.

2) Applies these reporting requirements to the following crimes:

   a) Sexual exploitation by a physician and surgeon, psychotherapist, or drug/alcohol abuse counselor, as specified in the Business and Professions Code;

   b) Rape and other sex crimes;

   c) Elder or dependent adult abuse, failure to report by mandated report, or interfering with a report;

   d) A hate crime motivated by anti-disability bias;

   e) Sexual abuse, as specified; and,

   f) Child abuse, failure to report by mandated report, or interfering with a report.

**EXISTING LAW**:

1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act. (Welf. and Inst. Code, § 15600 et seq.)

2) Enumerates categories of persons who are mandated reporters under the Act. (Welf. and Inst. Code, § 15630.)

3) Provides that failure to report specified conduct committed against an elder or dependent adult, or impeding or inhibiting such a report is a misdemeanor punishable by up to six months in jail, by a fine of up to $1,000, or both. (Welf. and Inst. Code, § 15630, subd. (h).)

4) Provides that failure to report specified conduct committed against an elder or dependent adult resulting in serious bodily injury or death, or impeding or inhibiting such a report is a misdemeanor punishable by up to one year in jail, by a fine of up to $5,000, or both. (Welf. and Inst. Code, § 15630, subd. (h).)

5) Establishes the Child Abuse Neglect Reporting Act (CANRA) for the purpose of protecting children from abuse and neglect. (Pen. Code, § 11164.)

6) Enumerates categories of persons who are mandated reporters under CANRA. (Pen. Code, § 11165.7, subd. (a).)

7) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)

8) States that the reporting duties under CANRA are individual and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided they are not inconsistent with CANRA. (Pen. Code, § 11166, subd. (i)(1).)

9) Provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of $1,000 or by both that imprisonment and fine. (Pen. Code, § 11166, subd. (c).)

10) States that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

11) Provides that any supervisor or administrator who interferes or inhibits a mandated reporter from reporting suspected child abuse or neglect shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and a fine. (Pen. Code, § 11166.01, subd. (a).)

12) States that "sexual abuse" means "sexual assault or sexual exploitation." (Pen. Code, § 11165.1.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "The developmentally disabled, elderly, and children are the most vulnerable members of our community and we have an obligation to help protect them. People with disabilities are subject to violent crimes – especially sexual

assault and abuse -- at much higher rates than the general population. Arrest and conviction rates are often very low. One reason is because mandated reporters often fail to report because of interference by supervisors and fear of retaliation. Many of these crimes are committed by caretakers. Those who are not arrested or convicted are simply fired and are legally free to go on to other jobs and continue their abuse because their licenses are not affected. Children and the elderly can be subject to the same kinds of assault and abuse. The bill addresses the problem by strengthening the law protecting mandated reporters from anyone who would impede their reports or retaliate against them for making the reports. Additionally, it requires law enforcement agencies to cross-report abuse, neglect, and sexual misconduct to the provider's state licensing agency."

2) **Practical Considerations**: The reporting requirement in this bill is triggered when a specified crime is alleged to have been committed by a person who holds a state professional or occupational credential, a license, or permit allowing the person to provide services to children, elders, dependent adults, or persons with disabilities. As drafted, this bill applies to an extremely broad range of professionals, including realtors, dentists, lawyers, contractors, cosmetologists, etc. Should this bill be limited to those persons who hold state licenses or permits to provide care for children, elders, dependent adults, or persons with disabilities?

   Given the many licensing agencies implicated, will law enforcement agency or officer know where to file the required report? Moreover, will the receiving agency necessarily have a process in place for investigating this type of allegation?

   It should be noted that as to reports received by law enforcement, there is no requirement that law enforcement conduct any sort of investigation before forwarding a copy of the report. A report may be uncorroborated or unfounded and yet law enforcement must still forward a copy of the report.

   Additionally, this bill does not state, what if anything, the licensing agency is supposed to do with the report. It is possible that some agencies will conduct an investigation, but there is no requirement for action of any kind.

   Nor are there any due process protections of any kind for the person who is the subject of the report. Might a person lose his or her license and livelihood based on an unsubstantiated report?

3) **Argument in Support**: According to the *Arc and United Cerebral Palsy California Collaboration*, the sponsor of this bill, "A large body of research shows that adults and children with disabilities are subject to violent crime—especially sexual assault and abuse – at much higher rates than the general population. Arrest and conviction rates are often very low, in some cases, because mandated reporters often fail to report because of interference by supervisors and fear of retaliation.

   "Many of these crimes are committed by caretakers. Those who are not arrested or convicted are simply fired and are legally free to go on to other jobs and continue their abuse.

   "Children and elders can be subject to the same kinds of assault and abuse. …

   "This bill attacks the problem in two ways:

"First, it strengthens the law protecting mandated reporters from anyone who would impeded their reports or retaliate against them for making the reports.

"Second, it requires law enforcement agencies to cross-report sex crimes and abuse, and also failure to report, to state licensing agencies. As under current law, the state agencies will investigate the reports and, if they substantiate them, take appropriate disciplinary action, up to and including license suspension or revocation – whether or not law enforcement agencies and prosecutors are able to arrest or convince (sic) them."

4) **Arguments in Opposition**:

a) According to the *California Association of Psychiatric Technicians* (CAPT), "CAPT opposes this bill for several reasons, one of which is that, if passed, this bill would require law enforcement to transmit a report or abuse, neglect, or sexual misconduct without having first done an investigation to sustain the allegation. Many CAPT members work with a population of individuals that have severe mental illness. At the state mental hospitals, hundreds of false reports are made a year by patients that are incompetent to stand trial or not guilty by reason of insanity.

"The reporting to the licensing body of a health care worker without investigation or substantiation of the allegation would clog the licensing body's investigating case load, forcing investigators to investigate hundreds of false allegations a year."

b) The *California State Sheriffs' Association* writes, "We appreciate your effort to ensure that licensing agencies are informed when alleged criminal acts take place. However, there are processes in place to achieve this goal. We are concerned that your measure is an unfunded mandate on law enforcement that could inadvertently require peace officers to disclose reports and unintentionally jeopardize investigations. If law enforcement becomes aware of an alleged offense, it has a protocol in place to investigate the matter and then file a report with the prosecutor if an arrest is made and there is probable cause to believe a crime has been committed.

"AB 2606 requires a notification of an alleged offense to a licensing agency that almost certainly receives subsequent arrest notification for persons who have been the subject of a background check. In other words, when a person who has undergone a background check for the purposes of a professional licensure is arrested, the Department of Justice generally provides a notification to the licensing agency of the arrest. By inserting law enforcement into this process, we may end up jeopardizing an investigation. While it is appropriate for a licensing agency to know when its licensees are accused of crime particularly when they relate to their profession, processes exist to accomplish this."

5) **Related Legislation**:

a) AB 1272 (Grove) requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set. AB 1272 is pending hearing in the Senate Public Safety Committee.

b) AB 1821 (Maienschein) makes specified sex crimes committed against victims with mental disorders or physical or developmental disabilities qualifying crimes for the "One Strike Sex Law" and the vulnerable victim enhancement. AB 1821 is pending a hearing in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

The Arc & United Cerebral Palsy California Collaboration (Sponsor)
The Arc of Riverside County
Association of Regional Center Agencies
California Advocates for Nursing Home Reform
California Long-Term Care Ombudsman Association
Disability Rights California
The Alliance

**Opposition**

California Association of Psychiatric Technicians
California Attorneys for Criminal Justice
California Public Defenders Association
California State Sheriffs' Association
Legal Services for Prisoners with Children

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

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 2695 (Obernolte) – As Introduced February 19, 2016

**SUMMARY**: Revises the procedure when there is a question about the mental competence of a juvenile charged with a crime. Specifically, **this bill**:

1) States that whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and make a determination of competence.

2) Specifies that a minor is mentally incompetent if he or she is unable to understand the nature of the proceedings, including his or her role in the proceedings, or unable to assist counsel in conducting a defense in a rational manner, including a lack of a rational and factual understanding of the nature of the charges or proceedings.

3) States that incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.

4) Allows the court to receive information from any source regarding the minor's ability to understand the proceedings.

5) States that the minor's counsel or the court may express a doubt as to the minor's competency, but the receipt of information or the expression of doubt of the minor's counsel does not automatically require the suspension of proceedings.

6) Provides that if the court has a doubt as to the minor's competency, the court shall suspend the proceedings.

7) States that unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor is competent.

8) Requires the expert to have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, to be familiar with competency standards and accepted criteria used in evaluating juvenile competency, and to have received training in conducting juvenile competency evaluations.

9) Requires the expert to personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant

information that is available.

10) Requires the expert to consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency, to gather a developmental history of the minor, to administer age-appropriate testing specific to the issue of competency, unless the facts of the particular case render testing unnecessary or inappropriate.

11) Specifies that in a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her.

12) Specifies that if the expert concludes that the minor lacks competency, the expert shall make recommendations regarding the type of services that would be effective in assisting the minor in attaining competency, and, if possible, the expert shall address the likelihood of the minor attaining competency within a reasonable period of time.

13) Requires the Judicial Council to adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles, and shall develop and adopt rules for the implementation of the other requirements in this subdivision.

14) Specifies that statements made to the appointed expert during the minor's competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of those statements shall not be used in any other hearing against the minor in either juvenile or adult court.

15) Allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing.

16) Requires an expert's report and qualifications to be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing.

17) States that the question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert.

18) Specifies that the minor has the burden of establishing by a preponderance of the evidence that he or she is incompetent.

19) Provides that if the court finds the minor to be competent, the court shall reinstate proceedings and proceed.

20) States that if the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction.

21) Requires the court upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency. Service providers shall determine the likelihood of the

minor attaining competency within a reasonable period of time, and if the opinion is that the minor will not attain competency within a reasonable period of time, the minor shall be returned to court at the earliest possible date.

22) Requires the court to review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.

23) Requires the court receipt of the recommendation by the remediation program, to hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program.

24) Specifies that if the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent.

25) Specifies that if the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable.

26) States that if the court finds that the minor has been remediated, the court shall reinstate the proceedings.

27) Provides that if the court finds that the minor has not yet been remediated, but is likely to be remediated, the court shall order the minor to return to the remediation program.

28) States that if the court finds that the minor will not achieve competency, the court shall dismiss the charges.

29) States that the proceedings above apply to juveniles before the court for criminal for criminal charges.

**EXISTING LAW**:

1) States that during any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. (Welf. & Inst., § 709, subd. (a).)

2) Specifies that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. (Welf. & Inst., § 709, subd. (a).)

3) If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended. (Welf. & Inst., § 709, subd. (a).)

4) States that upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. (Welf. & Inst., § 709, subd. (b).)

5) Requires the court to appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so,

whether the condition or conditions impair the minor's competency. (Welf. & Inst., § 709, subd. (b).)

6) Requires the expert to have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. (Welf. & Inst., § 709, subd. (b).)

7) States that the Judicial Council shall develop and adopt rules for the implementation of these requirements. (Welf. & Inst., § 709, subd. (b).)

8) Specifies that if the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. (Welf. & Inst., § 709, subd. (c)(1).)

9) Provides that during the time proceedings are suspended, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of specified motions (Welf. & Inst., § 709, subd. (c)(1).)

10) States that if the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction. (Welf. & Inst., § 709, subd. (d).)

11) Specifies that if the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals, as specified, to evaluate the minor. (Welf. & Inst., § 709, subd. (f).)

12) Specifies that the director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and shall provide the court with a written report informing the court of his or her determination. (Wel. & Inst., § 709, subd. (f).)

13) States that an expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst., § 709, subd. (g).)

14) Specifies that if a doubt arises in the mind of the judge as to the mental competence of an adult defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. (Pen. Code, § 1368, subd. (a).)

15) Provides that if counsel informs the court that he or she believes the adult defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing. (Pen. Code, § 1368, subd. (b).)

16) In any case where the adult defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two

psychiatrists, licensed psychologists, or a combination thereof; (Pen. Code, § 1369, subd. (a).)

17) Allows one of the psychiatrists or licensed psychologists to be named by the defense and one to be named by the prosecution, when two experts are appointed. (Pen. Code, § 1369, subd. (a).)

18) States a presumption that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. (Pen. Code, § 1369, subd. (f).)

19) States that at the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment, as specified, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. (Pen. Code, § 1370, subd. (c)(1).)

20) States that if, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. (Pen. Code, § 1370.01, subd. (c)(1).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "There are a number of deficiencies in the existing laws that lay out the procedures for determining whether minors are able to understand and participate in court proceedings. As a result, juveniles that may lack competency are being underserved and left without proper protection.

   "AB 2695, sponsored by the Judicial Council, would address these issues and revise the provisions for assessing a minor's competency and set guidelines for how to proceed if they are deemed incompetent. It is the result of a two year working group, consisting of members of California's Family and Juvenile Law Advisory Committee, Collaborative Justice Courts Advisory Committee and Mental Health Issues Implementation Task Force. Among the stakeholders that participated in the working group were judges, a chief probation officer, a deputy district attorney, a deputy public defender and a private defense attorney.

   "Together with input from public comment, the working group drafted a set of amendments to the Welfare and Institutions Code that would clarify and improve these procedures. The result, AB 2695, presents a cohesive set of guidelines for competency proceedings that will better protect minors who are facing competency questions."

2) **Current Juvenile Competency Standards and Procedures:** Adult mental incompetency is currently defined as lacking sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding or lacking a rational as well as factual understanding of the nature of the charges or proceedings. While those same

factors would be considered in evaluating the competency of a minor, the court would also consider the minors developmental maturity. Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone (*Timothy J. v. Superior Court*, 150 Cal.App.4th 847 (2007)).

The current statute governing juvenile competency procedures was put in place in 2010. (AB 2212 (Fuentes), Chapter 671, Statutes of 2010.) The language of that statute created some procedural gaps regarding how a juvenile should be treated if they are found to be incompetent. That statute also does not provide thorough guidelines regarding the experts responsible for evaluating the minor.

3) **Adults and Juveniles Have Different Cognitive Abilities:** Researchers in the science of human development, however, generally agree that from a developmental standpoint an adolescent is not an adult.

"The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable . . . Indeed, age 21 or 22 would be closer to the 'biological' age of maturity." [*Adolescent Brain Development and Legal Culpability, American Bar Assn. Criminal Justice Section, Juvenile Justice Center* (Winter 2003).]

Lack of culpability is at the heart of the Court of Appeal decision in *Timothy J., supra,* holding that developmental immaturity is grounds for a finding of not competent. The Court stated:

"As a matter of law and logic, an adult's incompetence to stand trial must arise from a mental disorder or developmental disability that limits his or her ability to understand the nature of the proceedings and to assist counsel (internal citation omitted.) The same may not be said of a young child whose developmental immaturity may result in trial incompetence despite the absence of any underlying mental or developmental abnormality. Dr. Edwards testified that minors are different from adults because their brains are still developing and as myelination occurs during puberty, the minor develops the ability to think logically and abstractly. Both experts concluded that because of his age, [the minor's] brain has not fully developed and he was unable to think in those ways.

"Their conclusions are supported by the literature, which indicates that there is a relationship between age and competency to stand trial and that an adolescent's cognitive, psychological, social, and moral development has a significant biological basis. [Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question* (2003) 18 Crim. Just. supra, 20, 21.]

"While many factors affect a minor's competency to stand trial, 'the younger the juvenile defendant, the less likely he or she will be to manifest the type of cognitive understanding sufficient to satisfy the requirements of the Dusky standard'." (Internal citation omitted.) According to Steinberg, the frontal lobes oversee high-level cognitive tasks such as hypothetical thinking, logical reasoning, long-range planning, and complex decision-making. During puberty, that area of the brain matures as the myelination process takes place. (Steinberg, *supra*, 18 Criminal Justice, at p. 20.)

"The research indicates that such factors as age, intelligence level, mental health history and severity of diagnosis, history of remedial education, and prior arrest or justice system history are relevant in determining a minor's trial competency (internal citation omitted.) One researcher found that 30 percent of the 11 to 13 year olds, and 19 percent of the 14 and 15 year olds, performed at the level of mentally ill adults who have been found incompetent to stand trial in matters of understanding and reason" (internal citation omitted.)

4) **Argument in Support**: According to *The Judicial Council,* "AB 2695 is the result of a long stakeholder process that brought judges, district attorneys, public defenders, and other stakeholders to the table. Statewide best practices, subject matter experts, recent state Supreme court cases, and stakeholder goals were all considered in reaching the good compromise measure before you.

"AB 2695 will create consistency statewide in conducting competency hearings in delinquency cases, while still allowing counties to pursue diversion programs that have been effective with their local populations. The bill will clarify procedures, firmly identify the burden of proof, and require courts to provide services to minors in an attempt to help restore and maintain competency.

"For these reasons, the Judicial Council supports AB 2695, . . ."

5) **Argument in Opposition**: According to *The California Public Defenders Association*, ". . . First, recently the California Supreme Court decided in *In re R.V.* (2015) 61 Cal.4th 181, that notwithstanding the absence of the presumption of competency or specifically stating who has the burden to establish incompetency in the current version of Welfare and Institutions Code section 709, minors are presumed competent in juvenile delinquency proceedings and carry the burden to prove otherwise. However, the high court only found this to be necessarily true regarding minors age 14 or older. With respect to minors under the age of 14, the court observed that, "any possible interplay between the presumption of competency and the presumption of incapacity is limited to cases involving minors under the age of 14 years. **In such cases, the presumption of competency arises only if the minor is subject to adjudication under the juvenile law, that is, only after the prosecution has overcome the presumption of incapacity with clear and convincing proof that the minor knew the wrongfulness of his or her conduct**. The presumption of competency presents no inconsistency with a presumption of incapacity that has been rebutted." (*In re R.V.*, *supra*, 61 Cal.4th, at pp. 197-198.) Stated simply, prior to presuming children under the age of 14 are competent to proceed in juvenile delinquency proceedings, the burden is on the prosecutor to prove by clear and convincing evidence that the minor knew the wrongfulness of his or her conduct, making the minor subject to adjudication under juvenile law in the first instance. AB 2695 as currently configured would be inconsistent with current California law and the California Supreme Court's interpretation of the interplay between juvenile adjudicative competency and the presumption of incapacity of children under the age of 14.

"CPDA further opposes AB 2695's provisions that gives the juvenile court authorization to refer minors for services after the court's jurisdiction has been terminated due to the substantial likelihood the minor will not attain competency in a reasonable amount of time. Although on its face this appears to be a lofty goal, i.e., to refer minors for services that the minor may appear to need. However, the problem with this provision is its lack of

understanding of the nature of the problem of incompetency. One of the reasons these children will have been found to be incompetent in the first instance is because they lack a rational understanding and appreciation for the nature of the proceedings against them. The goal of being referred to services is having the ability, capacity and appreciation of how the services apply to the alleged offender and how the alleged offender can utilize such services going forward. Moreover, many of these children would not have been legally responsible for the alleged conduct, and will be unable to be vindicated as a result of their inability to assist counsel in a meaningful way, or due to their inability to understand and appreciate the nature of the proceedings against them. Lastly, to what extent would the court be making the referrals is problematic. Would the referrals be made as orders of the court, or suggestions; and to what extent could the minor be held responsible if he or she, or his or her family did not participate in the referred services? AB 2695 in its current configuration leaves these and many other questions unanswered.

"Finally, CPDA opposed AB 2695's provision that would require each county to develop a protocol describing the competency process and program for the county to ensure minors that are found incompetent receive appropriate remediation services. The problem with this provision is it will lead to inconsistency throughout the state. It is one thing to have protocols that provide for time, place and manner of competency proceedings within a given county, but many of these protocols will also call for how long a child can the incarcerated pending competency proceedings; how long a case can be suspended before a child can bring a motion to dismiss; what types of information can be presented in motions to dismiss; etc. California should have statewide timelines regarding the length of detention for children pending competency proceedings, especially in light of the limited qualified evaluators available to perform competency evaluations on children and the limited services children receive pending competency evaluations and proceedings while in custody. We should also have statewide procedures rather than individual county protocols because of the potential for local courts to refuse to follow its own county protocol, which was the case that arose recently in In re Albert C., Second District Court of Appeal Case No. B256480, Los Angeles County Superior Court No. MJ21492, review granted 02/24/16 by the California Supreme Court, Case No. S231315.

"Certainly Welfare and Institutions Code section 709 in its current configuration leaves much to be desired with respect to policies and procedures regarding juvenile adjudicative competency. However, AB 2695, as currently proposed, fails to improve upon current law and in many respects creates an even more problematic process regarding children whose competency has been called into question in juvenile delinquency proceedings."

6) **Related Legislation**:

   a) AB 1962 (Dodd), requires the State Department of State Hospitals, to establish guidelines for minimum education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court to conduct adult mental competency evaluations. AB 1962 is pending in the Assembly Appropriations Committee.

7) **Prior Legislation**:

   a) SB 368 (Liu), Chapter 471, Statutes of 2011, requires that the court appoint an expert, as specified, to evaluate whether the minor suffers from a developmental

disability. Requires the court to appoint the director of a regional center for developmentally disabled individuals, or his or her designee, to evaluate the minor if the expert believes the minor is developmentally disabled.

b) AB 2212 (Fuentes), Chapter 671, Statutes of 2010, provides that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. Requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Judicial Council of California

**Opposition**

California Attorneys for Criminal Justice
California Public Defenders Association
Pacific Juvenile Defender Center

**Analysis Prepared by**: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 2792 (Bonta) – As Amended April 7, 2016

**SUMMARY**: Requires a memorandum of understanding (MOU), meeting specific criteria, between the governing body of the appropriate political subdivision and Immigration and Customs Enforcement (ICE) in order for a local law enforcement agency to participate in an immigration enforcement program. Specifically, **this bill**:

1) Authorizes a local law enforcement agency to participate in a federal Immigration and Customs Enforcement (ICE) immigration enforcement program only if it enters into a memorandum of understanding (MOU) with the governing body of the political subdivision in which the law enforcement agency is located that describes the terms and conditions pursuant to which the agency will participate in the immigration enforcement program.

2) States that the MOU must require compliance with the TRUST Act.

3) States that the MOU must prohibit law enforcement responses to ICE notification or transfer requests except in those situations in which a law enforcement official would have discretion to detain an individual under the TRUST Act.

4) Specifies that the MOU must contain a provision requiring compliance with any local ordinance or policy that limits law enforcement responses to ICE notifications, or detainer or transfer requests.

5) States that the MOU must have a prohibition on executing an ICE detainer or transfer request that does not indicate, in writing, whether the request is supported by a judicial warrant.

6) Requires the MOU to have a plan to ensure that ICE does not have access to an individual protected from continued detention under the TRUST Act, including, but not limited to, notification of the presence of the individual in the custody of local law enforcement through data sharing or otherwise, the ability to interview the individual, and access to the personal identifying information, including work or home addresses, of the individual.

7) Specifies that unless otherwise prohibited by a local ordinance, law enforcement policy, or an MOU entered into pursuant to this chapter, nothing in this bill shall prohibit a local law enforcement agency from responding to an ICE notification or transfer request if a law enforcement official would have discretion to detain an individual on the basis of an immigration as specified.

8) Specifies that the MOU must prohibit execution of an ICE detainer or transfer request and a plan to ensure that ICE does not have access to individuals protected from continued

detention on the basis of an immigration hold.

9) Requires the MOU and any records related to its development be a public record for purposes of the California Public Records Act.

10) Requires the local governing body to hold at least three community forums to provide information to the public about the policy under consideration, and to receive and consider public comment before entering into the MOU.

11) Authorizes the MOU to take effect 30 days after ratification by the governing body.

12) Specifies that the MOU be valid for a period not exceeding two years.

13) Defines "ICE immigration enforcement program" as "any program through which ICE works with local law enforcement agencies to detect, detain, transfer, or share information about individuals who allegedly are noncitizens or who have committed civil immigration violations, or to station ICE agents in local jails."

14) Defines "detainer request" as "an ICE request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE."

15) Defines "notification request" as "an ICE request that a local law enforcement agency inform ICE of the release date and time of an individual in its custody."

16) Defines "transfer request" as "an ICE request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE."

**EXISTING FEDERAL LAW:**

1) Provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. (8 CFR Section 287.7(a).)

2) States that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS. (8 CFR Section 287.7(d).)

3) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. Section 1357(g).)

4) Provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. 14th Amend.)

**EXISTING LAW**:

1) Defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual." (Gov. Code, § 7282, subd. (c).)

2) States that a law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under the following circumstances:

   a) The individual has been convicted of a serious or violent felony; (Gov. Code, § 7282.5, subd. (a), subd. (1).)

   b) The individual has been convicted of a felony punishable by imprisonment in the state prison; (Gov. Code, § 7282.5, subd. (a), subd. (2).)

   c) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony, or has been convicted at any time of a specified felony; (Gov. Code, § 7282.5, subd. (a), subd. (3).)

   d) The individual is a current registrant on the California Sex and Arson Registry; (Gov. Code, § 7282.5, subd. (a), subd. (4).)

   e) The individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, a felony punishable by imprisonment in state prison, or other specified felonies, and the magistrate makes a finding of probable cause as to that charge after a preliminary hearing; and (Gov. Code, § 7282.5, subd. (a), subd. (5).)

   f) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified, or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant. (Gov. Code, § 7282.5, subd. (a), subd. (6).)

3) States that if none of the conditions listed above is satisfied, an individual shall not be detained on the basis of an immigration hold after the individual becomes eligible for release from custody. (Gov. Code, § 7282.5, subd. (b).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Immigrant communities form an integral part of our state's social fabric. When Immigration and Customs Enforcement (ICE) coerces local law enforcement to carry out deportations, family members are separated and community trust destroyed, and undocumented witnesses and victims are afraid to step forward or seek help.

   "In 2013, Governor Brown signed AB 4, the TRUST Act, which protected community members from being detained by local law enforcement under immigration holds requested by ICE. Prior to the TRUST Act, ICE requested local jails hold community members until they could be picked up for deportation. From tamale vendors to domestic violence survivors transferred to ICE for deportation, the holds caused significant suffering and further weakened community-police relations as ICE sought to have local police officers and sheriff's deputies help it carry out mass deportation. After TRUST went into effect, a federal court found all immigration holds unconstitutional, but ICE has continued to circumvent the protections of TRUST by requesting local law enforcement notify them of personal information, such as release time and location.

   "With AB 2792, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, we close that loophole and build upon the TRUST Act by. The TRUTH Act requires a transparent process, including community engagement, prior to local law enforcement participation in ICE deportation programs. Local law enforcement must then reach an agreement with their city council or county supervisors, dictating the terms and conditions of any participation in such programs, including compliance with the state's TRUST Act.

   "The TRUTH Act requires critical transparency from ICE, ensures local communities have a voice, and creates clear guidelines to guard against future abuses."

2) **Federal Immigration Programs:** California's TRUST Act was enacted in 2013. (AB 4 (Ammiano), Chapter 570, Statutes of 2013.) The TRUST Act limits immigration "hold" or detainer requests, triggered by deportation programs like the program formerly known as "Secure Communities" or S-Comm. The requests caused immigrants to be detained for extra time for deportation purposes.

   On November 20, 2014, the Obama administration stopped S-Comm and put in place a new program, the Priority Enforcement Program (PEP). PEP is similar to S-Comm, in that it continues to check the immigration status of all individuals by reviewing fingerprints obtained by local police at the point of booking. PEP begins at the state and local level when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the FBI for criminal history and warrant checks. This same biometric data is also sent to U.S. Immigration and Customs Enforcement (ICE) so that ICE can determine whether the individual is a priority for removal, consistent with the DHS enforcement priorities. Under PEP, ICE will seek the transfer of a removable individual when that individual has been convicted of an offense listed under the DHS civil immigration enforcement priorities, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security. (https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2015/pep_brochure.pdf)

Under PEP, ICE will only seek transfer of individuals in state and local custody in specific, limited circumstances. ICE will only issue a detainer where an individual fits within DHS's narrower enforcement priorities and ICE has probable cause that the individual is removable. In many cases, rather than issue a detainer, ICE will instead request notification (at least 48 hours, if possible) of when an individual is to be released. ICE will use this time to determine whether there is probable cause to conclude that the individual is removable. (Id.)

Although PEP relies more on requests to local law enforcement to notify ICE when an individual is released than hold requests, concerns have been raised that the requests for notifications of release have resulted in delays in release to allow ICE time to detain the individual.

3) **ICE Involvement Can Impede Cooperation Between Local Law Enforcement and the Community:** A study by the University of Illinois – Chicago surveyed Latino immigrants in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties on their perception of local law enforcement when there's involvement in immigration enforcement found the following:

   a) 44 percent of Latinos surveyed reported they are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know;

   b) 45 percent of Latinos stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status;

   c) 70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime;

   d) Fear of police contact is not confined to immigrants. For example, 28 percent of US-born Latinos said they are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know; and

   e) 38 percent of Latinos reported they feel like they are under more suspicion now that local law enforcement authorities have become involved in immigration enforcement. This figure includes 26 percent of US-born respondents, 40 percent of foreign-born respondents, and 58 percent of undocumented immigrant respondents. (Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, University of Illinois at Chicago, Nik, Theodore et al., (May 2013), *available at* http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)

4) **Argument in Support**: According to *The Mexican American Legal Defense and Educational Fund*, "Passage of California's TRUST Act (AB 4 -Ammiano) in 2013 was instrumental in preventing the separation of thousands of families. This law limits immigration 'hold' or detainer requests, triggered by deeply controversial deportation programs like the program formerly known as 'Secure Communities' or S-Comm. These ICE

hold requests, found unconstitutional by a federal court in 2014, caused immigrants to be detained for extra time, at local expense, merely for deportation purposes.

"On November 20, 2014, the Department of Homeland Security acknowledged the failure of the S-Comm Program and announced a reboot of the program. However, ICE's reboot – named the Priority Enforcement Program or PEP – contains the same fundamental flaws. Like S-Comm, PEP has been shrouded in secrecy since its beginning with little information available to the public about which jurisdictions it is active in and how it is operating in these jurisdictions.

"Like its predecessor S-Comm, PEP continues to check the immigration status of all individuals by reviewing fingerprints taken by local police at the point of arrest, prior to the individual receiving any due process. In addition to continuing to rely on ICE hold requests, PEP also relies on notification requests, which are requests to local law enforcement to *notify* ICE when an individual is released. The end result of responding to a notification request is the same as with an ICE hold. ICE requests notification of release time so that they can detain the person at the point of release, leading to unconstitutional detentions at local jails and separating Californian families.

"In addition to continuing to rely on ICE hold requests, PEP also relies on notification requests, which are requests to local law enforcement to *notify* ICE when an individual is released. The end result of responding to a notification request is the same as with an ICE hold. ICE requests notification of release time so that they can detain the person at the point of release, leading to unconstitutional detentions at local jails and separating Californian families. Aside from ICE notification requests, since passage of the TRUST Act, ICE has utilized other troubling tactics to burden local law enforcement with deportations. This includes racially profiling individuals for interrogations in jail about their immigration status, while denying them access to counsel. ICE is also reviewing inmate logs and searching jail computers to gather addresses and telephone numbers to conduct raids, traumatizing family members and invoking fear in immigrant communities.

"The TRUTH Act would bring transparency to participation in federal immigration enforcement by requiring the local government and local law enforcement agency to enter into a Memorandum of Understanding before participating in ICE programs. The bill requires public meetings vetting such an agreement, as well as a public vote by the local government, allowing for the public's voice to be heard. The TRUTH Act also prevents separation of immigrant families by requiring local governments to abide by the protections of the TRUST Act for ICE notification requests."

5) **Argument in Opposition**: According to *The California State Sheriffs' Association*, "AB 2792 unduly burdens law enforcement by requiring an agency to enter into a memorandum of understanding (MOU) with its governing body if the law enforcement agency intends to cooperate with federal authorities on issues related to immigration, particularly detention and notification. As long as law enforcement actions comport with local, state, and federal law, agencies should not be limited by this MOU process. Additionally, a proposed MOU would be the subject of at least three different public forums and the MOU would have to be renewed every two years. We oppose this unwieldy process as it will impede law enforcement's ability to keep our communities safe by requiring agencies to negotiate unnecessary hurdles to simply work with our federal partners.

"Additionally, this bill attempts to preclude law enforcement from responding to federal requests for notification when a jail houses someone who might be the subject of an immigration hold. State law, the TRUST Act, already governs when and how a local entity may detain a person subject to an immigration hold. That said, we believe it is inappropriate for the state to tell a local agency that it cannot respond to a reque3st for information from the federal government unless the local entity has the authority itself to detain the individual. These are two entirely separate situations, yet AB 2792 inappropriately melds them."

6) **Prior Legislation**:

a) AB 4 (Ammiano), Chapter 570, Statutes of 2013, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

b) AB 524 (Mullin), Chapter 572, Statutes of 2013, provides that a threat to report the immigration status or suspected immigration status of an individual or the individual's family may induce fear sufficient to constitute extortion.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Immigrant Policy Center (Co-sponsor)
Asian Americans Advancing Justice – Asian Law Caucus (Co-sponsor)
National Day Laborer Organizing Network (Co-sponsor)
American Civil Liberties Union of California (Co-sponsor)
Immigrant Legal Resource Center (Co-sponsor)
Mexican American Legal Defense and Educational Fund (Co-sponsor)
National Day Laborer Organizing Network (Co-sponsor)
Alliance San Diego
American Friends Service Committee
Asian Pacific Islander Legal Outreach
ASPIRE
California Attorneys for Criminal Justice
California Immigrant Youth Justice Alliance
California Public Defenders Association
California Rural Legal Assistance Foundation
Central American Resource Center
Centro Legal de la Raza
Coalition for Humane Immigrant Rights of Los Angeles
Community Health for Asian Americans
Community Initiatives for Visiting Immigrants in Confinement
Community United Against Violence
Congregations Building Community

Dolores Street Community Services
Dream Team Los Angeles
East Bay Immigrant Youth Coalition
East Bay Organizing Committee
Filipino Advocates for Justice
Immigration Action Group
Immigrant Youth Coalition
Inland Coalition for Immigrant Justice
Inland Empire Immigrant Youth Coalition
Inland Empire Rapid Response Network
Instituto de Educacion Popular del Sur de California
Interfaith Movement for Human Integrity
Lawyers Committee for Civil Rights of the San Francisco Bay Area.
Legal Services for Prisoners with Children
Los Angeles Immigrant Youth Coalition
Mujeres Unidas y Activas
Mixteco/Indigena Community Organizing Project
National Immigration Law Center
North Bay Immigrant Youth Union
Orange County Immigrant Youth United
Pangea Legal Services
PICO California
Pomona Economic Opportunity Center (PEOC)
Prison Policy Initiative
RAIZ
Sacramento Immigration Alliance
San Diego Immigrant Rights Consortium
San Fernando Valley Dream Team
San Fernando Valley Immigrant Youth Coalition
San Joaquin Immigrant Youth Collective
Southeast Asia Resource Action Center
Street Level Health Project
Supervisor Sheila Kuehl, Board of Supervisors County of Los Angeles
Thai Community Development Center
Vital Immigrant Defense Advocacy & Services, Inc.

**Opposition**

The California State Sheriffs' Association

**Analysis Prepared by**: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Consultant: Matt Dean

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

AB 2839 (Thurmond) – As Amended March 17, 2016

**PULLED BY COMMITTEE**

**Analysis Prepared by**: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2340 (Gallagher) – As Introduced February 18, 2016
**MOTION TO GRANT RECONSIDERATION ONLY**

**SUMMARY**: Exempts persons holding valid licenses to carry a concealed firearm (CCW) who are also protected by a domestic violence protective order from both the school zone and the university prohibitions from possessing a firearm on a school zone campus.

**EXISTING LAW**:

1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)

2) Defines a "school zone" to means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)

3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)

    a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years.

    b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:

        i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,

        ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:

            (1) If the person previously has been convicted of any felony, or of any specified crime.

            (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.

(3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.

c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years.

d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.

e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.

f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.

g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years.

h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.

4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)

a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued

by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.

e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.

5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (l).)

a) A duly appointed peace officer;

b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;

c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;

d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;

e) A person holding a valid license to carry a concealed firearm;

f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;

g) A security guard authorized to carry a loaded firearm;

h) An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,

i) An existing shooting range at a public or private school or university or college campus.

6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons: (Pen. Code, § 626.9, subd. (l).)

a) A duly appointed peace officer as defined.

b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.

c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.

d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.

e) A person holding a valid license to carry the firearm.

f) An armored vehicle guard, who is engaged in the performance of that person's duties.

**FISCAL EFFECT:**

**COMMENTS:**

1) **Author's Statement**: According to the author, "victims of domestic should be able to protect themselves at all times. Preventing victims who possess a valid CCW permits from carrying firearms on school grounds will only make them more vulnerable to abuse and attacks."

2) **Persons with Concealed Carry Permits may Carry Weapons on School Grounds if Authorized by School Officials:** Under the existing code section for the Gun-Free School Zone Act, any person can possess a concealed weapon on school grounds provided that they have permission from school officials. The relevant code sections read as follows:

> "[A]ny person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, ***unless it is with the written permission of the school district superintendent, or equivalent school authority***, is punished…" (Pen. Code, § 626.9, subd (b).) (emphasis added.)
>
> "***Unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority***, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers in the scope of their duties." (Pen. Code, § 30310, subd. (a).) (emphasis added.)

The legislature has made a policy decision, that persons may carry firearms on school grounds with the written permission of school officials. The reason for this is to enhance public safety. Specifically, it is in the interests of public safety that school officials know that firearms are being carried on school grounds. Additionally, if a person has a domestic violence restraining order and the feel the need to carry a concealed weapon at work to defend themselves, school officials should know that danger is looming as well.

3) **Gun-Free School Zone Act of 1995:** Enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, the Gun-Free School Zone Act, hereafter referred to as the "Act," generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is a within a distance of 1,000 feet from the grounds of any public or private school, kindergarten or Grades 1 to 12, (a "school zone"), without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or Grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

4) **Argument in Support**: According to *Safari Club International*, "it is considered appropriate that persons possessing a permit to carry a concealed weapon (CCW) who are issued a protective order based on a threat of domestic violence be able to defend themselves if necessary while being in a school zone. They should be able to carry their concealed firearm wherever they go. Otherwise, they would be left defenseless if assaulted while within a school zone."

5) **Argument in Opposition**: According to *The California Chapters of the Brady Campaign to Prevent Gun Violence,* "In furtherance of our goal to reduce firearm violence in our communities, including on school grounds and college campuses, the California Brady Campaign Chapters are taking an oppose position to your bill, AB 2340.

"Legislation was enacted last year (SB 707) that prohibits persons holding a valid license to carry a concealed and loaded weapon (CCW) to bring the gun on the grounds of a K-12 school or on the campus of a university or college. Firearms, including concealed, loaded handguns, can still be allowed on school grounds or campuses with the written permission of school officials. AB 2340 would exempt CCW holders who are protected by a domestic violence protective order from the prohibition. Such person would also be exempt from the prohibition on carrying ammunition onto school grounds. The reasons for prohibiting CCW holders from carrying guns on school grounds and campuses have not changed since last year and apply to AB 2340.

"Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. Although there is a big variance in standards for issuing CCW permits among sheriffs, a permit is valid in any county in the state. Under AB 2340, a person who obtained a CWW permit in a rural county could be carrying a loaded gun on a campus in an urban setting. The Brady Campaign strongly believes that the discretion to allow hidden, loaded guns on a school grounds and college or university campuses must ultimately lie with school authorities, who bear the responsibility for the well-being and safety of their students.

"Moreover, it is very important for school authorities to know who has a loaded, hidden gun on campus. It has become standard practice for schools to prepare for a campus shooting incident. Active shooter drills are conducted and procedures are developed in collaboration with local law enforcement agencies. In a real school shooting, the presence of an armed person, who is unaware of the preparedness plan and whose intent may be unknown, adds unnecessary confusion and risk to the situation.

"The Violence Policy Center has documented homicides, suicides, accidental shootings and at least 29 mass shootings (since May 2007) committed by CCW license holders. Under existing law, they cannot carry their guns in many sensitive places. Similarly, those CCW permit holders who are also protected by a domestic violence protective order cannot carry their gun in many locations and schools should be no different.

"If a person feels threatened to the point where she or he feels the need to have a gun for a potential shootout, then that person should not be on school grounds or a college campus. Young children or older students could be killed in the crossfire. Safely using a firearm in such an emotionally charged or stressful situation would be difficult and would put many at great risk of being shot."

6) **Prior Legislation**:

a) SB 707 (Wolk), Chapter 766, Statutes of 2015, specified that persons who possess a concealed weapons permit may not possess that firearm on school grounds as specified.

b) AB 2609 (Lampert), Chapter 115, Statutes of 1998, clarified the Gun Free School Zone Act (Act) to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. Exempts specified law enforcement and security personnel.

c) AB 624 (Allen), Chapter 659, Statutes of 1995, passed the Gun-Free School Zone Act of 1995.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Rifle and Pistol Association
California Sportsmen's Lobby, Inc.
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Peace Officer Research Association of California
Safari Club International

**Opposition**

California Chapters of the Brady Campaign to Prevent Gun Violence
California Federation of Teachers
Law Center to Prevent Gun Violence

**Analysis Prepared by**: Gabriel Caswell / PUB. S. / (916) 319-3744