California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

1020 N Ste, Room 111
(916) 319-3744
FAX: (916) 319-3745

AGENDA

Tuesday, April 18, 2023
9 a.m. -- State Capitol, Room 126

PART II Analyses

AB 1329 (Maienschein) through AB 1723 (Waldron)

Date of Hearing: April 18, 2023
Chief Counsel: Sandy Uribe

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

AB 1329 (Maienschein) – As Amended April 12, 2023

SUMMARY: Establishes a pilot program for the San Diego Sheriff's Department and the Department of Motor Vehicles (DMV) to provide incarcerated persons with a valid identification card or a renewed driver's license. Specifically, **this bill**:

1) Authorizes the San Diego County Sheriff's Department and the DMV to implement a pilot program to provide an identification card or a renewed driver's license for eligible incarcerated persons so they may have a valid identification card when released from a San Diego County detention facility.

2) Defines "eligible incarcerated person" as one who is applying for an original or replacement identification card and meets one of the following two sets of requirements:

   a) For persons who have previously held a California identification card (Cal-ID) or driver's license:

      i) The person has a usable photo on file with the DMV or if deemed unusable the person has a new one taken, and

      ii) The person has provided, and the DMV has verified, the their true full name, date of birth, social security number, proof of legal presence in the country, and California residency; or,

   b) For persons who have *not* previously held a Cal-ID or driver's license:

      i) The person has signed and verified their application for a Cal-ID under penalty of perjury;

      ii) The person has a usable photo taken;

      iii) The person has provided a legible thumb or finger print; and,

      iv) The person has provided acceptable proof of the their true full name, date of birth, social security number, legal presence in the country, and California residency, which shall be subject to DMV verification.

3) States that upon implementation of provisions of law allowing undocumented immigrants to apply for driver's licenses in California, those provisions will apply to persons unable to submit satisfactory proof that the applicant's presence in the United States is authorized

under federal law.

4) Requires the sheriff's department to facilitate the process between an incarcerated person and agencies holding documentation required for an eligible person to obtain a Cal-ID card, such as a birth certificate and social security number, including, but not limited to, necessary notary services, assistance with obtaining necessary forms, and correspondence, but only to the extent administratively feasible and within available resources.

5) Sets the fee for an original or renewal Cal-ID at the reduced rate of $8 applicable to persons incarcerated within a state correctional facility.

6) Authorizes the sheriff's department and the DMV to provide a renewed driver's license instead of a Cal-ID if the incarcerated person had a valid license within the past 10 years, otherwise meets the eligibility criteria for renewing a driver's license by mail, and is otherwise eligible for the issuance of a license.

7) States that an incarcerated person receiving a driver's license is responsible for paying the difference between the cost of the driver's license and the reduced fee for a Cal-ID.

8) Specifies that these provisions do not remove the examination discretion of the DMV for renewing a driver's license.

9) Requires the sheriff's department to submit a report by April 1, 2028 with all of the following information:

   a) The number of identification cards issued under the program;

   b) The number of driver's licenses renewed;

   c) Any problems or barriers in implementing the pilot program; and,

   d) Any recommendations or best practices identified.

10) Provides that the pilot program is for five years and sunsets the program on January 1, 2029.

EXISTING LAW:

1) Requires that CDCR and the DMV ensure that all eligible inmates released from state prison have a valid identification card. (Pen. Code, § 3007.05, subd, (a)(1).)

2) Requires CDCR to facilitate the process between an incarcerated person and agencies holding documentation required for an eligible person to obtain a Cal-ID card, such as a birth certificate and social security number, including, but not limited to, necessary notary services, assistance with obtaining necessary forms, and correspondence, but only to the extent administratively feasible and within available resources. (Pen. Code, § 3007.05, subd, (a)(1).)

3) Defines "eligible inmate" to mean an inmate who meets all of the following requirements:

a) For persons who have previously held a California identification card (Cal-ID) or driver's license:

   i) The person has a usable photo on file with the DMV or if deemed unusable the person has a new one taken; and

   ii) The person has provided, and the DMV has verified, the their true full name, date of birth, social security number, proof of legal presence in the country, and California residency (Pen. Code, § 3007.05, subd. (c)); or,

b) For persons who have *not* previously held a Cal-ID or driver's license:

   i) The person has signed and verified their application for a Cal-ID under penalty of perjury;

   ii) The person has a usable photo taken;

   iii) The person has provided a legible thumb or finger print; and,

   The person has provided acceptable proof of the their true full name, date of birth, social security number, legal presence in the country, and California residency, which shall be subject to DMV verification. (Pen. Code, § 3007.05, subd. (d).)

4) Authorizes CDCR and the DMV provide a renewed driver's license in lieu of an identification card if the incarcerated person meets specified eligibility criteria, has had a valid driver's license within the prior 10 years, and is otherwise eligible for the issuance of a driver's license. (Pen. Code, § 3007.05, subd. (f).)

5) Provides that an incarcerated person receiving a driver's license is be responsible for paying the difference between the cost of the driver's license and the reduced fee for a Cal-ID. (Pen. Code, § 3007.05, subd. (f).)

6) Establishes an $8 fee for a replacement identification card issued to an eligible inmate upon release from a federal correctional facility or a county jail facility, or the Department of State Hospitals. (Veh. Code, § 14902, subds. (g) & (i).)

7) Establishes an $8 fee for an original or replacement identification card issued to an eligible inmate upon release from a state correctional facility. (Veh. Code, § 14902, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "For individuals transitioning back into the local communities after a period of incarceration, an official California ID card is necessary in order to access services, obtain employment, secure housing and seek medical insurance such as Medi-Cal. The legislature has taken action to make it easier for inmates leaving prison to obtain an ID with the goal of setting individuals up for success and reducing recidivism. AB 1329 expands on this progress by authorizing a 5-year pilot project for the

San Diego County Sheriffs' Department to explore a more expeditious process in issuing state identification cards to incarcerated persons upon their release from a San Diego County jail facility."

2) **CDCR Cal-ID program**: The purpose of the Cal-ID program is to "streamline access to support services, such as medical, housing, and right-to-work documents" upon release. An incarcerated individual must be within 13 months of release from CDCR to apply for a Cal-ID. (https://www.cdcr.ca.gov/rehabilitation/calid/ [as of April 10, 2023].)

   As originally implemented, CDCR's Cal-ID program provided a valid California ID card to eligible inmates upon their release from prison, and the program was located at 13 prisons designated as Reentry Hub institutions. AB 2308 (Stone, Chapter 607, Statutes of 2014) expanded the CAL-ID program, requiring CDCR and DMV to ensure that all eligible inmates released from state prison have a valid ID card.

   This bill creates a five-year pilot program which mirrors the current CDCR Cal-ID program for persons incarcerated in San Diego County jails. It also requires a report to the Legislature to obtain data on the program.

3) **Argument in Support**: According to the *San Diego County Sheriff's Department*, the sponsor of this bill, "In 2015, the County of San Diego established a Memorandum of Understanding (MOU) with the DMV in facilitating the issuance of identification cards to incarcerated persons in San Diego County jails. The paper process to initiate an application takes DMV approximately 120 days from receipt of pre-screening information to the delivery of completed identification cards. Once an identification card is received, the San Diego County Sheriff's Department retains possession of the identification card issued by the DMV until the release of that individual. Since the inception of the MOU, the Sheriff's Department has issued over 3,500 identification cards to incarcerated individuals.

   "AB 1329 will allow for efficiency by cutting the identification card issuance time in half so an incarcerated person can get quicker access to an official government issued identification card or driver's license. To support individuals transitioning back into the local communities, an official identification card is a needed step towards self-sufficiency and removes barriers with the end goal being the ability to access fundamental services for a successful reintegration back into society."

4) **Prior Legislation**:

   a) SB 629 (Roth), Chapter 645, Statutes of 2021, changed the eligibility criteria for a state prison inmate to be issued a state identification card upon release.

   b) AB 2308 (Stone), Chapter 607, Statutes of 2014, required CDCR and the DMV to ensure that all eligible inmates released from state prisons have valid identification cards.

   c) AB 777 (Bass), of the of the 2009-10 Legislative Session, would have required CDCR to establish a pilot program at two state facilities to provide each inmate at those facilities, prior to his or her release, a valid California identification card issued by the DMV. AB 777 was held on the Appropriations Committee's Suspense File.

d) AB 639 (Hancock), of the of the 2007-08 Legislative Session, would have provided that prior to release on parole, CDCR shall take reasonable steps to ensure that each parolee successfully obtains a valid California identification card issued by the DMV. AB 639 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego County Sheriff's Department (Sponsor)
California Public Defenders Association
California State Association of Counties
California State Sheriffs' Association
City of San Diego
San Diego County District Attorney's Office
San Diego Reentry Roundtable

Opposition

None

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

Date of Hearing: April 18, 2023
Counsel: Cheryl Anderson

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

AB 1371 (Low) – As Amended March 23, 2023

As Proposed to be Amended in Committee

SUMMARY: Prohibits a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

EXISTING LAW:

1) Specifies that "unlawful sexual intercourse" is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age. (Pen. Code, § 261.5, subd. (a).) Punishes unlawful sexual intercourse as follows:

   a) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor. (Pen. Code, § 261.5, subd. (b).)

   b) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment for 16 months, two, or three years in the county jail for a violation of the felony provision. (Pen. Code, § 261.5, subd. (c).)

   c) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for two, three, or four years. (Pen. Code, § 261.5, subd. (d).)

2) 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).)

3) Defines "conditional sentence" as "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

4) Sets the period of probation for a misdemeanor to no longer than one year, unless the offense includes specific probation lengths within its provisions. (Pen. Code, § 1203a.)

5) Sets the period of probation for a felony to no longer than two years, except as specified (Pen. Code, § 1203.1, subds. (a) & (l).)

6) Authorizes the court to impose and require any or all reasonable conditions of probation as it may determine are fitting and proper so that justice may be done, that amends may be done to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. (Pen. Code, § 1203.1, subd. (j).)

7) Authorizes the court to revoke, modify, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Victims' rights are critical to make sure our criminal justice system remains fair and balanced. It's inexcusable for rape cases in our state to be mishandled. AB 1371 is going to ensure victims are protected and rape cases are prosecuted correctly. If someone is found guilty of statutory rape, the defendant should never be able to fulfill community service in a place where minors are present."

2) **Probation Supervision**: Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

   This bill would prohibit a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

3) **Constitutional Considerations:** It is well-settled that a probationer, like a parolee, retains basic constitutional protection against arbitrary and oppressive official action. (See *In re Taylor* (2015) 60 Cal.4th 1019, 1038; *People v. Reyes* (1998) 19 Cal.4th 743, 753-754; *People v. Woods* (1999) 21 Cal.4th 668, 691.) However, courts have observed that "probation is a privilege and not a right, and that adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights—as, for example, when they agree to warrantless search conditions." (*People v. Olguin* (2008) 45 Cal.4th 375, 384 [citation omitted]; *People v. Bravo* (1987) 43 Cal.3d 600, 609.) Reasonable probation conditions may infringe upon constitutional rights, provided the conditions are narrowly

tailored to achieve legitimate purposes, such as fostering the probationer's rehabilitation or protecting the public. (*Olguin*, at p. 384.)

Freedom of association, for example, is a constitutional right. (*People v. Gonsalves* (2021) 66 Cal.App.5th 1, 6-7.) Because this bill would prohibit an individual from completing community service at a school or place where children congregate, it arguably may infringe on this right. That being said, this bill would prohibit only one subset of statutory rape offenders from performing community service at a school or where children congregate – those 21 years of age or older who were convicted on the basis of having engaged in sexual intercourse with a minor under 16 years of age. This bill would not encompass statutory rape cases where the age difference is much narrower and the perpetrator themselves could be a minor. Arguably, it is intended to balance fostering an individual's rehabilitation through community service while protecting children.

Probation conditions may also be challenged as excessively vague. "'It is an essential component of due process that individuals be given fair notice of those acts which may lead to a loss of liberty. [Citations.] This is true whether the loss of liberty arises from a criminal conviction or the revocation of probation. [Citations.] [P] "'Fair notice' requires only that a violation be described with a "'reasonable degree of certainty"' . . . so that 'ordinary people can understand what conduct is prohibited.'" [Citations.]" (*In re Angel J.* (1992) 9 Cal.App.4th 1096, 1101-1102; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018.) Thus, a probation condition "'must be sufficiently precise for the probationer to know what is required of him,'" and for the court to determine whether the condition has been violated. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630, quoting from *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.)

Some might argue that the probation condition to "stay away from any places where minor children congregate" may be unconstitutionally vague. But in *People v. Delvalle* (1994) 26 Cal.App.4th 869, the court considered that same language and found it not unconstitutionally vague. The court noted that the obvious places that come to mind are elementary schools, day care, and parks. (*Id.* at pp. 878-879.) However, in an abundance of caution, the author may wish to further clarify this provision to avoid potential constitutional vagueness issues.

4) **Argument in Support**: According to *Crime Victims Alliance*, "We believe this is common sense legislation that will ensure that as sex offenders who have assaulted minors and are placed on probation, are not able to complete their community service hours at a school or a location where children congregate."

5) **Argument in Opposition**: None on file.

6) **Prior Legislation**: AB 2199 (Campos), of the 2015-2016 Legislative Session, would have made statutory rape punishable by an additional two-year sentence enhancement if the offender is a person in a "position of authority" over the victim, as specified. AB 2199 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Crime Victims Alliance
Peace Officers Research Association of California (PORAC)

Opposition

None on file

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

Amended Mock-up for 2023-2024 AB-1371 (Low (A))

Mock-up based on Version Number 98 - Amended Assembly 3/23/23
Submitted by: Cheryl Anderson, Assembly Public Safety

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

SECTION 1. Section 261.5 of the Penal Code is amended to read:

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under 18 years of age and an "adult" is a person who is 18 years of age or older.

(b) A person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) A person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) A person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over 21 years of age who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against a person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and a defendant shall not be denied probation because of their inability to pay the fine permitted under this subdivision.

(f) A person convicted of violating **subdivision (d) of** this section who is granted probation shall not complete their community service at a school or location where children congregate.

Date of Hearing: April 18, 2023
Counsel: Liah Burnley

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

AB 1380 (Berman) – As Introduced February 17, 2023

SUMMARY: Expands the crime of "revenge porn" to include the distribution of specified images obtained without the authorization of the person depicted or by exceeding authorized access from the property, accounts, messages, files, or resources of the person depicted.

EXISTING FEDERAL LAW: Protects the freedom of speech and of the press. (U.S. Const., 1st Amend.)

EXISTING STATE LAW:

1) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press. (Cal. Const., art. I, § 2.)

2) Makes it a misdemeanor to look through a hole or opening, into, or otherwise view, by means of any instrumentality, including, but not limited to, a camera, motion picture camera, camcorder, mobile phone, electronic device, or unmanned aircraft system, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. (Pen. Code, § 647, subd. (j)(1).)

3) Makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. (Pen. Code, § 647, subd. (j)(2).)

4) Makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. (Pen. Code, § 647, subd. (j)(3).)

5) Makes it a misdemeanor to intentionally distribute an image of another identifiable person's intimate body parts or depicting the person engaged in one of several specified sex acts, under circumstances in which the persons agree or understand that the image shall remain private, when the person distributing the image knows, or should know, that its distribution will cause serious emotional distress, and where the person depicted suffers that distress. (Pen. Code, § 647, subd. (j)(4)(A).)

6) Provides that a person intentionally distributes an image when that person distributes the image or arranges, specifically requests, or intentionally causes another person to distribute that image. (Pen. Code, § 647, subd. (j)(4)(B).)

7) Defines "intimate body part" as any portion of the genitals, the anus, and in the case of a female, also includes any portion of the breasts below the top of the areola that is either uncovered or clearly visible through clothing. (Pen. Code, § 647, subd. (j)(4)(C).)

8) Makes distribution of the image exempt from prosecution if:

   a) It is made in the course of reporting an unlawful activity;

   b) It is made in compliance with a subpoena or other court order for use in a legal proceeding;

   c) It is made in the course of a lawful public proceeding; or,

   d) It is related to a matter of public concern or public interest. (Pen. Code, § 647, subd. (j)(4)(D)(i)-(iv).)

9) Specifies a second or subsequent violation of the misdemeanors described above, also known as invasion of privacy, is punishable by imprisonment in the county jail not exceeding one year, and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(1).)

10) Specifies that if the victim of the invasion of privacy, as described above, was a minor at the time of the offense, the violation is punishable in a county jail not exceeding one year, and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(2).)

11) States that the invasion of privacy provisions do not preclude punishment under any section of law providing for greater punishment. (Pen. Code, § 647, subd. (j)(5).)

12) Provides that every person who, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, is guilty of a misdemeanor punishable by up to one year in the county jail and/or a fine not exceeding $1,000. (Pen. Code, § 653.2, subd. (a).)

13) Provides that every person who sends, brings, possesses, prepares, publishes, produces, develops, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, as defined, with the intent to distribute, exhibit, or exchange such material, is guilty of either a misdemeanor punishable by imprisonment in the county jail for up to one year, and/or a fine not to exceed $1,000, or guilty of a felony punishable by imprisonment in the state prison, and/or a fine not exceeding $10,000. (Pen. Code, § 311.1, subd. (a).)

14) Specifies that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, as defined, for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to $100,000. (Pen. Code, § 311.2, subd. (b).) A person convicted of this offense is subject to sex offender registration for 10 years. (Pen. Code, § 290 subds. (c) & (d)(1).)

15) Provides that any person who hires or uses a minor to assist in the preparation or distribution of obscene matter is guilty of a misdemeanor, unless the person has a prior conviction, in which case the crime is a felony. (Pen. Code, §§ 311.4, subd. (a), 311.9, subd. (b).)

16) Provides that any person who hires or uses a minor to assist in the possession, preparation or distribution of obscene matter for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 311.4, subd. (b).)

17) Makes it a misdemeanor for a person to advertise or promote the sale, distribution, or exhibition of matter represented or held out by him or her to be obscene. (Pen. Code, § 311.5.)

18) Defines "obscene matter" as "matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (Pen. Code, § 311, subd. (a).)

19) Establishes a private cause of action against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent when all of the following conditions are satisfied:

    a) The person knew that the other person had a reasonable expectation that the material would remain private;

    b) The distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration. Defines "intimate body part" to mean any portion of the genitals, and in the case of a female, any portion of the breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing; and,

    c) The other person suffers general or special damages, as defined. (Civ. Code, § 1708.85, subds. (a) & (b).)

20) Provides that a depicted individual has a cause of action against a person who does either of the following:

   a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure; or,

   b) Intentionally discloses sexually explicit material that the person did not create, and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (Civ. Code, § 1708.86, subd. (b).)

21) Defines "depicted individual" as "an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction." (Civ. Code, § 1708.86, subd. (a)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1380 will strengthen California's law against revenge porn by closing the loopholes in the current law used by individuals to avoid punishment for distributing private sexual images of another person without their consent. Under current law, there are circumstances where a jury cannot agree that the photo or video distributed was taken under circumstances where the parties agreed that the image shall remain private because the image or video was taken surreptitiously. If a sexually explicit image or video is secretly taken and then distributed, this circumstance should fall under California's revenge porn laws. This bill will clarify that the existing crime of revenge porn applies when an image is knowingly obtained without the victim's knowledge or consent.

   "To ensure that victims of revenge porn are adequately protected, this bill will ensure that a person cannot distribute secretly recorded or captured image or video without the authorization of the person depicted. Additionally, it would ensure that a person cannot distribute images or videos that are stolen from the depicted person. Too often perpetrators of revenge porn leverage legal loopholes to get away with this heinous crime, leaving victims traumatized, humiliated, and without justice. AB 1380 will ensure that if you record and distribute another person's sexually explicit images without their consent there will be legal consequences."

2) **Existing Law Already Captures the Conduct this Bill Intends to Criminalize**: The intent of this bill is to criminalize the situation where an "image is knowingly obtained without the victim's knowledge or consent" and distributed. Penal Code section 647 subdivision (j) prohibits secretly filming, photographing, or recording another person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in any area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. (Pen. Code, § 647, subd. (j)(3).) The act of secretly taking a picture or filming a person, with the intent to invade the privacy of that person, whether or not the image is subsequently distributed, is already criminal offense. For example, in *In re M.H.* (2016) Cal.App.5th 699, evidence was sufficient to find that a minor invaded the

privacy of a fellow high school student when he used his smartphone to surreptitiously record another student in a school bathroom stall while he was either masturbating or jokingly pretending to do so, and had the video disseminated on social media. Similarly, in *People v. Johnson* (2015) Cal.App.4th 1432, the defendant was guilty of the offense for secretly photographing individuals under their skirts while shopping at Target.

In addition, Penal Code section 502 makes unauthorized access to a computer network, which includes a phone or social media profile, a crime. Under Section 502, there is protection for traditional hacking, but the statute also protects individual users from unauthorized access, and the offence is chargeable as a misdemeanor or felony. (Pen. Code, § 502.) In 2015, the Attorney General prosecuted a cyber-hacker who hacked into email accounts and stole victims' private intimate images. The defendant pled guilty to computer intrusion. (Office of the Attorney General, *Attorney General Kamala D. Harris Announces Guilty Plea of Hacker Involved in Cyber Exploitation Scheme* (June 17, 2015) <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harrisannounces-guilty-plea-hacker-involved-cyber> [as of March 30, 2023].)

3) **Existing Civil Remedies**: There is currently a civil remedy in place for this situation. In 2014, the Legislature enacted AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, creating a private right of action against a person who intentionally distributes a sexually explicit photographs or other images or recordings of another person, without the consent of that person. (Civ. Code, § 1708.85.) In cases where the person depicted has not suffered serious emotional harm, they can nonetheless get an injunction to stop distribution of the image. (Civ. Code, § 1708.85, subd. (d).) Depending on the circumstances, a civil suit stemming from revenge porn can be commenced under many other theories, such as intentional infliction of emotional distress, fraud, false light, invasion of privacy, defamation, copyright infringement, misappropriation, and civil harassment.

4) **Constitutional Concerns:** Due process of law is based on the concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders. (*People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1, 6 [citations omitted].) These protections are often referred to collectively as the 'fair warning' rule. (*Ibid.*) The vagueness doctrine bars enforcement of a statute, which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. (*Ibid.*) A vague law not only fails to provide adequate notice to those who must observe its strictures, but also "impermissibly delegates basic policy matters to law enforcement, judges, and juries for resolution on an ad hoc and subjective basis, with the dangers of arbitrary and discriminatory application. (*Ibid.*) The language used must have "reasonable specificity."(*Ibid.*)

The language proposed in this bill may be considered vague because it fails to specify *who* must knowingly record capture or otherwise obtain an image without authorization of the person depicted. This bill provides that "the image was knowingly [...] obtained without the authorization of the person depicted;" or "the image is knowing obtained by exceeding authorized access [...] of the person depicted." The bill lacks specificity as to whether a person who distributes an image is guilty of the offense, even if they did not know that the image was captured without the consent of the person depicted. Accordingly, this bill could fail to put people reasonably on notice of the conduct the law intends to prohibit.

In addition, the First Amendment to the United States Constitution provides that congress shall make no law abridging the freedom of speech. The First Amendment applies to the states under the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 133–134.) To avoid being unconstitutionally overbroad, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612.)

This bill could be unconstitutionally overbroad in violation of the First Amendment because it could arbitrarily foreclose to any person the right to distribute photographs of certain images, even if the person distributing the image does not know that the image was captured without the authorization of the person depicted. For example, a person could take a screenshot of a video posted online that was knowingly captured by a third party without the authorization of the person depicted in the images. If that person shares the video, for example by sending it in a text to a friend, they could be guilty of a misdemeanor. Such a prohibition could have a chilling effect on speech. Further, though the intent of this bill is to prevent the harms associated with "revenge porn," the images covered by this statute may not always be obscene – in some cases, the images they may involve nudity rather than sexual acts.

5) **Argument in Support**: According to the *California District Attorneys Association* (CDAA), "With the continued growth in social media use and internet accessibility, the crime of revenge porn has become an increasingly common crime with ever more devastating consequences on victims. The crime itself can often be committed within seconds, through the click of a mouse or the tap of a screen, but victims are forced to live with the consequences for years to come. Each new advancement in technology brings new ways for perpetrators to obtain and distribute revenge porn.

"The revenge porn statute, as presently written, seemingly precludes the prosecution of revenge porn when the distributed image was taken or obtained without the victim's knowledge or consent. This ambiguity in the statute's language impedes the prosecution of revenge porn in this specific context despite the victims still being subjected to the ugly consequences that this statute was enacted to prevent. By clarifying the revenge porn statute to explicitly include the distribution of intimate images taken without the victim's knowledge or consent, along with accounting for advancements in technology by including images obtained by exceeding authorized access, this bill will strengthen and expand protections for victims of revenge porn."

6) **Related Legislation**:

   a) AB 1602 (Alvarez) would add to the definition of disorderly conduct the attempt to engage in the crime of soliciting prostitution, the attempt to agree to engage in prostitution, or the attempt to engage in prostitution. AB 1602 is pending hearing in this Committee.

   b) AB 1721 (Ta) would make it a crime to knowingly distribute deepfakes of sexual conduct without the consent of the depicted individual. AB 1721 is being heard in this Committee

today.

7) **Prior Legislation**:

a) SB 23 (Rubio), Chapter 483, Statutes of 2021, extends the statute of limitations for the crime of revenge porn to allow prosecution to commence within one year of the discovery of the offense, but not more than four years after the image was distributed.

b) AB 307 (Lackey), of the 2021-2022 Legislative Session, would have required a person convicted of revenge porn to register as a sex offender. The hearing for AB 307 in the Assembly Public Safety Committee was canceled at the request of the author.

c) SB 894 (Rubio), of the 2019-2020 Legislative Session, would have allowed the prosecution for revenge porn to commence within one year of the discovery of the offense. SB 894 was never heard by the Senate Committee on Public Safety.

d) AB 2065 (Lackey), of the 2019-2020 Legislative Session, would have made the distribution of an intimate image of another person a felony offense punishable in state prison and requiring registration as a sex offender, and would have created new and separate misdemeanor crimes prohibiting the distribution and threatened distribution of such images. AB 2065 was not heard in this Committee.

e) AB 602 (Berman), Chapter 491, Statutes of 2019, created a private right of action for a "depicted individual" against a person who either creates or intentionally discloses sexually explicit material without the consent of the depicted person.

f) AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, created a private right of action against a person who intentionally or recklessly distributes a sexually explicit photograph or other image or recording of another person, without the consent of that person.

g) SB 1255 (Cannella), Chapter 863, Statutes of 2014, expanded the elements of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts.

h) SB 255 (Cannella), Chapter 466, Statutes of 2013, created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private.

i) SB 1484 (Ackerman), Chapter 666, Statutes of 2004, expanded the crime of disorderly conduct to include the use of a concealed instrumentality to secretly videotape another fully or partially undressed person for the purpose of viewing that person's body or undergarments without the consent while that person is inside a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or in any other area in which that other person has a reasonable expectation of privacy, with the intent to invade that person's privacy.

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Clara County District Attorney's Office (Sponsor)
California District Attorneys Association
California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)

Opposition

None.

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

Date of Hearing: April 18, 2023
Counsel: Mureed Rasool

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

AB 1406 (McCarty) – As Amended March 16, 2023

As Proposed to be Amended in Committee

SUMMARY: Authorizes the Department of Justice (DOJ) to delay a firearms background check up to 30 days if they are unable to determine a purchaser's eligibility due to certain convictions or mental health confinements and allows the DOJ to delay a firearm background check period up to 30 days if there is a state of war or emergency. Specifically, **this bill**:

1) Allows the DOJ, if there is a state of war or emergency preventing the DOJ from determining a firearm purchaser's eligibility, to delay a firearm transaction up to 30 days after the dealer's original submission of the purchaser's information.

2) Authorizes the DOJ to notify a firearms dealer to delay a firearms transaction up to 30 days after receiving the transaction application if the purchaser is possibly ineligible to possess a firearm for specified criminal convictions or mental health confinements and the DOJ cannot determine the disposition of the convictions or confinements.

3) Authorizes the DOJ to notify a firearms purchaser of a delay by mail or through other means determined by the DOJ, and exempts the DOJ from such notification requirement if a specified emergency occurs.

4) Authorizes the DOJ to notify a minor seeking to purchase a firearm pursuant to a hunting license of a delay by mail or through other means determined by the DOJ.

5) Makes technical non-substantive changes.

EXISTING LAW:

1) Requires a firearms dealer to record and forward certain firearm transaction information, including firearm purchaser information, to the DOJ before completing a sale, lease, or transfer of a firearm. (Pen. Code, §§ 28200 *et seq.*)

2) Restricts delivery of a firearm within 10 days of the application to purchase, within 10 days of a submission to the DOJ of any correction to the application, or within 10 days of the submission to the DOJ of any requisite fee. (Pen. Code, §§ 26815, subd. (a)& 27540, subd. (a).)

3) Requires the DOJ, upon receiving firearm purchaser information, to examine records in order to determine if the firearm purchaser is prohibited by law from owning or possessing a firearm. (Pen. Code, § 28220, subd. (a).)

4) Provides that the DOJ must immediately notify the dealer to delay the firearms transaction beyond 10 days if the purchaser's records indicate any of the following circumstances:

   a) The purchaser has been taken into custody due to specified mental health treatments and the DOJ cannot determine whether the purchaser is prohibited due to such custody;

   b) The purchaser has been arrested or charged for a crime that, if convicted, would render the purchaser prohibited from possessing a firearm; or,

   c) The purchaser previously bought a firearm within the past 30 days. (Pen. Code, § 28220, subd. (f)(1)(A)(i)-(iii).)

5) States that the DOJ must notify the purchaser by mail regarding the delay and explain the process to resolve any inaccuracies or incompleteness. (Pen. Code, § 28220, subd. (f)(2).)

6) Prohibits persons under 21 years of age from being sold a firearm unless an exception applies. Exempts persons over 18 from this prohibition if they possess a valid hunting license, as specified. (Pen. Code, § 27510.)

7) States that, commencing July 1, 2025, for firearms purchasers over 18 but under 21 years of age, if the DOJ is unable to verify the validity of their hunting license, the DOJ must immediately notify the dealer to cancel the sale and notify the purchaser of such by mail. (Pen. Code, § 28220, subd. (f)(5).)

8) Provides that if, within 30 days of being notified, the DOJ ascertains a purchaser's eligibility to possess a firearm, the DOJ must inform the dealer of whether or not the purchaser is eligible. (Pen. Code, § 28220, subd. (f)(3).)

9) States that if, within 30 days of being notified, the DOJ is unable to ascertain a purchaser's eligibility, the DOJ must notify the dealer that it is unable to make a determination, and must let the dealer know that they can complete the firearm transaction. (Pen. Code, § 28220, subd. (f)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1406 simply grants the DOJ extra time to determine if a firearm should be transferred to a buyer during a state of emergency. We should be 100% certain that California buyers be eligible to own a gun before handing a weapon over."

2) **Background Checks and COVID-19**: In California, a prospective firearm purchaser must undergo a 10-day waiting period before their firearm can be delivered to them. (Pen. Code, §§ 26815, subd. (a) & 27540, subd. (a).) During this time, the DOJ must conduct a background check to ensure the firearm purchaser is not prohibited from possessing a firearm. (Pen. Code, § 28220.)

   When the pandemic began in 2020, the DOJ began facing complications in conducting

background checks within the usual 10-day period, fell behind in processing their background check applications, and were subsequently sued. (*Campos v. Becerra* (2022) LEXIS 50277.) The court found that statute only provided the DOJ with the authority to extend the 10-day background check period for up to 30 days in three circumstances. (*Id.* at 3-4.) Those circumstances were when a purchaser may be prohibited from possessing a firearm based on their mental health record, criminal record, or based on the fact they previously purchased a handgun within the previous 30 days. (*Id.* at 3, citing Pen. Code, § 28220, subd. (f)(1)(A).) The DOJ argued that such a strict interpretation of the statute in question was incorrect and would contradict the purpose of the statute; however, the court found that a plain reading of the statute's text confined the DOJ to only those three circumstances. (*Id.* at 3-4.)

The DOJ also argued that case law recognizes an implied exception to every statute when compliance is impossible. (*Id.* at 4-5.) However, it appears the DOJ was not able to properly demonstrate they were faced with an impossible task given the circumstances. (*Id.* at 5-6.) After having rejected all of the DOJ's arguments, the court intimated that the DOJ could have sought an emergency order from the Governor under the Emergency Services Act to extend their background checks beyond 10 days due to the pandemic. (*Id.* at 6.)

The Emergency Services Act authorizes the Governor, during times of war or states of emergencies, to issue rules and regulations that suspend, alter, and replace statutes. (Gov. Code, § 8550 *et seq.*; *Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099, 1112-1113.) In part, the Act defines a state of emergency as a proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property caused by air pollution, fire, flood, epidemic, cyberterrorism, disease, and other enumerated calamities. (Gov. Code, § 8558, subd. (b).)

This bill, as amended, will allow the DOJ to extend background checks up to 30 days if there is such an event and that event has caused the DOJ to be unable to obtain or review firearm purchaser records. Although it does beg the question of why the DOJ should not be required to get the Governor's authorization, this type of language is similar to the statute that allows the Chairperson of the Judicial Council to extend arraignment, preliminary hearing, and trial deadlines. (Gov. Code, § 68115.)

Furthermore, this bill would also require the DOJ to delay a firearm transaction if they are unable to determine the disposition of a purchaser's specified conviction or mental health confinement. Existing law requires the DOJ to delay a firearm transaction if they are unable to determine whether a purchaser has been taken into custody pursuant to a specific mental health treatment, or arrested or charged with a crime that would render them ineligible. This bill would therefore add in situations where a purchaser's previous convictions or past confinements would result in a delay of a transactions, rather than a current arrest, charge, or custodial status.

3) **Argument in Support**: According to the *Department of Justice*, "During the COVID-19 pandemic in 2020, firearms sales nearly doubled. At the same time, the DOJ was facing unprecedented complications in processing those background checks within the 10-day limit caused by court and government office shutdowns and staffing shortages due to the Governor's proclamation of state of emergency. This meant that some background checks were completed after the 10-day waiting period.

"Recently, a trial court held that the DOJ violated Penal Code section 28220 by delaying firearm transfers beyond 10 days during the pandemic. The court opined that the statute only allowed for a delay in three very specific circumstances, none of which included statewide emergencies. Without legislative action, the DOJ could be required to allow firearms to be transferred after 10 days without a background check—even if there was another global level emergency justifying the delay in the process.

"Making certain that guns do not fall into the wrong hands is a goal we all share. Proper vetting of all purchasers is a critical part of that process. AB 1406 provides commonsense flexibility when emergency circumstances warrant a delay in processing background checks, while preserving the rights of potential firearm owners to take possession of their guns within a reasonable amount of time."

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

5) **Prior Legislation**:

   a) AB 500 (Ammiano), Chapter 737, Statutes of 2013, among other things, outlined the procedure for the DOJ to notify the dealer of the purchaser's status and established the timeline provisions for which to do so.

   b) SB 715 (Portantino), Chapter 250, Statutes of 2021, among other things, required the DOJ to verify the validity of a firearm purchaser's hunter's license and to cancel the transaction upon failure to verify the license.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice

Opposition

None received.

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

Amended Mock-up for 2023-2024 AB-1406 (McCarty (A))

Mock-up based on Version Number 98 - Amended Assembly 3/16/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 28220 of the Penal Code is amended to read:

28220. (a) (1) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) Commencing July 1, 2025, for the sale or transfer of a firearm to a person under 21 years of age pursuant to subdivision (b) of Section 27510, the Department of Justice shall verify the validity of the purchaser's hunting license with the Department of Fish and Wildlife.

(b) The Department of Justice shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register

to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.

(f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(ii) The purchaser has been arrested for, or charged with, a crime that would make the purchaser, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(iv) The purchaser may be a person described in Section 27500, and the department is unable to ascertain the effect of past criminal convictions or mental health confinements on the purchaser's eligibility without further research or without obtaining further records that could not be completed or obtained prior to the conclusion of the waiting period described in Sections 26815 and 27540.

(B) The dealer shall provide the purchaser with information about the manner in which the purchaser may contact the department regarding the delay described in subparagraph (A).

(2) The department shall notify the purchaser by mail or by other means as determined by the department regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form. This paragraph does not apply to any delivery that has been delayed pursuant to paragraph (6).

(3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:

(A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to the purchaser.

(B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.

(4) If the department is unable to ascertain the purchaser's eligibility to possess, receive, own, or purchase a firearm for any of the reasons described in subdivision (A) of paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to the purchaser.

(5) Commencing July 1, 2025, if the department is unable to ascertain the validity of a hunting license required pursuant to Section 27510, the department shall immediately notify the dealer to cancel the sale of the firearm. The department shall notify the purchaser by mail or by other means

as determined by the department, that the hunting license was not valid and unexpired or the Department of Fish and Wildlife was unable to verify the license based upon the information provided.

(6) If ~~an extraordinary event or incident, reasonably beyond the control of the department, including, without limitation~~, an event described in Section 8558 of the Government Code, has caused the department to be unable to obtain or review records to determine a purchaser's eligibility to purchase, receive, own, or possess a firearm prior to the conclusion of the waiting period described in Sections 26815 and 27540, the department may notify the dealer to delay the transfer of the firearm to the purchaser up to 30 days after the dealer's original submission of purchaser information to the department.

(g) (1) Upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.

(2) This subdivision does not prohibit the department from sharing information pertaining to a person that is prohibited from possessing a firearm if the department is otherwise expressly authorized or required by state law to share that information with the recipient party.

Date of Hearing: April 18, 2023
Counsel: Mureed Rasool

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

AB 1483 (Valencia) – As Amended March 16, 2023

As Proposed to be Amended in Committee

SUMMARY: Deletes the exemption that allows private persons to apply to purchase more than one firearm a month if it is a private party transaction unless the seller is required under state law or by court order to relinquish their firearms.

EXISTING LAW:

1) Requires a private person wishing to sell or transfer a firearm to another private person ("private party transaction") to do so through a state-licensed firearms dealer. (Pen. Code, 28050, subd. (a).)

2) Requires the seller or transferor to deliver the firearm to the dealer and specifies the procedure the dealer must follow after receiving the firearm. (Pen. Code, § 28050.)

3) Outlines the exceptions to the statute requiring a firearms dealer to conduct a private party transaction. Exceptions include, but are not limited to, a loan to a specified family member, a transfer for safekeeping to prevent use in a suicide, or a delivery to law enforcement under specified circumstances. (Pen. Code, §§ 27850 *et seq.*)

4) States that a person cannot purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period unless a specified exception applies, including private party transactions. (Pen. Code, § 27535.)

5) Provides that, commencing January 1, 2024, a person cannot purchase more than one firearm within any 30-day period unless a specified exception applies, including private party transactions. (Pen. Code, § 27535.)

6) Punishes a violation of the one-firearm-a-month purchasing rule as an infraction for the first two offenses and a misdemeanor for any subsequent offense. (Pen. Code, § 27590, subd. (e)(1)-(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Too many Californians suffer from the harms of gun violence. AB 1483 is a sensible, gun violence prevention bill that has the potential to save lives. A current exemption in law allows individuals to bypass the 30-day waiting period for firearm acquisitions, if the firearm is acquired from a private party

transfer. AB 1483 will close that gap and will instead require all individuals, regardless of how they are acquiring firearms, to adhere to the 30-day waiting period."

2) **Multiple Firearm Purchases and Firearm Trafficking**: According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), since 1975 firearms dealers have been required to report all transactions in which an unlicensed person acquired two or more handguns at one time or during any five consecutive business days. This circumstance is referred to as "multiple sales" or "multiple purchases" and was implemented to monitor and deter firearms trafficking. The ATF states that if one or more firearms recovered from a crime are part of a multiple purchase, it could be an indicator of potential firearms trafficking. (ATF. *Reporting Multiple Firearms Sales*. (Last reviewed Sept. 23, 2022) <https://www.atf.gov/firearms/reporting-multiple-firearms-sales> [as of Apr. 12, 2023].)

   A 2007 research report to the U.S. National Institute of Justice (NIJ) that examined firearms sales in Maryland, Baltimore, and the D.C. area over a period of five to ten years found that guns sold in multiple sales were up to 64% more likely to be used in a crime and accounted for roughly a quarter of recovered guns. (Koper et al. *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*. (2007) <https://www.ojp.gov/pdffiles1/nij/grants/221074.pdf> [as of Apr. 12, 2023].) More recent national data from the ATF indicates that approximately 9% of guns used in a crime, i.e. "crime guns," were part of a multiple sale transaction. (ATF. *Part III: Crime Guns Recovered and Traced Within the United States and Its Territories*. (Jan. 11, 2023) <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-iii-crime-guns-recovered-and-traced-us/download> [as of Apr. 13, 2023] at p. 15.) The ATF states that the yearly number of crime guns traced to a purchaser that were part of a multiple sale transaction increased by almost 89% from 2017 to 2021. (*Ibid.*) Crime guns that were part of a multiple sale had a considerably shorter median time-to-crime average than crime guns that were not part of a multiple sale (time-to-crime referring to the period of time between when a firearm was purchased and when it was recovered at a crime scene). (*Id.* at 31.)

   California started restricting multiple sales in 1999, it started out as a restriction for concealable firearms only, and has since evolved to include all firearms. (AB 202 (Knox), Chapter 128, Statutes of 1999; SB 61 (Portantino) Chapter 737, Statutes of 2019; AB 1621 (Gipson) Chapter 76, Statutes of 2022.) However, among the exemptions to the rule, there remained an exemption for private party transactions. (Pen. Code, § 27535, subd. (b)(8).) This meant that a person could buy one firearm within a 30-day period if they were buying it directly from a firearm dealer, but they could purchase as many firearms as they wanted within a 30-day period from a private party transaction. This bill would remove the exemption in order to curb multiple firearm sales, which, as mentioned above, are more likely to be trafficked or used to commit crimes.

   However, this bill was recently amended to exempt private party transactions where a seller is, either under state law or by court order, required to relinquish their firearms. Doing so would help facilitate removal of firearms from a prohibited person as it would allow them to wholesale their firearms to one purchaser. There may be other situations that proponents of the bill mentioned that the author may also want to consider. These situations include circumstances where, under existing law, a transfer does not need to go through a firearms dealer.

3) **Argument in Support**: According to *Giffords*, "Bulk firearm purchases can often be a significant warning sign that a buyer is a straw purchaser engaged in gun trafficking and/or acquiring weapons for organized criminal groups. Studies have found, for instance, that handguns sold in 'multiple sales' (the sale or two or more firearms to the same purchaser within the same 5-business day period) were up to 64% more likely to be used in crime than handguns purchased individually, and that 20-25% of all handguns recovered at crime scenes were purchased as part of a multiple sale. Since bulk purchases of semiautomatic rifles are such a significant warning sign of gun trafficking to organized criminal groups and cartels, ATF has, since 2011, required gun dealers in California and other border states to report multiple sales of certain semiautomatic rifles: dealers in California have been required to notify federal authorities when they sell or transfer two or more such weapons to the same person within a 5-day period.

"Laws limiting multiple sales can help to reduce gun trafficking. After Virginia introduced its limited one-handgun-per-month law, there was a significant reduction in the number of crime guns recovered outside the state and traced back to Virginia dealers. Laws limiting bulk firearm sales may also help prevent people planning to perpetrate a mass shooting attack from being able to immediately acquire an arsenal of weapons for their attack.

"California has been one of four states (along with Maryland, New Jersey, and Virginia) to place *some* express limitations on buyers' ability to acquire bulk quantities of firearms. California originally applied this "one gun per month" limitation to bulk handgun purchases. In 2019, California SB 61 expanded this law to cover bulk purchases of certain semiautomatic rifles obtained in any 30-day period too, and in 2022, AB 1621 expanded this law to also cover bulk purchases of core ghost gun components, including completed and unfinished firearm frames or receivers (also known as "firearm precursor parts.")

"These limitations are subject to multiple exemptions. One especially large and, in our view, problematic exception is that California's bulk firearm purchase limitations exempt any firearms purchased from unlicensed "private party" sellers (as opposed to licensed retail gun dealers).

"This functionally enables gun traffickers to acquire dozens of firearms in bulk in a single transaction as long as those firearms are sold on the secondary market and not sold directly out of a licensed gun dealer's inventory. (California law generally does not require sellers to obtain a gun dealer license unless they sell, lease, or transfer more than 50 firearms per year in the state or conduct six or more firearm transactions per year, meaning that unlicensed parties can currently sell or transfer up to 50 firearms in a single transaction, despite California's bulk firearm purchase limitations).

"To be clear, these secondary market sales must still generally be conducted by licensed gun dealers in California. But unless the firearm is sold from the dealer's own inventory, California's existing one-gun-per-month law generally does not apply.

"Two other states have already done what AB 1483 proposes. New Jersey places analogous limitations on acquiring more than one handgun per 30-day period but, unlike California, does not exempt bulk firearm purchases from unlicensed sellers. Like New Jersey, Maryland places analogous limitations on acquiring more than one handgun or regulated long gun per 30-day period but, unlike California, does not exempt bulk firearm purchases from

unlicensed sellers.

"We believe that closing this gap in California will help further deter and prevent gun trafficking conduct and help prevent mass shooters from immediately acquiring an arsenal of weapons through bulk purchases.

"California law already provides a number of important exemptions to its background check laws to authorize unlicensed individuals to acquire or transfer firearms without applying to CalDOJ or involving a licensed gun dealer; in these circumstances, the one-gun-per-month limitation would not apply. These include cases where firearms are transferred to a lawful recipient for suicide prevention purposes or for temporary safekeeping to remove firearms from crisis situations, or where, for instance, a gun owner may be absent from their residence for an extended period of time. We would welcome the bill making it even more explicit for that bulk firearm purchase limitations would not apply in circumstances where, under existing law, private party transactions are already exempt from applying to the Department of Justice for a background check or conducting the transaction through a licensed gun dealer."

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

5) **Prior Legislation**:

   a) AB 1621 (Gipson), Chapter 76, Statutes of 2022, among other things, will, commencing January 1, 2024, expand the rule against purchasing more than one handgun or semiautomatic rifle to all firearms.

   b) SB 61 (Portantino), Chapter 737, Statutes of 2019, among other things, expanded the rule against purchasing more than one handgun to include semiautomatic rifles as well.

   c) AB 1674 (Santiago), of the 2015-2016 Legislative Session, was similar to this bill in that it, among other things, would have deleted the private party transaction exemption from the one-handgun-purchase-a-month rule. AB 1674 was vetoed by Governor Brown on grounds aside from the private party transaction exemption.

   d) AB 202 (Knox), Chapter 128, Statutes of 1999, prohibited any person from applying for more than one concealable firearm within a 30-day period, and prohibits the delivery to any person who has made an application to purchase more than one concealable firearm within 30 days.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
Giffords
Los Angeles Unified School District

Opposition

None received.

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

Amended Mock-up for 2023-2024 AB-1483 (Valencia (A))

Mock-up based on Version Number 98 - Amended Assembly 3/16/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 27535 of the Penal Code, as added by Section 19 of Chapter 76 of the Statutes of 2022, is amended to read:

27535. (a) A person shall not make an application to purchase more than one firearm within any 30-day period. This subdivision does not authorize a person to make an application to purchase a combination of firearms, completed frames or receivers, or firearm precursor parts within the same 30-day period.

(b) Subdivision (a) does not apply to any of the following:

(1) Any law enforcement agency.

(2) Any agency duly authorized to perform law enforcement duties.

(3) Any state or local correctional facility.

(4) Any private security company licensed to do business in California.

(5) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of employment as a peace officer.

(6) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(7) Any person who may, pursuant to Article 2 (commencing with Section 27600), Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700), claim an exemption from the waiting period set forth in Section 27540.

(8) Any private party transaction wherein the seller is, at the time of the transaction, required under state law or by court order to relinquish all firearms.

(8) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

(9) The exchange of a firearm where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(10) The replacement of a firearm if the person's firearm was lost or stolen, and the person reported that firearm lost or stolen pursuant to Section 25250 prior to the completion of the application to purchase the replacement.

(11) The return of any firearm to its owner.

(12) A community college that is certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission-certified law enforcement training.

(c) This section shall become operative on January 1, 2024.

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

Date of Hearing: April 18, 2023
Counsel: Andrew Ironside

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

AB 1486 (Jones-Sawyer) – As Amended April 10, 2023

SUMMARY: Clarifies that an assault weapon is not a "standard issue service weapon" and therefore falls under the definition of "military equipment," which requires approval from the local governing body before a law enforcement agency may acquire it.

EXISTING LAW:

1) Requires a law enforcement agency to obtain approval of the governing body, by an ordinance adopting a military equipment use policy at a regular meeting of the governing body before, among other things, requesting, acquiring, or seeking funds for military equipment. (Gov. Code, § 7071, subd. (a).)

2) Defines "military equipment" to include specialized firearms and ammunition of less than .50 caliber, including assault weapons, as specified, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency. (Gov. Code, § 7070, subd. (c)(10).)

3) Defines "governing body" as the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. (Gov. Code, § 7070, subd. (a).)

4) Defines "law enforcement agency" as a police department, sheriff's department, district attorney's office, or county probation department. (Gov. Code, § 7070, subd. (b)(1)-(4).)

5) Requires a law enforcement agency to submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue. (Gov. Code, § 7070, subd. (b).)

6) Provides that the governing body shall only approve a military equipment use policy if it determines all of the following:

   a) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

   b) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

c) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

d) Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance. (Gov. Code, § 7071, subd. (d)(1).)

7) Requires, in order to facilitate public participation, any proposed or final military equipment use policy to be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use. (Gov. Code, § 7071, subd. (d)(2).)

8) Defines "assault weapon" as specified semiautomatic rifles, pistols, centerfire firearms, and shotguns. (Pen. Code, §§ 30510 & 30515.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is incredibly important that our laws fulfill their designated purpose. In 2021, the legislature passed AB 481 (Chiu) as a response to increased police brutality and militarized policing. AB 1486 closes a loophole in that law by ensuring that law enforcement agencies who acquire surplus military equipment are required to report any and all assault weapons they obtain. Given the serious harm that has already been caused through the use of assault weapons and military equipment, it is imperative that the legislature fortify the existing law. In doing so, this bill will preserve the original intent of AB 481: to establish oversight and transparency in the acquisition of military equipment."

2) **Need for the Bill:** Current law requires a law enforcement agency to obtain approval from the governing body that oversees it before acquiring or using military equipment. (Gov. Code, § 7071, subd. (a), et seq.) Military equipment includes, among other things, robots and drones, battering rams, command and control vehicles, tracked armored vehicles that provide ballistic protection to their occupants, and firearms and firearm accessories that can launch explosive projectiles. (Gov. Code, § 7070, subd. (c).) It also includes specialized firearms and ammunition of less than .50 caliber, including assault rifles, but exempts standard issue service weapons and ammunition. (Gov. Code, § 7070, subd. (c)(10).). However, current law does not define "standard issue service weapon." As a result, law enforcement could circumvent the prior approval requirement by simply issuing assault weapons to all officers, thereby avoiding oversight and accountability.

   This bill would close that loophole by defining "standard issue service weapon" as a firearm, other than an assault weapon, that is of the type normally issued to, carried, or transported by a peace officer in the course of routine patrol activities.

3) **Argument in Support**: According to *Initiate Justice*, "In 2021, the legislature passed AB 481 (Chui) as a response to increased military policing and police brutality. That bill limited

the ability of California's law enforcement agencies (LEAs) to acquire military equipment through the National Defense Authorization Act's 1033 Program. AB 481 did so by establishing specific procedures for LEAs to follow when obtaining surplus military equipment and, as a result, increased the transparency and accountability in that process.

"Among other things, AB 481 requires LEAs to submit a written military equipment use policy to local governing bodies for approval prior to acquisition and use of military equipment. Governing bodies have the authority to determine if the military equipment included in each policy meet specified standards and they are required to annually review the use policy.

"The items classified as military equipment under AB 481 vary wildly, ranging from armored vehicles to grenades. Specialized firearms and assault weapons are included but there is an exception for "standard issue service weapons". Unfortunately, there is no definition for standard issue service weapon. This lack of clarity creates an opportunity for LEAs to acquire weapons intended to be covered by AB 481 without reporting them.

"Given the serious harm that has already been caused through the use of military equipment, it is imperative that the legislature clarify what kinds of weapons can be considered standard issue and put in the hands of every law enforcement officer. By defining what is considered a standard issue service weapon, this bill will close a loophole and ensure that LEAs remain compliant, accountable and transparent when acquiring military equipment."

4) **Related Legislation**:

   a) AB 79 (Weber), would prohibit a peace officer from using deadly force against or intending to injure, intimidate, or disorient a person by utilizing any unmanned, remotely piloted, powered ground or flying equipment except under specified circumstances. AB 79 is pending hearing in this committee.

   b) AB 742 (Jackson), would prohibit the use of canines by peace officers for arrest and apprehension, or in any circumstances to bite a person, but permits their use of canines for search and rescue, explosives detection, and narcotics detection. AB 742 is pending hearing in the Assembly Appropriations Committee.

5) **Prior Legislation**:

   a) AB 421 (Chiu), Chapter 406, Statutes of 2021, requires local law enforcement agencies to follow specific procedures to obtain approval from local government prior to the acquisition or use of federal surplus military equipment.

   b) AB 3131 (Gloria), of the 2017 – 2018 Legislative Session, was similar to AB 421. AB 3131 was vetoed.

   c) AB 36 (Campos), of the 2015 – 2016 Legislative Session, would have prohibited local agencies, except local law enforcement agencies that are directly under the control of an elected officer, from applying to receive specified surplus military equipment from the federal government, unless the legislative body of the local agency approves the

acquisition at a regular meeting. AB 36 was vetoed.

d) SB 242 (Monning), Chapter 79, Statutes of 2015, requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

REGISTERED SUPPORT / OPPOSITION:

Support

Communities United for Restorative Youth Justice (CURYJ)
Concerned Citizens for Justice
Friends Committee on Legislation of California
Indivisible Sf
Initiate Justice
San Francisco Public Defender
Secure Justice
South Bay People Power
2 Private Individuals

Opposition

None

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

Date of Hearing: April 18, 2023
Counsel: Cheryl Anderson

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

AB 1497 (Haney) – As Amended March 30, 2023

PULLED BY COMMITTEE

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

Date of Hearing: April 18, 2023
Counsel: Liah Burnley

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

AB 1551 (Gipson) – As Amended April 13, 2023

SUMMARY: Requires the California Victim Compensation Board (the Board) to pay child victims loss of support until they are 18 years old, for gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, or a hit and run while intoxicated, if the offense caused the death of the child's parent or guardian. The total amount payable to the child shall not exceed $100,000.

EXISTING LAW:

1) Provides that gross vehicular manslaughter while intoxicated is a felony punishable by imprisonment in the state prison for four, six, or 10 years. (Pen. Code, § 191.5 subds. (a), (c).)

2) Provides that vehicular manslaughter while intoxicated is a misdemeanor punishable by imprisonment in a county jail for not more than one year or a felony punishable by imprisonment in a county jail 16 months or two or four years. (Pen. Code, § 191.5 subds. (b), (c).)

3) States that a person who flees the scene of an accident after committing gross vehicular manslaughter or gross vehicular manslaughter while intoxicated, upon conviction for that offense, shall be punished by an additional term of five years in the state prison. This additional term runs consecutive to the punishment for the vehicular manslaughter. (Veh. Code, § 20001, subd. (c).)

4) Establishes the Board to operate the California Victim Compensation Program (the Board). (Gov. Code, §§ 13950 et seq.)

5) Provides than an application for compensation shall be filed with the Board in the manner determined by the Board. (Gov. Code, § 13952, subd. (a).)

6) Defines "crime" for purposes of victim compensation to mean "a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult. (Gov. Code, § 13951, subd. (b)(1).)

7) Provides that a person shall be eligible for compensation if they are a victim or a derivative victim. A derivative victim includes the victim's child, among others (Gov. Code, § 13955.)

8) States that a derivative victim is eligible for compensation if the injury or death was a direct result of a specified vehicular crime, including if the injury or death was intentionally inflicted through the use of a motor vehicle, caused by a driver who fails to stop at the scene

of an accident, caused by a person who is under the influence of any alcoholic beverage or drug, caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated, or caused by a person who commits vehicular manslaughter. (Gov. Code, § § 13955.)

9) Authorizes the Board to reimburse victims and derivative victims for the specified types of pecuniary losses, including but not limited to compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death. (Gov. Code, § 13957, subd. (a).)

10) Provides that, if the victim or derivative victim requests that the Board give priority to reimbursement of loss of income or support, the Board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support. (Gov. Code, § 13957, subd. (a)(3).)

11) Authorizes compensation to a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to both of the following:

    a) Loss of support shall be paid by the Board for income lost by an adult for a period up to, but not more than, five years following the date of the crime; and

    b) Loss of support shall not be paid by the Board on behalf of a minor for a period beyond the child's attaining 18 years of age. (Gov. Code, § § 13957.5, subd. (a)(4).)

12) Provides that the total award to or on behalf of each victim may not exceed $35,000, and may be increased to an amount not exceeding $70,000, if federal funds for the increase are available. The total amount payable to all derivative victims for loss of support as the result of one crime shall not exceed $70,000. (Gov. Code, §§ 13957, subd. (b) & 13957.5, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "All children deserve an equal chance at life. This opportunity is taken away when children lose their parents—especially if it results from a tragic and self-centered action like drinking and driving and killing a parent of a minor. DUI/Hit and run accidents are rampant and have only gone up over the years. AB 1551 would leave a defendant responsible, via the California Victim's Compensation Board, for child support if the defendant kills the parent of a minor while driving under the influence. We need comprehensive solutions-- I want to ensure children are given resources to help combat the damage caused by these tragedies. This is wholeheartedly about helping the lives of children left without resources, and nothing less."

2) **The Victim Compensation Program**: The California Victims Compensation Program provides compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. (Gov. Code, § 13953 et seq.) The Board administers the program and

awards compensation to victims with moneys from the state Restitution Fund. (Gov. Code, § 13950, subd. (b).)

Compensation is available to victims and derivative victims who suffer injuries or death as a direct result of specified crimes. (Gov. Code, § 139501.) To be eligible for compensation, victims must meet specific criteria and file a timely application with the Board. (*Ibid.*)

Compensation is available for a range of qualified expenses, including, but not limited to, medical and dental expenses, outpatient mental health treatment and counseling, in-patient psychiatric costs, funeral/burial costs, support loss for legal dependents, wage or income loss, job retraining, crime scene clean-up, relocation expenses, veterinarian fees, mileage reimbursements, and home renovation and security improvements. (California Victim Compensation Board, *Who is Eligible?* <https://victims.ca.gov/for-victims/who-is-eligible/> [as of Feb. 8, 2023].) The total award to or on behalf of each victim may not exceed $35,000, and may be increased to an amount not exceeding $70,000, if federal funds for the increase are available. (Gov. Code, § 13957, subd. (b).)

3) **Victim Compensation for Child Victims of Vehicular Offenses**: Children under age 18, who are legally dependent on an adult victim at the time of any qualifying offense, including specified vehicular offenses, are eligible for loss of support due to the victim's injury or death. (Gov. Code, §§ 13957, 13957.5.) Gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, and hit and run while intoxicated, are such qualifying offenses. (Gov. Code, § § 13955.) Loss of support must be paid by the Board for a period up to, but not more than, five years following the date of the crime. (Gov. Code, §§ 13957, 13957.5.) Loss of support cannot be paid by the Board on behalf of a minor after they turn 18. The total award for loss of support cannot exceed $70,000. (Gov. Code § 13957.5, subd. (b).)

   This bill would additionally require the Board to pay child victims loss of support until they are 18 years old if their parent death was the result of being a victim of gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, or a hit and run while intoxicated. The total amount payable cannot exceed $100,000.

   This bill differs from the existing provisions providing for loss of support in the following ways: (1) the loss of support must have been the result of the victim's death, not injury; (2) the total award is capped at $100,000 not $70,000; (3) there is no requirement that the parent of the minor had to have been an adult at the time of the offense; and, (4) there is no requirement that the loss of support be limited to a period of 5 years following the date of the crime.

4) **Condition of the Restitution Fund**: The Restitution Fund, which funds the Victim Compensation Program, has been operating under a structural deficiency for a number of years. In 2015, the Legislative Analyst's Office (LAO) reported the Restitution Fund was depleting and would eventually face insolvency. (LAO, *Improving State Programs for Crime Victims* (2015) <https://lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.aspx> [as of Feb. 8, 2023].) Although revenue has remained consistent, expenditures have outpaced revenues since FY 2015-16. The Governor's 2021-22 budget proposed $33 million dollars in one-time General Fund monies to backfill declining fine and fee revenues in the Restitution Fund, and $39.5 million annually afterwards. This amount will allow the

Board to continue operating at its current resource level. The Budget Act allows for additional backfill upon a determination that revenues are insufficient to support the Board. (Department of Finance, *California State Budget –2023-24* at p. 90 <https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/CriminalJustice.pdf> [as of Feb. 8, 2023].) In addition, the 2022 Budget prioritized changes to the victim compensation program and the elimination of the restitution fine, if a determination is made in the spring of 2024 that the General Fund over the multiyear forecast is available to support this ongoing augmentation. (*Ibid.*)

Should the Legislature expand victim compensation when the proposed backfill only allows the Board to continue operating at its current level?

5) **Argument in Support**: According to *Mothers Against Drunk Driving* (MADD), "Drunk driving deaths increased by 20% California. According to the National Highway Traffic Safety Administration in 2019, there were 966 people killed in drunk driving crashes, but these deaths increased 20% in 2020 to 1,159 people lives taken due to drunk driving.

"AB 1551 better ensures justice and accountability. MADD believes that passing this proposal will make people think twice before getting behind the wheel impaired. [...]

"To the victims of the impaired drivers, this proposal allows for another avenue of restitution to help ensure justice."

6) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "Intoxicated driving that causes death is indeed a tragedy. It is severely punished. An intoxicated driver can be charged with murder and sentenced to life in prison. A person charged with gross vehicular manslaughter while intoxicated can also receive a life sentence. A death caused under these circumstances almost always results in a prison sentence. A person in prison most often has lost their job, makes pennies from prison work, and has no assets.

"Restitution for losses caused by crimes is mandatory. Usually, some proof of loss is presented that gives the court the ability to determine a reasonable restitution amount.

"AB 1551, unfortunately, is standardless and perhaps inequitable. The restitution desired in AB 1551 for intoxicated driving or hit and run should be sought in a civil law suit, not as restitution in a criminal case. In a civil action, damages are awarded based upon proof. When lost future income is at issue the plaintiff will present an expert witness, such as an economist, who will provide evidence. The defense may choose to present their own expert and the jury will determine the damage award. There is a clear opportunity to challenge the expert conclusions."

7) **Related Legislation**:

   a) AB 56 (Lackey), would expand eligibility for victim compensation to include emotional injuries from felony violations of, among other things, attempted murder, rape and sexual assault, mayhem, and stalking. AB 56 is pending on the Assembly Floor.

b) AB 1067 (Jim Patterson), would increase the penalties for fleeing the scene of an accident resulting in the death of another person from an alternate felony-misdemeanor with a maximum punishment of four years in state prison, to an alternate felony-misdemeanor having a maximum punishment of six years in the state prison. AB 1607 is pending in Assembly Appropriations Committee.

c) AB 1186 (Bonta), would require the Board, upon appropriation by the Legislature, to compensate victims for their economic losses resulting from offenses committed by juveniles. AB 1186 is pending in the Assembly Appropriations Committee.

d) AB 1187 (Quirk-Silva), would authorize the Board to reimburse the expense of counseling services provided by a Certified Child Life Specialist who provides counseling under the supervision of a licensed provider. AB 1187 is being heard in this Committee today.

8) **Prior Legislation**:

a) SB 1232 (Bradford), Chapter 983, Statues of 2018, extended the time limit to file an application for compensation with the Board within three years after the victim turns 21, instead of 18.

b) AB 2809 (Leno), Chapter 587, Statutes of 2008, allowed a minor who suffers emotional injury as a direct result of witnessing a violent crime to be eligible for reimbursement for the costs of outpatient mental health counseling if the minor was in close proximity to the victim when he or she witnessed the crime.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice
California Association of Highway Patrolmen
Mothers Against Drunk Driving
Peace Officers Research Association of California (PORAC)
Streets for All

Opposition

California Public Defenders Association (CPDA)

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

Date of Hearing: April 18, 2023
Chief Counsel: Sandy Uribe

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

AB 1584 (Weber) – As Amended March 16, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the court to determine whether restoration to competency is in the interests of justice when a defendant in a felony case has been deemed incompetent to stand trial (IST). Specifically, **this bill**:

1) States that if the defendant or defense counsel objects to an evaluation of mental incompetence, then two evaluators must be appointed, but only upon the request of defense counsel.

2) Requires the report of the mental health expert evaluating the defendant to include the expert's opinion in the following matters, in addition to what must already be included:

   a) Whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future; and

   b) An opinion as to whether the defendant is eligible for mental health diversion, if such an opinion is requested by the defense.

3) Sets a 30-day deadline for submission of the evaluator's report, unless waived by the defendant or unless the court finds good cause for an extension.

4) Provides that any statements made by the defendant during a mental health evaluation for purposes of determining competency are inadmissible in other proceedings. Clarifies that this limitation codifies the holding in *Estelle v. Smith* (1981) 451 U.S. 454.

5) Allows the court to determine the issue of competency based on the reports, if neither party objects to any of the competency reports; however, requires a hearing on the issue if either party objects to the reports and requests a hearing.

6) Provides that a defendant charged with a felony can waive the right to a jury trial on the issue of competency, in which case the hearing shall be heard by the court.

7) Requires the court, upon a finding that a defendant who is not charged with an offense excluding a person from mental health diversion is found to be IST, to suspend the proceedings and determine whether restoring the person to mental competence is in the interests of justice, as specified.

8) Requires the court to consider the following when determining if restoring the defendant to competency is in the interests of justice:

   a) The relevant circumstances of the charged offense;

   b) The defendant's mental health condition and history of treatment;

   c) Whether the defendant is likely to face incarceration if convicted;

   d) The likely length of any term of incarceration;

   e) Whether restoring the person to mental competence will enhance public safety; and,

   f) Any other relevant considerations.

9) Provides that if the court finds that restoring a defendant to competence is in the interests of justice, or if the defendant is charged with an offense making them ineligible for mental health diversion, the proceedings shall be suspended until the person becomes mentally competent.

10) Authorizes the court to do either of the following when making a determination that restoration of competency is not in the interests of justice:

   a) Conduct a hearing to determine if the defendant is eligible for mental health diversion, and if so, grant diversion, as specified; or

   b) Dismiss the charges against the defendant, as specified.

11) Provides that if the court deems the defendant eligible for diversion, it shall grant diversion for a period not to exceed two years from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter.

12) States that if the court finds the defendant ineligible for mental health diversion, or if diversion is terminated, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

   a) Order modification of the treatment plan in accordance with a recommendation from the treatment provider;

   b) Refer the defendant to assisted outpatient treatment under Laura's Law, as specified. A referral for Assisted Outpatient Treatment may occur only in a county where Laura's Law services are available, and the agency agrees to accept responsibility for treatment of the defendant, as specified; or,

   c) Refer the defendant to the county conservatorship investigator for the county of commitment for possible Lanterman Prentis Short (LPS) conservatorship proceedings for the defendant, as specified.

13) Provides that if at any time after a finding of mental incompetence, the court finds that there is no substantial likelihood that the defendant will attain mental competence in the forseeable future, the director of the DSH or the treatment facility will have the defendant returned to the committing court, as specified.

14) Makes conforming changes to the mental health diversion provisions.

EXISTING LAW:

1) States that a person cannot be tried or adjudged to punishment or have their probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

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

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

4) Requires the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. (Pen. Code, § 1369, subd. (a)(1).)

5) Provides that if the defendant or 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. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

6) Requires the examining psychologist or psychiatrists to evaluate: the nature of the defendant's mental disorder, if any; the defendant's ability or inability to understand the nature of the proceedings or the defendant's ability to assist counsel in conducting a defense; whether treatment with antipsychotic medication is appropriate. (Pen. Code, § 1369, subd. (a)(2)(A.)

7) Provides that if the defendant is found mentally competent, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent. (Pen. Code, § 1370, subd. (a).)

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

9) States that only a court trial is required to determine competency in a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen Code, § 1369, subd. (g).)

10) Permits, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court, in its discretion, to grant pretrial mental health diversion to a defendant if

the defendant satisfies the eligibility requirements and the court determines that the defendant is suitable for that diversion. (Pen. Code, § 1001.36, subd. (a).)

11) Provides that a defendant is eligible for pretrial mental health diversion if both of the following criteria are met:

   a) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia; and

   b) The defendant's mental disorder was a significant factor in the commission of the charged offense. (Pen. Code, § 1001.36, subd. (b).)

12) States that a defendant may not be placed into a pretrial mental health diversion program for the following offenses:

   a) Murder or voluntary manslaughter;

   b) An offense for which a person, if convicted, would be required to register as a sex offender;

   c) Rape;

   d) Lewd or lascivious act on a child under 14 years of age;

   e) Assault with intent to commit rape, sodomy, or oral copulation;

   f) Commission of rape or sexual penetration in concert with another person;

   g) Continuous sexual abuse of a child; or,

   h) Using a weapon of mass destruction, as specified. (Pen. Code, § 1001.36, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In 2018, the Council of State Governments Justice Center (CSG) convened an advisory group of experts to identify system improvements to competency to stand trial procedures. Among its ten evidence-based strategies to decrease referrals to state hospitals, the group recommended that states limit the use of competency restoration to cases that are too serious to warrant dismissal or diversion.

   "In 2022, consistent with CSG's suggested recommendations, the Committee on the Revision of the Penal Code (CRPC) recommended that judges be required to determine whether restoration to competency is in the interests of justice, applying a presumption against restoration for nonviolent offenses. To limit the reliance on restoration of competency to only

cases where restoration would be necessary and productive, CRPC further recommended that court-appointed mental health experts opine whether a person found incompetent to stand trial has a substantial probability of attaining competency within the required time frame and to evaluate their eligibility for mental health diversion.

"The problem with existing law is that it does not authorize the court to order the mental health expert to offer an opinion regarding the defendant's eligibility for diversion or whether the defendant is likely to attain competency after treatment. Under existing law, an individual must receive substantive competency restoration services even when not in the interest of justice to do so, where the person is unlikely to be restored, or where other treatment options would be more effective.

"The State's existing competency restoration process delivers quick prosecution-driven outcomes rather than continuing treatment and care. AB 1584 aligns with recommendations from CSG and CRPC by giving judges the discretion to determine the most appropriate response to a finding of incompetency, allowing for quicker determinations of eligibility for mental health diversion, creating earlier off-ramps from state hospital waitlists, and reducing the number of experts needed to complete what can be done by one person."

2) **Background on IST Proceedings**: Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. A defendant is mentally incompetent to stand trial "if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367.) Due process requires the court to initiate a determination of competency on its own motion when substantial evidence exists that the defendant is incompetent. (*People v. Pennington* (1967) 66 Cal.2d 508, 518.)

When substantial evidence of incompetence exists, the trial court cannot proceed with the case against the defendant without first holding a competency hearing. (*People v. Pennington*, *supra*, 66 Cal.2d at 521.) The court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 1369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

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

If after an examination and a hearing the court finds the defendant IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to the Department of State Hospitals (DSH) or other (inpatient or outpatient) treatment facility for treatment to regain competency in order to be brought back to court to face the charges. (Pen. Code, § 1370, subd. (a).) A treatment facility includes a county jail, if the county board of supervisors, the county mental health director, and the county sheriff, concur and make specified findings. A court can also find that the defendant is eligible for mental health diversion and may grant diversion on that basis. (Pen. Code, §§ 1370 and 1370.01.) Effective July 1, 2023, California law will require that a felony IST be considered for an outpatient treatment program, a community treatment program, or diversion unless the clinical or safety needs of the patient warrant treatment in a DSH facility. (Pen. Code, § 1370, subd. (a)(2)(A)(ii).)

"The state treats the majority of felony ISTs in state hospitals; however, many individuals wait in county jails for many months given the limited number of DSH beds, which has resulted in a waitlist of felony ISTs who have not been admitted to DSH. The treatment provided to felony ISTs—known as 'competency restoration treatment'—differs from general mental health treatment. The objective of competency restoration treatment is to treat a felony IST until they are competent enough to face their criminal charge, rather than provide comprehensive treatment for an underlying mental health condition." (See The 2022-23 Budget: Analysis of the Governor's Major Behavioral Health Proposals (ca.gov) Legislative Analyst's Office [as of April 12, 2023].)

3) **Committee on Revision of the Penal Code Recommendations**: In its 2022 Annual Report, the Committee recommended modernizing IST proceedings. Specifically, the committee made three recommendations. First the Committee recommended requiring judges to determine whether restoration to competency is in the interests of justice by considering all relevant circumstances of the offense, including the likelihood and length of incarceration if convicted. Next, the committee recommended requiring court-appointed mental health experts to return competency evaluations within 30 days. The final recommendation was requiring a judge to determine, and court-appointed mental health experts to provide an opinion on, whether a person found IST has a substantial probability of attaining competency within the required timeframe. In addition, require the court-appointed mental health expert to evaluate their suitability for mental health diversion. (*Annual Report and Recommendations*, Committee on Revision of the Penal Code, 2022, p. 48 http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf. [as of April 10, 2023].)

This bill implements some of those recommendations.

The first recommendation by the Committee which this bill would implement is requiring mental health experts to return competency evaluations within 30 days, unless there is good cause to extend the time.

While most would agree that an individual should not languish in jail while awaiting a competency assessment, it is unclear whether establishing a 30-day deadline in law is implementable. Are the current delays due in part to a lack of mental health experts available to perform the evaluations? If so, this bill does not address that. This bill also does not define good cause. If the unavailability of an evaluator constitutes good cause, then this remedy,

will not solve the underlying problem.

Next, this bill would address the Committee's recommendation of requiring the mental health expert evaluating a person's competence to stand trial to also evaluate whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future, and whether the defendant is eligible for mental health diversion, if the latter opinion is requested by the defense. Arguably, given the long delays and insufficient resources statewide to treat persons for restoration to competency, it make sense to consider whether to use those resources on a person who an expert does not think will attain competency in the foreseeable future.

Finally, this bill would require judges to determine whether, for a person deemed IST, restoration to competency is in the interests of justice. In doing so, the judge shall consider: the relevant circumstances of the charged offense; the defendant's mental health condition and history of treatment; whether the defendant is likely to face incarceration if convicted; the potential length of any term of incarceration; whether restoring the person to mental competence will enhance public safety; and, any other relevant considerations.[1]

4) **Recent IST Litigation**: As noted by the Committee on Revision of the Penal Code, "this issue has been the focus of intense attention and litigation in California because of delays in admitting people to the state hospital for restoration to competency." In the last 10 years, the number of people found incompetent to stand trial in California has increased significantly, far outpacing the state's ability to provide timely services in response. (According to DSH data from August 2022, over 1700 people declared IST were awaiting transfer to a state hospital or other medical facility for treatment. The average wait time for transfer is now five months. (*Annual Report and Recommendations*, *supra*, p. 50.)

   The state is under a court order to reduce the time it takes to admit someone to the state hospital to restore them to competency. (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) In that case, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (*Id.* at p. 737.) The Court of Appeal ordered that DSH must begin substantive restoration services within 28 days of being placed on the list. (*Id.* at p. 730.) However, the court's order is being implemented in phases, allowing DSH until February 2024 to implement the 28-day timeline. If DSH is unable to meet these specified requirements, the department potentially could be subject to substantial fines or placed under federal receivership. (See The 2022-23 Budget: Analysis of the Governor's Major Behavioral Health Proposals (ca.gov), Legislative Analyst's Office, [as of April 12, 2023].)

   Arguably, this bill would alleviate some of the pressures to comply with these timelines by allowing the court to determine that it is not in the interests of justice to restore some felony

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[1] As introduced, this bill would also have created a rebuttable presumption that it was not in the interests of justice to restore the defendant to competency if the defendant was charged with a wobbler offense, an offense punishable pursuant to criminal justice realignment, to Penal Code section 1170(h) offenses, wobbler offenses, robbery or assault with a deadly weapon other than a firearm or assault by means of force likely to produce great bodily injury. The committee amendments remove this rebuttable presumption.

ISTs to competency, and instead to grant them diversion or to dismiss the charges.

5) **Mental Health Diversion:** Existing law permits pretrial diversion programs. (Pen. Code, §1001.) Pre-trial diversion suspends the criminal proceedings without requiring the defendant to enter a plea. (Pen. Code, §§ 1001.1, 1001.3.) The defendant must successfully complete a program or other conditions imposed by the court. If a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense. (Pen. Code, §§ 1001.7, 1001.9.)

   In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. (Pen. Code, § 1001.36.) The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion. (*Ibid.*)

   As noted above, consistent with the recommendation of the Committee on the Revision of the Penal Code, this bill would require the mental health expert evaluating the defendant on the issue of competence to also provide an opinion on eligibility for mental health diversion, thereby saving potential resources in the form of a subsequent evaluation.

   In addition, this bill would require the court to consider placing a defendant on mental health diversion in situations where the court determines that restoring the person to competency is not in the interests of justice. This alternative appears to be consistent with legislation implemented last year which would require, starting July 1, 2023, that a felony IST be considered for a less restrictive program than DHS, including diversion, unless the clinical or safety needs of the patient warrant treatment in a DSH facility. (See Pen. Code, § 1370, subd. (a)(2)(A)(ii).)

6) **Argument in Support**: According to the *California Public Defenders Association*, a co-sponsor of this bill, "AB 1584 would amend provisions of the Penal Code to encourage timely access to mental health treatment and evidence-based outcomes for individuals who are incompetent to stand trial.

   "A person is incompetent to stand trial if their mental health condition prevents them from understanding the proceedings against them or assisting in their defense in a rational manner. Those who are determined to be incompetent to stand trial must be committed to a facility that will promote their "speedy restoration to mental competence" or placed on outpatient status.

   "Although outpatient status is permitted, it is rarely ordered. Unlike most civil commitment schemes that require treatment in the least restrictive placement, the majority of individuals who are found incompetent to stand trial and committed to restoration services are funneled to our State's most restrictive and most costly State hospital beds. And because these beds are scarce, people wait months prior to placement, suffering with symptoms of unmanaged mental illness while in the confines of a jail cell.

"The prolonged confinement of these vulnerable people not only violates due process, it violates fundamental principles of human decency. No one benefits from existing procedures – not the State, the public, nor the system-impacted person. At the end of this lengthy, costly, and often dehumanizing process, most are released to the exact same circumstances that led to their incarceration. According to Dr. Katherine Warburton, the Medical Director of the California Department of State Hospitals, these people 'often end up worse off than where they started.'

"In 2021, this State enacted legislation reforming California's competency provisions for individuals charged with misdemeanors. SB 317 eliminated competency restoration and required courts to consider mental health diversion instead. For those not suitable for diversion, the statute allowed courts to refer the individual for Assisted Outpatient Treatment (AOT) or a conservatorship.

"Unfortunately, SB 317 applies to only a segment of system-involved individuals, with other low-level felony offenders still among the hundreds of individuals on the state hospital's 1400-person waitlist. By the time these people are 'restored' to competency, they, like their misdemeanor counterparts prior to SB 317, have reached their maximum sentence, or have far surpassed the amount of time they would have served if not for their mental illness....

"Ab 1584 prioritizes treatment over incarceration, it adopts evidenced-based solutions over existing failed approaches, and it aligns with recommendations from subject-matter experts to promote prompt and fair resolutions."

7) **Argument in Opposition**: According to the *San Diego Deputy District Attorneys Association*, "This bill devalues the rights of victims of crimes to have their crimes addressed in court and will incentivize malingering by defendants to avoid accountability.

"Current law provides that all felony defendants who are found incompetent have two years to be restored to competency. Statistics compiled by the Department of State Hospitals found that over 66% of defendants who were initially found to be incompetent to stand trial (IST) were restored to competency. (*Incompetent to Stand Trial Solutions Workgroup – Report of Recommended Solutions November 2021 p11*). Unfortunately, AB1584 creates a 'get out of jail free card' for those that are mentally incompetent who commit robbery, assault causing great bodily injury, criminal threat, arson, distribution of fentanyl or hate crimes. AB 1584 allows individuals who would be restored to competency to bypass the criminal justice system based upon their temporary mental status.

"Consider that recently in San Diego, one woman attacked another woman breaking her orbital bone while yelling racial epithets. The attacker was on probation for a prior felony assault where she had been found competent and pled guilty. In the recent hate crime attack she found incompetent. Instead of commencing restoration of the attacker, AB1584 would require the People to rebut a presumption that the court should skip restoration and instead divert or dismiss the case against this racist and violent woman and ignore the rights of the victim of this hate crime.

"Furthermore, AB1584 provides the court with absolutely no guidance on how to approach determining whether the presumption has been overcome. Instead AB1584 lists factors without indicating whether those factors favor rebuttal of the presumption or support the

presumption. For example, if a judge believes a case is factually strong, does that rebut the presumptions in favor of diversion/dismissal? AB1584 creates an impossible burden for the prosecution to overcome the presumption because it is vague.

"AB1584 incentivizes defendants to malinger (exaggerate or create mental health symptoms) in the hopes of manipulating an evaluator because of the benefits. The Department of State Hospitals has estimated that at least seventeen percent of individuals evaluated for competency malinger. By incentivizing defendants to appear incompetent, AB1584 has the potentially to greatly increase number of defendants malingering and thereby the workload of the professionals that conduct the evaluations. Additionally, because of the long-term ramifications of a finding of incompetency, the People will be forced to hire independent evaluators that test for malingering. AB1584 will dramatically increase the cost of the evaluations.

"While we strongly believe in providing appropriate mental health care to all individuals within the criminal justice system, this bill does not guarantee those services to mentally ill defendants and ignores victims' rights and public safety."

8) **Related Legislation**: SB 349 (Roth), would provide that a certificate of restoration for a defendant who was found incompetent to stand trial shall apply to all cases pending against the defendant at the time of restoration. SB 349 is pending in the Senate Appropriations Committee.

9) **Prior Legislation**:

   a) AB 1630 (Weber), of the 2021-2022 Legislative Session, would have shifted the burden of proof to the prosecution to prove a finding of competence to stand trial when a court-appointed psychiatrist or licensed psychologist indicates that the defendant is incompetent. AB 1630 was held in the Senate Appropriations Committee.

   b) SB 317 (Stern), Chapter 599, Statutes of 2021, revised the process by which a person may be found IST on a misdemeanor, including eliminating competency restoration proceedings in misdemeanor cases.

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

   d) AB 1214 (Stone), Chapter 991, Statutes of 2018, revised the procedures to determine the mental competence of a juvenile charged with a crime.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Co-Sponsor)
California Public Defenders Association (Co-Sponsor)
Ella Baker Center for Human Rights

Friends Committee on Legislation of California
Initiate Justice

Opposition

California District Attorneys Association
California State Sheriffs' Association
San Diegans Against Crime
San Diego Deputy District Attorneys Association

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

Amended Mock-up for 2023-2024 AB-1584 (Weber (A))

Mock-up based on Version Number 98 - Amended Assembly 3/16/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense not set forth in subdivision (d), the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant satisfies the eligibility requirements for pretrial diversion set forth in subdivision (b) and the court determines that the defendant is suitable for that diversion under the factors set forth in subdivision (c).

(b) A defendant is eligible for pretrial diversion pursuant to this section if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) For any defendant who satisfies the eligibility requirements in subdivision (b), the court must consider whether the defendant is suitable for pretrial diversion. A defendant is suitable for pretrial diversion if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion, unless the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment pursuant to clause (iv) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.

(4) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

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

(iii) If the court refers the defendant to a county mental health agency pursuant to this section and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. That declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

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

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in

accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

SEC. 2. Section 1369 of the Penal Code is amended to read:

1369. A trial by court or jury of the question of mental competence shall proceed in the following order:

(a) (1) If the court is presented with substantial evidence that the defendant is incompetent to stand trial, the court shall suspend the criminal proceedings and shall appoint at least one mental health expert to examine the defendant's mental condition. If counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two mental health experts upon request of defense counsel, in which case one shall be named by the defense and one by the prosecution.

(2) If it is suspected the defendant has a developmental disability, the court shall appoint the director of the regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the director's designee, to examine the defendant to determine whether the defendant has a developmental disability. The regional center director or their designee shall determine whether the defendant has a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, and is therefore eligible for regional center services and supports. The regional center director or their designee shall provide the court with a written report informing the court of this determination.

(b) (1) A mental health expert shall evaluate the defendant and submit a written report to the court. The report shall include the opinion of the expert regarding all of the following matters:

(A) A diagnosis of the defendant's mental condition, if any.

(B) Whether the defendant, as a result of a mental disorder or developmental disability, is able to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

(C) Whether there is a substantial likelihood that the defendant will attain competency in the foreseeable future.

(D) If requested by the defense, an opinion as to whether the defendant is eligible for mental health diversion pursuant to Section 1001.36.

(2) Any statements made by the defendant during an examination pursuant to this section shall not be admissible in any other proceeding. This paragraph is intended to codify the holding of the United States Supreme Court in Estelle v. Smith (451 U.S. 454), and is therefore declarative of existing law.

(3) (A) The examining mental health expert shall evaluate whether treatment with antipsychotic medication, as defined in subdivision (l) of Section 5008 of the Welfare and Institutions Code, is appropriate for the defendant. The evaluation of whether treatment with antipsychotic medication is appropriate shall be done in accordance with subparagraphs (B) and (C). The examining licensed psychologists or psychiatrists shall also opine whether the defendant lacks the capacity to make decisions regarding antipsychotic medication, as outlined in subclauses (I) and (II) of clause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of Section 1370.

(B) If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, their opinion shall be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion shall not exceed the scope of their license. That opinion about the potential benefit of antipsychotic medication is not a prescription for that medication.

(C) If a psychiatrist examines the defendant and opines that treatment with antipsychotic medication is appropriate, the psychiatrist shall inform the court of their opinion as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments, as outlined in subclause (III) of clause (i) of subparagraph (B) of paragraph (2) of subdivision (a) of Section 1370.

(4) The report of the mental health expert prepared pursuant to this subdivision shall be completed and filed with the court within 30 days after the order, unless waived by the defendant or unless the court finds good cause for an extension.

(c) (1) If neither party objects to any competency report, the court may determine the competency of the defendant based on any competency report.

(2) If either party objects to any competency report and requests a hearing, the court shall hold a hearing to determine competence.

(3) In a hearing to determine competence, the defendant is presumed competent to stand trial unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent.

(4) If the defendant waives the right to a jury trial or as provided in paragraph (5), the hearing shall be heard by the court. Otherwise, a determination of the defendant's competency to stand trial shall be decided by a jury. The verdict of the jury shall be unanimous.

(5) In a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole, the hearing shall be heard by the court.

(d) (1) The State Department of State Hospitals, on or before July 1, 2017, shall adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court pursuant to this section. To develop these guidelines, the State Department of State Hospitals shall convene a workgroup comprised of the Judicial Council and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accrediting bodies for psychologists and psychiatrists, and other interested stakeholders.

(2) When making an appointment pursuant to this section, the court shall appoint an expert who meets the guidelines established in accordance with this subdivision or an expert with equivalent experience and skills. If there is no reasonably available expert who meets the guidelines or who

has equivalent experience and skills, the court may appoint an expert who does not meet the guidelines.

(e) As used in this section, "mental health expert" means a licensed psychologist or psychiatrist. However, this section does not preclude the court from appointing any other qualified expert to evaluate the defendant's mental condition in addition to a licensed psychologist or psychiatrist.

SEC. 3. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is not charged with an offense listed in subdivision (d) of Section 1001.36, the trial, the hearing on the alleged violation, or the judgment shall be suspended, and the court shall do all of the following:

(i) Determine whether restoring the person to mental competence is in the interests of justice.

(I) In exercising its discretion pursuant to this clause, the court shall consider the relevant circumstances of the charged offense, the defendant's mental health condition and history of treatment, whether the defendant is likely to face incarceration if convicted, the likely length of any term of incarceration, whether restoring the person to mental competence will enhance public safety, and any other relevant considerations.

~~(II) There is a rebuttable presumption that restoration to mental competence is not in the interests of justice if a defendant charged with either a violation of Section 211, a violation of paragraph (1) or (4) of subdivision (a) of Section 245, any felony punishable pursuant to subdivision (h) of Section 1170, or any offense that may be charged as either a felony or a misdemeanor. This presumption may be overcome by evidence that persuades the court that restoration to mental competence is in the interests of justice.~~

(ii) If restoring the person to mental competence is in the interests of justice, the court shall state its reasons orally on the record and the case shall proceed as provided in subparagraph (C).

(iii) If restoring the person to mental competence is not in the interests of justice, the court may do either of the following:

(I) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed two years from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter.

(ia) If the court opts to conduct a hearing pursuant to this subclause, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

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

(ic) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b) or (d) of Section 1001.36, or if diversion is terminated unsuccessfully, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(Ia) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(Ib) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(Ic) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if it appears to the court or a qualified mental health expert that the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of either a temporary or permanent conservatorship, the charges shall be dismissed pursuant to Section 1385.

(II) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county behavioral health director or the director's designee.

(C) If the defendant is found mentally incompetent, and restoring the defendant to competence is in the interests of justice or the defendant is charged with an offense listed in subdivision (d) of Section 1001.36, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.

(i) The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community-based residential treatment system approved by the community program director, or their designee, that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of persons with a mental health disorder, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) (I) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(II) Notwithstanding subclause (I), if a defendant is found mentally incompetent and is transferred to a facility described in Section 4361.6 of the Welfare and Institutions Code, the court may, at

any time upon receiving any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, make a finding that the defendant is an appropriate candidate for diversion.

(v) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (iv), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1) of subdivision (c) or two years. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (d) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vi) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(vii) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in the defendant's state summary criminal history information.

(D) If at any time after the finding of mental incompetence, the court finds that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the court shall proceed pursuant to paragraph (2) of subdivision (c).

(E) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(F) A defendant charged with a violent felony may not be delivered to a State Department of State Hospitals facility or treatment facility pursuant to this subdivision unless the State Department of State Hospitals facility or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(G) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(H) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(I) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the

court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has attained competence. If, in the opinion of that expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372.

(J) (i) The State Department of State Hospitals may, pursuant to Section 4335.2 of the Welfare and Institutions Code, conduct an evaluation of the defendant in county custody to determine any of the following:

(I) The defendant has attained competence.

(II) There is no substantial likelihood that the defendant will attain competence in the foreseeable future.

(III) The defendant should be referred to the county for further evaluation for potential participation in a county diversion program, if one exists, or to another outpatient treatment program.

(ii) If, in the opinion of the department's expert, the defendant has attained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372.

(iii) If, in the opinion of the department's expert, there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the committing court shall proceed pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) (i) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(ii) Commencing on July 1, 2023, a defendant shall first be considered for placement in an outpatient treatment program, a community treatment program, or a diversion program, if any such program is available, unless a court, based upon the recommendation of the community program director or their designee, finds that either the clinical needs of the defendant or the risk to community safety, warrant placement in a State Department of State Hospitals facility.

(B) The court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (b) of Section 1369, as applicable to the issue of whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

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

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

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

unlikely to have substantially the same results, and antipsychotic medication is appropriate in light of their medical condition.

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

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

(III) If the court finds the conditions described in subclause (III) of clause (i) to be true, and if pursuant to the opinion offered to the court pursuant to subdivision (b) of Section 1369, a psychiatrist has opined that it is appropriate to treat the defendant with antipsychotic medication, the court shall issue an order authorizing the administration of antipsychotic medication as needed, including on an involuntary basis, to be administered under the direction and supervision of a licensed psychiatrist.

(iii) An order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter, including a county jail, shall remain in effect when the defendant returns to county custody pursuant to subparagraph (A) of paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c), or pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 1372, but shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iv) In all cases, the treating hospital, county jail, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of their counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the

defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from their counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vii) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a State Department of State Hospitals facility or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the State Department of State Hospitals facility or other treatment facility, shall have the right to contact the patients' rights advocate regarding the defendant's rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws their consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for the defendant's interests at the hearing,

review the panel's final determination following the hearing, advise the defendant of their right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To be given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(vii) If the administrative law judge upholds the certification pursuant to clause (ii), the court may, for a period not to exceed 14 days, extend the certification and continue the hearing pursuant to

stipulation between the parties or upon a finding of good cause. In determining good cause, the court may review the petition filed with the court, the administrative law judge's order, and any additional testimony needed by the court to determine if it is appropriate to continue medication beyond the 21-day certification and for a period of up to 14 days.

(viii) The district attorney, county counsel, or representative of a facility where a defendant found incompetent to stand trial is committed may petition the court for an order to administer involuntary medication pursuant to the criteria set forth in subclauses (II) and (III) of clause (i) of subparagraph (B). The order is reviewable as provided in paragraph (7).

(3) When the court orders that the defendant be committed to a State Department of State Hospitals facility or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, which shall include a specification of the charges, an assessment of whether involuntary treatment with antipsychotic medications is warranted, and any orders by the court, pursuant to subparagraph (B) of paragraph (2), authorizing involuntary treatment with antipsychotic medications.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) (i) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(ii) If a certificate of restoration of competency was filed with the court pursuant to Section 1372 and the court subsequently rejected the certification, a copy of the court order or minute order rejecting the certification shall be provided. The court order shall include a new computation or statement setting forth the amount of credit for time served, if any, to be deducted from the defendant's maximum term of commitment based on the court's rejection of the certification.

(D) State summary criminal history information.

(E) Jail classification records for the defendant's current incarceration.

(F) Arrest reports prepared by the police department or other law enforcement agency.

(G) Court-ordered psychiatric examination or evaluation reports.

(H) The community program director's placement recommendation report.

(I) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(J) Medical records, including jail mental health records.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a State Department of State Hospitals facility or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a State Department of State Hospitals facility pursuant to this subdivision, the court shall commit the defendant to the State Department of State Hospitals.

(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the State Department of State Hospitals facility and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a State Department of State Hospitals facility or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be electronically transferred or taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six-month progress reports pursuant to paragraph (1) of subdivision (b) to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) Within 60 days before the expiration of the one-year involuntary medication order, the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed may petition the committing court for a renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2). The hearing on a petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(8) For purposes of subparagraph (D) of paragraph (2) and paragraph (7), if the treating psychiatrist determines that there is a need, based on preserving their rapport with the defendant or preventing harm, the treating psychiatrist may request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist. If the medical director of the facility designates another psychiatrist to act pursuant to this paragraph, the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the defendant prior to the hearing.

(b) (1) Within 90 days after a commitment made pursuant to subdivision (a), the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary.

If the defendant is in county custody, the county jail shall provide access to the defendant for purposes of the State Department of State Hospitals conducting an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code. Based upon this evaluation, the State Department of State Hospitals may make a written report to the court within 90 days of a commitment made pursuant to subdivision (a) concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary. If the defendant remains in county custody after the initial 90-day report, the State Department of State Hospitals may conduct an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary.

If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will attain mental competence in the foreseeable future, the defendant shall remain in the State Department of State Hospitals facility or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the State Department of State Hospitals facility or person in charge of the facility shall report, in writing, to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court.

(A) If the report indicates that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The defendant shall be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to subparagraph (A).

(C) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification made pursuant to clause (ii) of subparagraph (B), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(2) The reports made pursuant to paragraph (1) concerning the defendant's progress toward attaining competency shall also consider the issue of involuntary medication pursuant to paragraph

(3) of subdivision (b) of Section 1369. Each report may include, but not be limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to their physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if the defendant is not treated with antipsychotic medication.

(D) Whether the defendant has a mental disorder for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine if grounds for the involuntary administration of antipsychotic medication exist, whether or not an order was issued at the time of commitment, and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, any order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, any order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall determine whether to vacate the order or issue a new order for the involuntary administration of antipsychotic medication. The court shall consider the opinions in reports submitted pursuant to paragraph (1), including any opinions rendered pursuant to Section 4335.2 of the Welfare and Institutions Code. The court may, upon a showing of good cause, set a hearing within 21 days to

determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a). The court shall require witness testimony to occur remotely, including clinical testimony pursuant to subdivision (d) of Section 4335.2 of the Welfare and Institutions Code. In-person witness testimony shall only be allowed upon a court's finding of good cause.

(D) If the report states a basis for involuntary administration of antipsychotic medication and the court did not issue such order at the time of commitment, the court shall determine whether to issue an order for the involuntary administration of antipsychotic medication. The court shall consider the opinions in reports submitted pursuant to paragraph (1), including any opinions rendered pursuant to Section 4335.2 of the Welfare and Institutions Code. The court may, upon a finding of good cause, set a hearing within 21 days to determine whether an order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a). The court shall require witness testimony to occur remotely, including clinical testimony pursuant to subdivision (d) of Section 4335.2 of the Welfare and Institutions Code. In-person witness testimony shall only be allowed upon a court's finding of good cause.

(4) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court, and, if the defendant is not in county custody, returned to the custody of the county. The court shall transmit a copy of its order to the community program director or a designee.

(5) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the State Department of State Hospitals facility or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of two years 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 information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, 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, and custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) (A) The medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall provide notification, in compliance with applicable

privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to paragraph (1).

(B) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification pursuant to subparagraph (A), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(3) Whenever a defendant is returned to the court pursuant to paragraph (1), subparagraph (C) of paragraph (2) of subdivision (a), or paragraph (1) or (4) of subdivision (b), and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(4) If a defendant is returned to court pursuant to paragraph (1), subparagraph (C) of paragraph (2) of subdivision (a), or paragraph (1) or (4) of subdivision (b), and the prosecution elects to dismiss and refile charges pursuant to Section 1387, the court shall presume that the defendant is incompetent unless the court is presented with relevant and credible evidence that the defendant is competent. Such evidence may include medical records, witness statements, or reports by qualified medical experts. If the court is satisfied that it has received substantial evidence that the defendant is competent, the court shall proceed as provided in Section 1369. Otherwise, the court shall find that the defendant is not mentally competent to stand trial and shall proceed as provided in paragraphs (1) and (3).

(5) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(6) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed,

the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (3) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to the initiation of proceedings that may be appropriate under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" does not include, except for State Department of State Hospitals facilities, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) This section does not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

SEC. 4. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and has been determined by a regional center to have a developmental disability, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement. The recommendation shall be made to the court by the director of a regional center or the director's designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital, developmental center, or any other available residential facility approved by the director of a regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or

be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600).

(ii) When the action against a defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of an offense specified in Section 290. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in the defendant's state summary criminal history information.

(C) If the court finds that there is no substantial likelihood that the defendant will attain mental competence in the foreseeable future, the court shall proceed as provided in subdivision (e).

(D) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(E) The court shall transmit a copy of its order to the regional center director or the director's designee and to the Director of Developmental Services.

(F) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a

locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(G) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(H) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(I) As used in this section, "developmental disability" has the same meaning as in Section 4512 of the Welfare and Institutions Code.

(2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or the director's designee to evaluate the defendant and to submit to the court, within 15 judicial days of the order, a written recommendation as to whether the defendant should be committed to a state hospital, a developmental center, or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or the director's designee.

(3) If the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents, which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of an offense specified in Section 290.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of an offense specified in Section 290.

(5) (A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital, a developmental center, or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal action or revocation proceedings before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to another facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed, shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, this report shall be made to the committing court by the regional center director or the director's designee. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a), or if the defendant becomes mentally competent, the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed shall report to the court and the regional center director or the director's designee regarding the

defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, the regional center director or the director's designee shall make that report to the committing court. The court shall provide copies of all reports under this section to the prosecutor and defense counsel. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or the director's designee and to the executive director of the developmental center.

(2) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or the director's designee and to the executive director of the developmental center.

(3) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of two years 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 information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or the director's designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) (A) Except as provided in subparagraph (B), in the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(B) In revocation proceedings alleging a violation of mandatory supervision in which the defendant remains incompetent upon return to court under subparagraph (A), the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the court shall reinstate mandatory supervision and modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. Actions alleging a violation of mandatory supervision are not subject to dismissal under Section 1385.

(d) Except as provided in subparagraph (B) of paragraph (2) of subdivision (c), the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) If a defendant is returned to court pursuant to subparagraph (C) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c), and the prosecution elects to dismiss and refile charges pursuant to Section 1387, the court shall presume that the defendant is incompetent unless the court is presented with relevant and credible evidence that the defendant is competent. Such evidence may include medical records, witness statements, or reports by qualified medical experts. If the court is satisfied that it has received substantial evidence that the defendant is competent, the court shall proceed as provided in Section 1369. Otherwise, the court shall find that the defendant is not mentally competent to stand trial and proceed as provided in subdivision (c).

(f) For the purpose of this section, "secure treatment facility" does not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or a community board and care facility.

SEC. 5. Section 4361 of the Welfare and Institutions Code is amended to read:

4361. (a) As used in this section, "department" means the State Department of State Hospitals.

(b) The purpose of this chapter is to, subject to appropriation by the Legislature, promote the diversion of individuals with serious mental disorders as prescribed in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, and to assist counties in providing diversion for individuals with serious mental illnesses who have been found incompetent to stand trial and committed to the department for restoration of competency. In implementing this chapter, the department shall consider local discretion and flexibility in diversion activities that meet the community's needs and provide for the safe and effective treatment of individuals with serious mental disorders across a continuum of care.

(c) (1) Subject to appropriation by the Legislature, the department may solicit proposals from, and may contract with, a county to help fund the development or expansion of pretrial diversion described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets all of the following criteria:

(A) Participants are individuals diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder, but excluding a primary diagnosis of antisocial personality disorder, borderline personality disorder, and pedophilia, and who are presenting non-substance-induced psychotic symptoms, who have been found incompetent to stand trial pursuant to clause (iv) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code.

(B) There is a significant relationship between the individual's serious mental disorder and the charged offense, or between the individual's conditions of homelessness and the charged offense.

(C) The individual does not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18 of the Penal Code, if treated in the community.

(2) A county submitting a proposal for funding under this chapter shall designate a lead entity to apply for the funds. This lead entity shall show in its proposal that it has support from other county entities or other relevant entities, including courts, that are necessary to provide successful diversion of individuals under the contract.

(d) When evaluating proposals from the county, the department, in consultation with the Council on Criminal Justice and Behavioral Health within the Department of Corrections and Rehabilitation, shall prioritize proposals that demonstrate all of the following:

(1) Provision of clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care, as appropriate, to meet the individual needs of the diversion participant. For purposes of this section, "wraparound services" means services provided in addition to the mental health treatment necessary to meet the individual's needs for successfully managing the individual's mental health symptoms and to successfully live in the community. Wraparound services provided by the diversion program shall include appropriate housing, intensive case management, and substance use disorder treatment, and may include, without limitation, forensic assertive community treatment teams, crisis residential services, criminal justice coordination, peer support, and vocational support.

(2) Collaboration between community stakeholders and other partner government agencies in the diversion of individuals with serious mental disorders.

(3) Connection of individuals to services in the community after they have completed diversion as provided in this chapter.

(e) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of providing postbooking assessment of defendants who are likely to be found incompetent to stand trial on felony charges to determine whether the defendant would benefit from diversion as included in the contract.

(f) The department may also provide funding in the contract with the county, subject to appropriation by the Legislature, to cover the cost of in-jail treatment prior to the placement in the community for up to an average of 15 days for defendants who have been approved by the court for diversion as included in the contract.

(g) A county contracted pursuant to this chapter shall report data and outcomes to the department, within 30 days after the end of each quarter, regarding those individuals targeted by the contract and in the program. This subdivision does not preclude the department from specifying reporting formats or from modifying, reducing, or adding data elements or outcome measures from a contracting county, as needed to provide for reporting of effective data and outcome measures. Notwithstanding any other law, but only to the extent not prohibited by federal law, the county shall provide specific patient information to the department for reporting purposes. The patient information is confidential and is not open to public inspection. A contracting county shall, at a minimum, report all of the following:

(1) The number of individuals that the court ordered to postbooking diversion and the length of time for which the defendant has been ordered to diversion.

(2) The number of individuals participating in diversion.

(3) The name, social security number, criminal identification and information (CII) number, date of birth, and demographics of each individual participating in the program. This information is confidential and is not open to public inspection.

(4) The length of time in diversion for each participating individual. This information is confidential and is not open to public inspection.

(5) The types of services and supports provided to each individual participating in diversion. This information is confidential and is not open to public inspection.

(6) The number of days each individual was in jail prior to placement in diversion. This information is confidential and is not open to public inspection.

(7) The number of days that each individual spent in each level of care facility. This information is confidential and is not open to public inspection.

(8) The diagnoses of each individual participating in diversion. This information is confidential and is not open to public inspection.

(9) The nature and felony or misdemeanor classification of the charges for each individual participating in diversion. This information is confidential and is not open to public inspection.

(10) The number of individuals who completed diversion.

(11) The name, social security number, CII number, and birth date of each individual who did not complete diversion and the reasons for not completing. This information is confidential and is not open to public inspection.

(h) Contracts awarded pursuant to this chapter are exempt from the requirements contained in the Public Contract Code and the State Administrative Manual and are not subject to approval by the Department of General Services.

(i) The funds shall not be used to supplant existing services or services reimbursable from an available source but rather to expand upon them or support new services for which existing reimbursement may be limited.

(j) (1) Beginning July 1, 2021, subject to appropriation by the Legislature, the department may amend contracts with a county to fund the expansion of an existing department-funded pretrial diversion as described in Chapter 2.8A (commencing with Section 1001.35) of Title 6 of Part 2 of the Penal Code, for the population described in subdivision (b) and that meets both of the following criteria:

(A) All participants identified for potential diversion are found incompetent to stand trial on a felony charge.

(B) Participants diverted through a program expansion suffer from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, excluding antisocial personality disorder, borderline personality disorder, and pedophilia.

(2) Counties expanding their programs under this section will not be required to meet any additional match funding requirements.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state hospitals and the department may implement, interpret, or make specific this section by means of a departmental letter or other similar instruction, as necessary.

(l) The department shall have access to the arrest records and state summary of criminal history of defendants who are participating or have participated in the diversion program. The information may be used solely for the purpose of looking at the recidivism rate for those patients.

(m) If the defendant is committed directly to a county program in lieu of commitment to the department, counties shall provide the minute order from the court documenting the incompetent

to stand trial finding on a felony charge and the original alienist evaluation associated with that finding.

(n) For department-funded diversion programs funded through appropriations made by the Budget Act of 2018 or new county programs funded through the Budget Act of 2021, participants in those county programs may include individuals diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder, who are likely to be found incompetent to stand trial for felony charges, pursuant to Section 1368 of the Penal Code, or who have been found incompetent to stand trial pursuant to clause (iv) of subparagraph (C) of paragraph (1) of subdivision (a) of Section 1370 of the Penal Code, until new funds are dispersed to the county. Counties shall continue to comply with all terms of the contract signed with the department, including matching fund and data reporting requirements.

Date of Hearing: April 18, 2023
Counsel: Andrew Ironside

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

AB 1598 (Berman) – As Amended April 12, 2023

SUMMARY: Requires DOJ to prepare a firearm-safety-certificate study guide, separate from the current instruction manual, explaining information covered on the firearm safety certificate test, and to develop a new pamphlet on the risk and benefits of firearm ownership. Specifically, **this bill**:

1) Expands the information that the written firearms safety certificate test must cover to include: the increased risk of homicide and unintentional injury as a result of bringing a firearm into the home, and current law as it relates to eligibility to own or possess a firearm, gun violence restraining orders, domestic violence restraining orders, and privately manufactured firearms.

2) Requires DOJ to update the test to reflect the added testing requirements during the first regularly scheduled update after January 1, 2024.

3) Requires DOJ to prepare a firearm-safety-certificate study guide, in English and in Spanish, that explains the information covered in the test.

4) Requires DOJ to offer copies of the study guide at actual cost to certified firearm safety instructors, who shall provide the study guide to an applicant for a firearm safety certificate prior to their test date.

5) Provides that the study guide may be provided as an electronic copy by text or email or as a physical copy.

6) Provides that the cost of the study guide, if any, may be added to the firearm safety certificate fee, as specified.

7) Requires DOJ to update the study guide concurrently with any update to the firearms safety test.

8) Requires DOJ to notify a certified instructor of the requirement to provide the study guide to an applicant for a firearm safety certificate.

9) Requires DOJ to prepare a pamphlet in English and in Spanish that explains the benefits and risks of owning a firearm and brining a firearm into the home, including the increased risk of death to someone in the household by suicide, homicide, or unintentional injury.

10) Authorizes DOJ to solicit input from any reputable association or organization in the development of the pamphlet.

11) Requires DOJ to offer copies of the pamphlet at actual cost to licensed firearms dealers, as specified.

12) Requires that receipts from the sale of the pamphlet to be deposited into the Firearms Safety and Enforcement Special Fund.

13) Requires a licensed firearm dealer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the most current version of the firearm pamphlet at the start of the 10-day waiting period.

14) Authorizes a licensed firearm dealer to add the cost of the pamphlet, if any, to the price of the firearm.

EXISTING LAW:

1) Requires DOJ to develop an instruction manual on firearm safety in English and in Spanish. (Pen. Code, § 31630, subd. (a).)

2) Requires DOJ to make the instruction manual available to licensed firearm dealers, who shall make it available to the general public. (Pen. Code, § 31630, subd. (a).)

3) Provides that essential portions of the manual may be included in the pamphlet summarizing the state's firearms laws. (Pen Code, § 31630, subd. (a).)

4) Requires DOJ to develop audiovisual materials on firearm safety in English and in Spanish to be issued to certified firearms instructors. (Pen. Code, § 31630, subd. (b).)

5) Requires DOJ to solicit input from any reputable association or organization, including any law enforcement association that has as one of its objectives the promotion of firearm safety, in the development of the firearm safety certificate instructional materials. (Pen. Code, § 31630, subd. (c).)

6) Requires the firearm safety instruction manual to prominently include the following firearm safety warning: "Firearms must be handled responsibly and securely stored to prevent access by children and other unauthorized users. California has strict laws pertaining to firearms, and you can be fined or imprisoned if you fail to comply with them. Visit the Web site of the California Attorney General at https://oag.ca.gov/firearms for information on firearm laws applicable to you and how you can comply." (Pen. Code, § 31630, subd. (d).)

7) Requires DOJ to develop a written, objective firearm-safety-certificate test, in English and in Spanish, and prescribe its content, form, and manner, to be administered by a DOJ-certified instructor. (Pen. Code, § 31640, subd. (a).)

8) Requires the firearm safety test to be administered orally if the person taking the test is unable to read. (Pen. Code, § 31640, subd. (b).)

9) Allows the test to be administered orally by a translator if the person taking the test is unable to read English or Spanish. (Pen. Code, § 31640, subd. (b).)

10) Requires the test to cover, but not be limited to, all of the following:

    a) The laws applicable to carrying and handling firearms, particularly handguns;

    b) The responsibilities of ownership of firearms, particularly handguns;

    c) Current law as it relates to the private sale and transfer of firearms;

    d) Current law as it relates to the permissible use of lethal force;

    e) What constitutes safe firearm storage;

    f) Issues associated with bringing a firearm into the home, including suicide; and,

    g) Prevention strategies to address issues associated with bringing firearms into the home. (Pen. Code, § 31640, subd. (c)(1)-(7).)

11) Requires DOJ to update firearms safety certificate test materials at least once every five years. (Pen. Code, § 31640, subd. (e)(1).)

12) Requires DOJ to update the Bureau of Firearms website regularly to reflect current laws and regulations. (Pen. Code, § 31640, subd. (e)(2).)

13) Requires DOJ to prescribe a minimum level of skill, knowledge, and competency to be required of all firearm safety certificate instructors. (Pen. Code, § 31635, subd. (a).)

14) Requires DOJ Certified Instructor applicants to have a certification to provide training from an organization, as specified, or any entity found by the DOJ to give comparable instruction in firearms safety, or to have similar or equivalent training to that provided by specified entities. (Pen. Code, § 31635, subd. (b).)

15) Requires an applicant for a firearm safety certificate to successfully pass the firearm safety certificate test with a passing grade of at least 75%. (Pen. Code, § 31645, subd. (a).)

16) Requires an applicant who fails to pass the test upon the first attempt to be offered additional instructional materials by the instructor, such as a videotape or booklet. (Pen. Code, § 31645, subd. (b).)

17) Prohibits a person who fails to pass the test on a first attempt from retaking the test under any circumstances for 24 hours. (Pen. Code, § 31645, subd. (b).)

18) Requires DOJ to prepare a pamphlet that summarizes California firearms laws as they pertain to persons other than law enforcement officers or members of the armed services. (Pen. Code, § 34210, subd. (a).)

19) Requires DOJ to offer copies of the pamphlet at actual cost to licensed firearms dealers, who shall have copies of the most current version available for sale to retail purchasers or transferees of firearms. (Pen. Code, § 34210, subd. (c).)

20) Provides that the cost of the pamphlet, if any, may be added to the sale price of the firearm. (Pen. Code, § 34210, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Thirty years ago, [the] majority of people knew that having a gun in the house makes it more dangerous which is supported by peer-reviewed academic research. Over the last few decades, this has changed and the problem is that majority of people do **not** think that the bringing a firearm into the home makes the home more dangerous despite what the research shows. AB 1598 would ensure that potential firearm purchasers are aware of both the benefits and risks of owning and bringing a firearm into the home, as well as know about life-saving firearm laws in California. This bill does this by expanding what is covered on the firearm safety certification (FSC) test and requiring that FSC applicants receive a study guide with this information prior to the test. Understanding these benefits and risks are critically important for potential firearm purchasers so they can make an informed decision before bringing a firearm into their home. Furthermore, knowing the risks ensures firearm purchasers understand the gravity of being a responsible firearm owner to ensure appropriate safety measures are being taken."

2) **Firearm Safety Certificates:** Beginning in 1993, possession of a handgun safety certificate was required to transfer firearms. The DOJ was required to create the requisite process to obtain a handgun safety certificate. Exemptions were provided for specified classes of persons who did not need to either successfully take the course or challenge the course with a specified exam.

   SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme. SB 52 provided that, effective January 1, 2003, no person may purchase, transfer, receive, or sell a handgun without a handgun safety certificate. SB 1080, Chapter 711, Statutes of 2010, required DOJ to prepare a pamphlet that summarizes California firearms laws as they pertain to a person other than law enforcement officers or members of the armed services. This pamphlet included, but was not limited to, the following: lawful possession, licensing procedures, transportation and use of firearms, the acquisition of hunting licenses, and other provisions as specified. (Pen. Code, § 34205 subds. (a) & (b).) SB 683 (Block), Chapter 761, Statutes of 2013, required the DOJ to develop an instruction manual in both English and Spanish and available to licensed firearms dealers who must provide the manual to the general public.

   This bill would require DOJ prepare a firearm safety certificate study guide, in English and in Spanish, that explains the information covered in the firearm safety certificate test. DOJ would have to offer copies of the study guide to a firearm safety instructor at actual cost, and requires the instructor to provide the study guide to any applicant for a firearm safety certificate prior to the applicant's test date. This bill would require DOJ to notify the firearm safety instructor of the requirement to provide the study guide to applications. It would also require DOJ to update the study guide whenever there is an update to the firearm safety certificate test.

Under Penal Code section 31630, DOJ is required to develop and instruction manual in English and Spanish. This bill would create a new section that requires DOJ to prepare a firearm safety certificate study guide, distinct from the instruction manual.

This bill would also create a new pamphlet that explains the benefits and risks of owning a firearm and bringing a firearm into the home, including the increased risk of death to someone in the household by suicide, homicide, or unintentional injury. It would authorize DOJ to solicit input from any reputable association or organization in the development of the new pamphlet, and would require DOJ to offer copies of the pamphlet at actual cost to licensed firearm dealers. This bill would require licensed firearm dealers to provide a purchaser or transferee of a firearm with a copy of the most current version of the pamphlet.

3) **Argument in Support**: According to the *Brady Campaign California*, "Deciding to own and bring a firearm into the home is a purchase that comes with benefits and risks. It is critically important that potential firearm purchasers understand these serious risks so they can become a responsible firearm owner who is diligent in setting up safety measures to protect themselves and those around them.

"In 2013, California established the Firearm Safety Certificate (FSC) Program to ensure that everyone who buys a firearm is a responsible gun-owner with demonstrated knowledge of safe handling and gun laws. Over the last decade, the Legislature has continued its commitment to adequately provide warnings and information to stress the importance of responsible gun ownership. Today, most people do not know that bringing a firearm into the home makes the home more dangerous. This information is critically important to provide so that potential firearm purchasers know the risks prior to purchasing a firearm. Furthermore, providing this information continues to emphasize the gravity of being a safe and responsible firearm owner to protect themselves, their family, and their community.

"Individuals may purchase firearms for valid reasons. Some choose to own a firearm for hunting, while others use firearms for target and sport shooting. Owning firearms for these reasons provides individual satisfaction as well as the benefit of community and culture that comes with partaking in these activities with others. Owning a firearm can also make an individual feel safer, as a Pew Research Center study found that the majority of gun owners own a gun for protection.

"Despite these benefits, there are also serious risks with bringing a firearm into the home, which is supported by significant amounts of academic research. Individuals with access to a firearm are three times more at risk of suicide and two times more at risk of homicide.3 Not only does bringing a firearm into the home make it more dangerous for the owner, but it also increases the risk to cohabitants of firearm owners. The risk of dying by homicide is more than two times higher for cohabitants of handgun owners compared to people living in firearm-free homes. Lastly, there are extreme risks for children, as firearm injury is the leading cause of death in the United States for children and adolescents.

"Understanding these benefits and risks are critically important for potential firearm purchasers so they can make informed decisions before bringing a firearm into their homes. Furthermore, knowing the risks increases the likelihood that firearm purchasers will understand the gravity of being a responsible firearm owner, and that they will take appropriate safety measures to prevent injury from a firearm in the home.

"AB 1598 would expand what the FSC test covers by including explicitly the benefits and risks of owning a firearm and bringing a firearm into the home, including the increased risk of death to someone in the household by suicide, homicide, or unintentional injury. Additionally, this bill would require the test to also cover California's current laws relating to eligibility to own or possess a firearm, gun violence restraining orders, domestic violence restraining orders, and laws related to privately manufactured firearms. Lastly, this bill also ensures that FSC applicants are receiving a study guide created by the Department of Justice that provides all the information covered in the test."

4) **Related Legislation**:

a) AB 724 (V. Fong), would require DOJ to develop firearm safety certificate materials and tests in other specified languages besides English and Spanish. AB 724 is pending hearing in the Assembly Appropriations Committee.

b) SB 241 (Min), would require a licensee and any employees that handle firearms to annually complete specified training. SB 241 would also require the DOJ to develop and implement an online training course. SB 241 is pending in the Senate Appropriations Committee.

5) **Prior Legislation**:

a) SB 1289 (Committee on Judiciary), Chapter 92, Statutes of 2018, included provisions that required DOJ to create a firearm safety certificate manual, audio visual aids, and tests –both oral and written – in English and Spanish, among other requirements.

b) AB 1525 (Baker), Chapter 825, Statutes of 2017, updated warnings on packaging, instructional manuals, pamphlets, and signs posted at retailers relating to the risks of firearms to reflect recent updates in California law related to firearms.

c) SB 683 (Block), Chapter 761, Statutes of 2013, extended the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun.

d) SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme.

e) AB 35 (Shelley), Chapter 940, Statutes of 2001, required any person who wants to purchase or otherwise transfer a handgun, except as specified, to obtain a handgun safety certificate.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
California Academy of Family Physicians

California Catholic Conference
Los Angeles Unified School District
Safe- Scrubs Addressing the Firearm Epidemic

Opposition

None

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

Date of Hearing: April 18, 2023
Counsel: Liah Burnley

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

AB 1708 (Muratsuchi) – As Amended April 12, 2023

SUMMARY: Amends provisions of Proposition 47 relating to shoplifting and petty theft.

1) Specifically, **this bill**:

1) Defines "Shoplifting" as entering a commercial establishment with intent to steal retail property or merchandise, where the value of the property that is taken or intended to be taken does not exceed $950.

2) Defines "Retail property or merchandise" as any article, product, commodity, item, or component intended to be sold in retail commerce.

3) Defines "Value," for the purpose of shoplifting, as the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

4) Excludes from the offense of shoplifting, forgery, the unlawful sale, transfer, or conveyance of an access card, forgery of an access card, the unlawful use of an access card, theft from an elder or dependent adult, receiving stolen property, embezzlement, identity theft, or the theft or unauthorized use of a vehicle.

5) Excludes from the offense of petty theft, forgery, the unlawful sale, transfer, or conveyance of an access card, forgery of an access card, the unlawful use of an access card, theft from an elder or dependent adult, receiving stolen property, embezzlement, identity theft, or the theft or unauthorized use of a vehicle.

6) Creates a new offense of petty theft with a prior, a wobbler. Any person who has two or more convictions for any of the following offenses, and who is subsequently convicted of petty theft or shoplifting, is guilty of petty theft with a prior:

   a) Petty theft;

   b) Grand theft;

   c) Theft from an elder or dependent adult;

   d) Theft or unauthorized use of a vehicle;

   e) Burglary;

   f) Carjacking;

g) Robbery;

h) Receiving stolen property;

i) Shoplifting; and,

j) Mail theft.

7) Provides that the above provisions shall only become effective when submitted to and approved by the voters.

8) Authorizes the city or county prosecuting attorney or county probation department to create a diversion program for theft offenses or repeat theft offenses.

9) States that, in determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

a) Any prefiling investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement;

b) If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity;

c) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or deferred entry of judgment program;

d) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program; and,

e) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

10) States that on referral of a case to the program, a notice shall be provided to the defendant with the following information:

a) The date by which the person must contact the diversion program or deferred entry of judgment program in the manner designated by the supervising agency; and

b) A statement of the penalty for the offense or offenses with which that person has been charged.

11) Allows the prosecuting attorney to enter into a written agreement with the defendant to refrain from, or defer, prosecution of the offenses on the following conditions:

a) Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney; and

b) Making adequate restitution or an appropriate substitute for restitution to the victim or victims.

EXISTING LAW:

1) Defines "Shoplifting" as entering a commercial establishment with intent to commit theft, where the value of the property that is taken or intended to be taken does not exceed $950. (Pen. Code § 459.5 subd. (a).)

2) Defines "Value" for the purpose of shoplifting as the "reasonable and fair market value" of the property. (Pen. Code, §484, subd. (a); *People v. Romanowski* (2017) 2 Cal.5th 903, 914-915.)

3) States that shoplifting shall be punished as a misdemeanor, except that shoplifting may be punished as a felony if a person has a prior "super strike," or a registerable sex conviction, as specified. (Pen. Code, § 459.5, subd. (a).)

4) Requires any act of shoplifting to be charged as shoplifting. (Pen. Code, § 459.5, subd. (b).)

5) Clarifies that a person who is charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)

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

7) Defines "Grand theft" as theft that is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified. (Pen. Code, § 487.)

8) Provides that grand theft is a wobbler. (Pen. Code, § 489, subd. (c).)

9) States that any other case of theft is petty theft. (Pen. Code, § 488.)

10) Defines "Petty theft" as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950. (Pen. Code, § 490.2 subd. (a).)

11) Provides that petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 6 months, or both. (Pen. Code, § 490.)

12) Provides that petty theft shall be punished as a misdemeanor, except that petty theft may be punished as a felony, if a person has a prior "super strike," or a registerable sex conviction, as specified. (Pen. Code, § 490.2, subd. (a).)

13) Specifies that petty theft does not include any theft that may be charged as an infraction. (Pen. Code, § 490.2, subd. (b).)

14) Specifies that petty theft does not include theft of a firearm. Theft of a firearm is grand theft, punishable as a felony by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, §§ 490.2, subd. (c) & 489, subd. (a).)

15) Provides that the offense of petty theft with a prior is a wobbler. (Pen. Code, § 666, subd. (a).)

16) States that petty theft with a prior may be charged if a defendant has a prior conviction for petty theft, grand theft, embezzlement from an elderly person or dependent adult, auto theft as specified, burglary, carjacking, robbery, or a felony for receiving stolen property. (Pen. Code, § 666, subd. (a).)

17) Allows a peace officer to take into custody a person who has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months or if there is probable cause to believe the person committed organized retail theft, as specified. (Pen. Code, § 856, subd. (i)(11)-(12).)

18) Allows a court to issue a bench warrant if a defendant has been cited or arrested for misdemeanor or felony theft from a store and has failed to appear in court in connection with that charge or those charges within the past six months. (Pen. Code, § 978.5, subd. (a)(7).)

19) States that is the intent of the Legislature that any provision of law should not construed to preempt current or future pretrial diversion programs. (Pen. Code, § 1001.)

20) Authorizes local jurisdictions to establish misdemeanor diversion programs upon approval of the district attorney. (Penal Code §§ 1001.2, subd. (b), 1001.50.)

21) Authorizes a city attorney, district attorney, or county probation department to create a diversion program for persons who commit a theft offense or repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department. (Pen. Code, § 1001.81.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "A report by the National Retail Foundation highlighted that retail theft accounts for nearly $30 billion in economic loss per year, with California as one of the states most impacted by retail theft. Most of these incidents are traced back to a few repeat offenders who have learned how to game the system. Since Proposition 47 eliminated the use of felony options for most serial theft cases, law enforcement generally only use a misdemeanor citation, which usually results in the suspect being immediately released. The National Association for Shoplifting Prevention further reports that since Proposition 47 was enacted, they have seen a 50% drop in court participation in their education programs. With the rise in retail theft and the lack of accountability, a recent survey by UC Berkeley highlighted that a majority of California voters would like to see changes made to Proposition 47 to better address theft crimes. If approved by the voters, AB 1708 holds repeat offenders accountable and provides a pretrial diversion option. If a person has two or more prior convictions related to theft, they could be charged with a misdemeanor or felony on their next offense. The bill also establishes a pretrial diversion program for persons charged with theft-related offenses and offers them appropriate mental health and substance abuse treatment in an effort to help prevent future

theft and crimes that are more serious."

2) **Diversion:** Existing law permits pretrial diversion programs. (Pen. Code, §1001.) Pre-trial diversion suspends the criminal proceedings without requiring the defendant to enter a plea. (Pen. Code, §§ 1001.1, 1001.3.) The defendant must successfully complete a program or other conditions imposed by the court. If a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense. (Pen. Code, §§ 1001.7, 1001.9.)

   Current law already authorizes local jurisdictions to establish misdemeanor diversion programs upon approval of the district attorney. (Penal Code §§ 1001.2, subd. (b), 1001.50.) This bill would authorize a city or county prosecuting attorney or county probation department to create a diversion program for persons who commit a misdemeanor or felony theft offense or repeated theft offenses.

   Current law also already authorizes the city or county prosecuting attorney or county probation department to create diversion programs for thefts or repeat thefts. AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018 added "Chapter 2.9D. Theft and Repeat Theft Crimes Diversion or Deferred Entry of Judgment Program" to the Penal Code. The diversion program proposed by this bill is identical to the program already authorized pursuant to AB 1065 (Jones-Sawyer) in Penal Code section 1001.82, which is set to sunset on January 1, 2026. (Pen. Code, §§ 1001.81- 1001.82.)

3) **Proposition 47 and Theft Offenses**: In the November 4, 2014 election, California voters approved Proposition 47, which became effective the following day. (California Secretary of State ("SOS"), *Statement of the Vote* at p. 93 <https://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Feb. 16, 2023].) The purpose of Proposition 47 is to "ensure that spending focused on violent and serious offences and to maximize alternatives for nonserious, nonviolent crime" and to invest the savings into "prevention and support programs for schools, victims services, and mental health and drug treatment." (SOS, *Voter Guide, Proposition 47, Section 2* at p. 70 <https://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf> [as of Feb. 16, 2023].)

   Proposition 47 amended various provisions of the Government Code, Penal Code and Health and Safety Code to reclassify certain drug possession offenses and property offenses from felonies or wobblers to misdemeanors. In addition, individuals can petition the court to amend their criminal records. Generally, individuals previously convicted of a "super strike," or a registerable sex offence, are not eligible for the reduced penalties and record relief under Proposition 47.

   In relation to thefts, Proposition 47 reclassified several theft offenses, where the value of the property does not exceed $950, from felonies or wobblers to misdemeanors. This bill would make changes to some of those reforms as follows:

   a) **Shoplifting**: Proposition 47 created the misdemeanor offense of shoplifting, punishable by up to six months in county jail. (Pen. Code, § 459.5.) Shoplifting is entering a

commercial establishment with intent to commit theft, where the value of the property that is taken or intended to be taken does not exceed $950. (*Ibid.*) Acts of shoplifting must be charged as shoplifting. (*Ibid.*) Prior to the enactment of Proposition 47, shoplifting could be charged as a burglary, a potential felony.

This bill would narrow the definition of shoplifting to apply to only circumstances in which a person enters a commercial establishment with intent to steal retail property or merchandise, which is defined as any item intended to be sold in retail commerce, where the value of the property that is taken or intended to be taken does not exceed $950. Thus, any offense that does not meet this definition would have to be charged as another offense with increased penalties.

This bill also changes the definition of "value" for the purposes of shoplifting. This bill would define "value" as the retail value of an item as advertised by the affected retail establishment, including applicable taxes. Decades of case law has defined "value" in regards to theft offenses, including shoplifting, as the "reasonable and fair market value" of the property. (Pen. Code, § 484, subd. (a); *People v. Romanowski* (2017) 2 Cal.5th 903, 914-915.) As explained by the California Supreme Court:

> [T]he Penal Code's definition of "theft," [] requires courts to determine the value of property obtained by theft based on "reasonable and fair market value." [...] Section 484 is a definitional section. It sets the ground rules for how theft crimes are adjudicated—for example, how various terms are defined, how value must be calculated, and how certain evidentiary presumptions operate. Specific theft crimes are set out in a variety of other sections, and courts have long required section 484's "reasonable and fair market value" test to be used for theft crimes that contained a value threshold [...]. Acceptance of this approach was part of the backdrop against which Proposition 47 was enacted, and Proposition 47 does not refer to any other approach to valuation. We thus see no basis for an alternative approach to valuation either in the original statutory scheme or in the provisions enacted by Proposition 47. Courts must use section 484's "reasonable and fair market value" test when applying section 490.2's value threshold for theft crimes.

(*People v. Romanowski* (2017) 2 Cal.5th 903, 914-915 (citations omitted).) Fair market value "means the highest price obtainable in the market place rather than the lowest price or the average price." (*People v. Pena* (1977) 68 Cal.App.3d 100, 104; see also CALCRIM No. 1801 ["Fair market value is the price a reasonable buyer and seller would agree on if the buyer wanted to buy the property and the seller wanted to sell it, but neither was under an urgent need to buy or sell."].) Fair market value is "*not the value of the property to any particular individual.*" (*People v. Lizarraga* (1954) 122 Cal.App.2d 436, 438 [264 P.2d 953] (*Lizarraga*) (emphasis added); see also *People v. Grant* (2020) 57 Cal.App.5th 323, 329.)

This bill would establish a new method of valuation for shoplifting offenses only. Whether a person could be guilty of shoplifting, would rest on the value of an item as advertised by the retailer, instead of the fair market value of the item. Further, price advertising has been the subject of much legislation, regulation, and litigation because of concerns that advertised prices do not correspond to prices actually charged for truly comparable products. (See, e.g.; *Shaulis v. Nordstrom, Inc.* (1st Cir. 2017) 865 F.3d 1, 5 [consumer class action alleging that price tags on Nordstrom Rack products purport to represent a bona fide price, but such items were never sold or intended to be sold at the prices advertised on the price tags]; *John v. AM Retail Group, Inc.* (S.D.Cal., Mar. 20, 2018, No. 17CV727-JAH (BGS)) 2018 WL 1400718, p. *2 [consumer class action alleging that a sign advertising a leather wallet as having a ticket price and a sale price was misleading because the particular wallet was not offered for sale at the ticket price at any store in California; *Pena, supra*, 68 Cal.App.3d at p. 103 ["If some stores would underprice the items or would give them away that would not be representative of the fair market value"]; *People v. Grant* (2020) 57 Cal.App.5th 323, 331, ["This is particularly relevant in the context of an outlet store that sells everything at a discount].)

b) **Petty Theft**: Existing law separates the crime of theft into two categories: "petty theft," an infraction/misdemeanor and "grand theft," a wobbler. (Pen. Code, § 489, subd. (c).) Prior to Proposition 47, an offense would be charged as either grand theft of petty theft based on the conduct involved, the manner in which the crime was committed or the value of the property stolen. (*Gomez v. Superior Court of Mendocino County* (1958), 50 Cal.2d 640.) Proposition 47 provides that theft must be charged as petty theft if the value of the property stolen does not exceed $950, unless the defendant has a prior "super strike," or a registerable sex conviction, in which case the offence can be charged as a felony. (Pen. Code, § 490.2.) Theft remains chargeable as grand theft if the value of the property taken exceeds $950 and/or is a firearm. (Pen Code, §§ 487, 490.2, subd. (a).)

   This bill would narrow the types of theft that could be charged as petty theft. Specifically, forgery, unlawful sale, transfer, conveyance, or use of an access card, theft from an elder or dependent adult, receiving stolen property, embezzlement, identity theft, and the theft or unauthorized use of a vehicle could not be charged as petty theft, even if the value of the property involved is less than $950. Instead, these thefts would have to be charged as a different offense with increased penalties.

   For example, embezzlement is treated like either a petty theft or grand theft depending on the value of the property in question. Under existing law, if the embezzled amount was $950 or less, the defendant can be charged with a misdemeanor. If the amount exceeds $950 the offense is a wobbler that can be charged as a misdemeanor or felony. (Pen. Code, § 514.) This bill would eliminate the ability for embezzlement, and other specified offenses, to be charged as petty theft, even if the value of the property was under $950.

c) **Petty Theft with a Prior Conviction**: Prior to the passage of Proposition 47, a defendant could be charged with felony petty theft with a prior, if the defendant had three or more prior convictions for specified crimes. Proposition 47 repealed the crime of petty theft with a prior, unless the defendant has a prior conviction for specified auto theft offenses or embezzlement from an elderly person or dependent adult, in which case the offense is chargeable as a wobbler. (Pen. Code, § 666.)

This bill creates a new, additional petty theft with a prior offense. This bill would allow a person to be charged with a petty theft with prior if they have had two or more convictions for specified crimes including petty theft and shoplifting, among other offenses, and are subsequently convicted of petty theft or shoplifting. This offense would be punishable a wobbler. For example, a person with two prior shoplifting convictions could be guilty of a felony upon their third shoplifting offense, even if the value of the property stolen was far below $950.

4) **Proposition 47 and Crime Rates**: Opponents of Proposition 47 claim that there is an increase in crime attributable to the initiative. However, reports evaluating the effects of the initiative have found that Proposition 47 has had little to no effect on California's crime rates overall. (KQED, *California Prison Reform Didn't Cause Crime Increase, Study Finds* <https://www.kpcc.org/2016-02-18/study-cas-prison-reform-didnt-cause-crime-increase>[as of Feb. 16, 2023]; see also, Center on Juvenile and Criminal Justice, *Urban Crime Trends Remain Stable Through California's Policy Reform Era (2010-2016)* <http://www.cjcj.org/uploads/cjcj/documents/urban_crime_trends_remain_stable_through_californias_policy_reform_era_2010-2016.pdf> [as of Feb. 16, 2023].) Incarceration and crime rates are all down substantially compared to their levels in 2006 – shortly before state policymakers and the voters began enacting reforms to California's criminal justice system. (*Criminal Justice Reform is Working in California*, California Budget & Policy Center <https://calbudgetcenter.org/resources/criminal-justice-reform-is-working-in-california/> [as of Feb. 16, 2023].)

There is evidence that recidivism rates have fallen. (Public Police Institute of California ("PPIC"), *Recidivism of Felony Offenders in California* <https://www.ppic.org/publication/recidivism-of-felony-offenders-in-california/> [as of Feb. 16, 2023].) An evaluation of Proposition 47's effect of recidivism found statistically significant fewer rearrests and reconvictions for any crime or revocation. (National Institute of Justice, *Program Profile: The Impact of California's Proposition 47 (The Reduced Penalties for Some Crimes Initiative) on Recidivism* (Nov. 29, 2021) <https://crimesolutions.ojp.gov/ratedprograms/740#ar> [as of Feb. 16, 2023].)

Further research suggests that Proposition 47 has had no effect on violent crimes, including homicide, rape, aggravated assault and robbery and findings of increased property offenses such as larceny and motor vehicle theft that blame Proposition 47 as the cause do not withstand more rigorous statistical testing. (Bartos, Bradley J. & Kubrin, Charis E., *Can We Downsize Our Prisons and Jails without Compromising Public Safety?* (2018) 17 Criminology & Public Policy 3 <https://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12378 > [as of Feb. 16, 2023].)

Moreover, a study by the Pew Research Center found that raising the felony theft threshold in other states had no impact on crime; states that increased their thresholds reported roughly the same average decrease in crime as the 20 states that did not change their theft laws; and the amount of a state's felony theft threshold—whether it is $500, $1,000, $2,000, or more—is not correlated with its property crime and larceny rates. (Pew Research Center, *The Effects of Changing Felony Theft Thresholds* <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-effects-of-changing-felony-theft-thresholds> [as of Feb. 16, 2023].)

FBI data reflects that nationally, the rate of property crimes has been decreasing for 18 years. California, with its landmark criminal justice reforms, saw a more than eight percent decrease in the statewide property crime rate. (Californians for Safety and Justice, *New Federal Crime Data Underscores Urgency Of Increased Investments In Community-Based Crime Prevention* (Sept. 27, 2021) <https://safeandjust.org/news/https-safeandjust-org-news-new-federal-crime-data-underscores-urgency-of-increased-investments-in-community-based-crime-prevention/> [as of March 29, 2023].)

> Broader crime statistics paint a picture of a decreasing problem, not one on the rise. National crime statistics from the FBI show shoplifting decreasing steadily every year from 2015 through 2020, the most recent data available. Larceny — the taking of property without using force or breaking in — declined 16% between 2010 and 2019, then dipped even lower in 2020, the data indicate.
>
> At a local level, more up-to-date statistics sharpen the image of a waning problem. Property crime in Los Angeles is up 2.6% from last year, according to LAPD numbers published Nov. 27, but down 6.6% from 2019. The category that includes shoplifting — "personal/other theft" per LAPD — is down 32% from 2019. A San Francisco Chronicle analysis of that city's shoplifting crime data showed that the number of monthly reports had changed little in the last three years, though it also raised some major questions about the accuracy of shoplifting reporting to law enforcement. Smash-and-grab thefts are classified differently because they involve violence, trespassing and high-value hauls, and suspects have been charged with robbery, burglary or grand theft after recent incidents in L.A. and San Francisco.

(Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate> [as of March 2, 2023].)

5) **Reports of Exaggerated Losses by Retailers**: Some complaints of retail theft were overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html> [as of March 2, 2023]; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate> [as of March 2, 2023]; CNN Business, '*Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html> [as of March 2, 2023]; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021)

<https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/> [as of March 2, 2023].)

6) **Existing Penalties for Theft Offenses**: To the extent this bill is aimed at increasing penalties for thefts, there are currently a number of laws that prosecutors can use to charge these crimes that call for increased penalties.

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

Repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (Pen. Code, § 487; see also *People v. Bailey* (1961) 55 Cal.2d 514, 518-519 (*Bailey*).) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, specified that if the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, whether committed against one or more victims, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. According to the Assembly Public Safety Analysis of AB 2356, the intent of the bill was to codify *People v. Bailey* to "clarify the state of the law to the extent some prosecutors may think Proposition 47 changed the Bailey rule."

Law enforcement can also use aggregation to pursue felony charges when individuals are in possession of stolen items, where multiple items are received on one occasion and the total amount exceeds $950, even in instances where a person possesses items stolen from different stores. (*People v. Lyons* (1958) 50 Cal.2d 275; see also *People v. Roberts* (1960) 182 Cal.App.2d 431, 436-437.)

Moreover, under California law, if two or more persons conspire to commit any crime, even misdemeanor petty theft or shoplifting, they can be charged with a felony for the conspiracy itself. Thus, any time there is more than one person involved in any act of theft, they can be charged as felony conspiracy, regardless of the value of the items stolen. (Pen. Code, § 182.)

In sum, there are many legal options for charging thefts with increased penalties.

7) **Recent Legislation Targeting Reports of Increased Retail Theft**: Penal Code section 490.4 punishes "organized retail theft" – shoplifting schemes undertaken by two or more persons who have organized themselves to commit shoplifting for financial gain. (Pen. Code, § 490.4.) The punishment ranges from one year in the county jail (misdemeanor) to 16 months, or two, or three years in the county jail (felony), depending on the specific circumstances.

The crime of organized retail theft was created by AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018. AB 1065 also authorized CHP to establish regional task forces to investigate property theft crimes. AB 1065 contained various provisions expanding jurisdiction to prosecute theft, organized retail theft and receipt of stolen property;

authorizing nonrelease of individuals arrested for misdemeanors when certain circumstances are present; specifying that a court may issue a bench warrant for a person who failed to appear if the defendant has been cited or arrested for a theft offense in the previous 6 months; and authorizing the creation of a diversion or deferred entry of judgment program for persons who commit theft and repeat theft offenses. AB 1065 contained a sunset date of January 1, 2021.

Subsequently, AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, reenacted the provisions of the original bill that created the crime of organized retain theft. AB 331 contains a sunset date of January 1, 2026. AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and provisions of AB 1065 that had authorized nonrelease of individuals arrested for misdemeanors when certain circumstances are present; specifying that a court may issue a bench warrant for a person who failed to appear if the defendant has been cited or arrested for a theft offense in the previous six months; and authorizing the creation of a diversion or deferred entry of judgment program for persons who commit repeat theft offenses but also expanded to apply to single theft offenses. AB 2294 contains a sunset date of January 1, 2026.

8) **Failed Attempts to Amend Proposition 47**: Since its enactment, there have been numerous legislative attempts to repeal and/or amend Proposition 47, most of which failed passage by the Legislature, or were vetoed.

   In addition to unsuccessful legislative attempts to repeal and/or amend Proposition 47, the Criminal Sentencing, Parole, and DNA Collection Initiative (Proposition 20), was on the ballot in the November 2020 election. Proposition 20 was a citizen-initiated measure designed to reverse some reforms made by Proposition 47. The voters rejected Proposition 20 by 61.7%. (SOS, *Statement of the Vote* at p. 63 <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf> [as of Feb. 16, 2023].) Proposition 20 would have would have made specific types of theft, shoplifting, and fraud, no matter the value, chargeable as wobblers, rather than misdemeanors. (SOS, *Voter Guide, Proposition 20* at pp. 15-26 <https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop20.pdf > [as of Feb. 16, 2023].)

   Again, in 2022, the California Punishment for Repeat Theft convictions Initiative (#21-004) would have authorized felony sentences for certain thefts under $950 and required longer sentences for specified property losses. (SOS, *Initiative and Referendum Proposals Pending Review* <https://www.sos.ca.gov/elections/ballot-measures/attorney-general-information> [as of Feb. 16, 2023].) To be certified for the 2022 ballot, the initiative needed 623,212 signatures by July 26, 2022. The initiative failed to qualify for the ballot.

   At the ballot box, the California electorate has repeatedly rejected regressive "tough on crime" measures, in favor of criminal justice reforms aimed at reducing incarceration and reinvesting savings toward prevention, and reducing recidivism.

9) **Long Sentences are Counterproductive for Public Safety**: This bill would increase sentences for theft offenses. Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).) Increasingly punitive sentences add little to the deterrent effect of the

criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs. (National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 15, 2023].)

> This finding makes intuitive sense. Consider a person who is thinking about stealing a car or burglarizing a local business. If he is thinking rationally, he will take into account a variety of factors when considering how to commit the crime, including time of day, ease of entry, presence of security personnel or technology, or his ability to leave the crime scene. He does this to avoid being caught in the act because being arrested and prosecuted will impose significant burdens on him. Additionally, because he is not planning on being apprehended, he is unlikely to be thinking about how much time he might spend in prison and whether his sentence will be three, five, or seven years.
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> Notably, this example looks at the behavior of a rational person, which rarely fits the picture of a substantial portion of those who actually commit a crime. Many are teenagers seeking peer approval for their illegal behavior, individuals under the influence of alcohol or drugs at the time of the offense, or are motivated by economic challenges. Many of these individuals are not even thinking about the risk of being caught, let alone know how much prison time they may face.
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> The limited impact of extending sentence length becomes even more attenuated for long-term incarceration. If the penalty for a second robbery conviction is twenty years and a legislative body increases that penalty to twenty- five, few would-be robbers undeterred by the prospect of "only" a twenty year sentence would balk at an additional five years.
>
> Again, there are multiple possible reasons for imposing a given prison term, depending on the circumstances of the crime. But policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message."

(*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine (April 2014) at pp. 130 -150 <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs> [as of March 27, 2023].)

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

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.

As to the Legislature's authority to amend the initiative, Proposition 47 states: "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor, so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act." (SOS, *Voter Guide, Proposition 47* at p. 74 <https://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf> [as of Feb. 16, 2023].)

Three sections of this bill seek to increase penalties for theft offenses addressed by Proposition 47. As such, it is inconsistent with the purpose of Proposition 47. Therefore, pursuant to the above-referenced provisions of the California Constitution, only the voters may authorize the provisions. Accordingly, this bill would become effective only upon approval of the voters at the statewide general election.

11) **Argument in Support**: According to the *City of Brentwood*, "This measure would increase accountability for repeat theft offenders and offer pathways for pre-plea diversion programming. If passed, the bill would send the issue to the voters for approval at the next statewide general election.

"This strategy is one of many supported by cities to address crime and its underlying causes. We remain committed to improving California's carceral systems, interrupting and ending cycles of recidivism, and building a community-based system of care that appropriately meets the needs of all community members.

"Proposition 47 of 2014 made promises of safe neighborhoods, but the unintended consequences that followed have provided anything but. According to a February 2023 study conducted by the Public Policy Institute of California, a strong majority of Californians worry they or a family member will be a victim of a crime (21% very, 44% somewhat). This is the sentiment being felt by residents of cities throughout the state.

"Our communities deserve better, and cities are more than ready to find solutions that fix Proposition 47.

"The City of Brentwood is keenly interested in exploring additional strategies to address the impacts of crime in our communities. This includes resources to improve community safety through prevention and early intervention programming, as well as improved re-entry service provision for our formerly incarcerated community members. While these provisions have historically been the responsibility of state and county departments, cities are interested in increased collaboration to meet these urgent needs."

12) **Argument in Opposition**: According to *Californians for Safety and Justice*, "AB 1708 would partially repeal key elements of Proposition 47 (Prop 47) by increasing penalties for low-level shoplifting and petty theft under multiple circumstances. The legislation weakens the definition of shoplifting under California law, allowing people to be charged with other, additional, and more serious property crimes under a variety of circumstances. Also under AB 1708, a person convicted of shoplifting or petty theft under $950 who has two or more prior convictions for property crimes could be charged with a felony and receive a sentence of three years or more. These changes all work to repeal key elements of Prop 47, which since its enactment has been followed by historic lows in property crime.

"In numerous ways, AB 1708 would make it easier to charge non-violent Californians with felonies and to go back to the same shortsighted "tough on crime" measures that have failed California for the past three decades. It is yet another attempt to go down a path that California's voters have already twice rejected. Increasing penalties for these offenses would once again dramatically increase incarceration rates, leaving the state vulnerable to falling out of compliance with the prison system's population cap mandated by the federal judiciary. Increasing incarceration rates would also eliminate the more than $1 billion Prop. 47 is expected to save each decade in perpetuity, savings that are required to be reallocated back to local, community- based programs proven to more effectively prevent crime and harm, like drug treatment, mental health services, re-entry services and programs that help crime victims heal. As of 2022, Prop. 47 has saved the state more than $600 million and has been reinvested in the community.

"AB 1708 nonetheless proposes to expose more people to felony sentencing and incarceration for low-level property crimes. Such an attempt is not justified by actual crime data, flies in the face of sensible criminal justice reform, and would force counties to shoulder the cost of imprisoning more people for years, at great human and fiscal expense."

13) **Related Legislation**:

a) AB 23 (Muratsuchi), would amend Proposition 47 by reducing the threshold amount for petty theft and shoplifting from $950 to $400. The hearing for AB 23 was canceled at the

request of author.

b) AB 75 (Hoover), would reinstate a provision of law that was repealed by Proposition 47 relating to petty theft with a prior and would increase penalties for shoplifting. AB 75 failed passage in this Committee.

c) AB 335 (Alanis), would require the Little Hoover Commission to submit a report to the Legislature describing reports retail thefts, as specified. AB 335 is pending in Assembly Appropriations Committee.

d) SB 316 (Niello), would reinstate a provision of law that was repealed by Proposition 47 relating to petty theft with a prior and would increase penalties for shoplifting. SB 316 is pending in Senate Public Safety Committee.

14) **Prior Legislation**:

a) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses.

b) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

c) AB 1597 (Waldron), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reinstating the offense of petty theft with a prior. AB 1597 failed passage in this Committee.

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

e) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reducing the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from $950 to $400. AB 1603 failed passage in this Committee.

f) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have amended Proposition 47 by authorizing the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

g) SB 1108 (Bates), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reinstating the offense of petty theft with a prior. SB 1108 failed passage in Senate Public Safety Committee.

h) AB 3234 (Ting), Chapter 334, Statutes of 2020, created a court-initiated misdemeanor diversion program.

i) AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community.

j) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

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

l) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced penalties for certain drug and property crimes.

m) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

n) AB 994 (Lowenthal), of the 2013-2014 Legislative Session, would have required each county to establish and maintain a pretrial diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed.

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

REGISTERED SUPPORT / OPPOSITION:

Support

BizFed Los Angeles
BOMA California
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Retailers Association
California Chamber of Commerce
California District Attorneys Association (Co-Sponsor)
California Association of Highway Patrolmen
California Grocers Association
California Police Chiefs Association
California Retailers Association
Carmichael Improvement District
City of Artesia
City of Atwater
City of Bakersfield
City of Bellflower

City of Brentwood
City of Ceres Council District 2
City of Chino
City of Clovis
City of Concord
City of Downey
City of Duarte
City of El Segundo
City of Fairfield
City of Fontana
City of Fortuna
City of Garden Grove
City of Glendora
City of Grand Terrace
City of Hanford
City of Hesperia
City of Indian Wells
City of Kerman, CA
City of Lake Elsinore
City of Lakeport
City of Lakewood
City of Lakewood CA
City of Lomita
City of Menifee
City of Mission Viejo
City of Morgan Hill
City of Newark, California
City of Newport Beach
City of Norco
City of Norwalk
City of Oceanside
City of Placentia
City of Red Bluff
City of Redlands
City of Ripon
City of Riverbank
City of Riverside
City of Rosemead
City of San Fernando
City of San Marcos
City of Turlock
City of Vista
City of Walnut
City of Walnut Creek
City of Westminster
City of Whittier
Crime Survivors Resource Center
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce

Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Goods Movement Alliance
Greater Ontario Business Council
Hollywood Chamber of Commerce
Inland Empire Chamber Alliance
Inland Empire Economic Partnership
League of California Cities
Lincoln Area Chamber of Commerce
Los Angeles County Division, League of California Cities
Mayor Patricia Lock Dawson, City of Riverside
Menifee Bicycles
NAIO
National Federation of Independent Business
Peace Officers Research Association of California (PORAC)
Rancho Cordova Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Southern California Leadership Council
Town of Apple Valley
UCAN – United Chamber Advocacy Network
Yuba Sutter Chamber of Commerce

Opposition

A New Way of Life Reentry Project
Anti Recidivism Coalition
Bolda Bridges INC
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Defy Ventures
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance Project
Indivisible CA Statestrong
Initiate Justice
Last Prisoner Project
Let's Make It Happen
Los Angeles Regional Reentry Partnership (LARRP)
Loyola Law School Collateral Consequences of Conviction Justice Project
Rubicon Programs
Sacred Purpose LLC
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Seeds for Youth Development

Shields for Families
Time Done
United Communities for Peace

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

Date of Hearing: April 18, 2023
Counsel: Cheryl Anderson

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

AB 1721 (Ta) – As Amended March 23, 2023

SUMMARY: Makes it a crime to knowingly distribute deepfakes of sexual conduct without the consent of the depicted individual. Specifically, **this bill**:

1) Makes it a crime to knowingly and without the consent of the depicted individual, distribute, exhibit, or exchange with others or offer to distribute, exhibit, or exchange with others a deepfake that depicts an individual personally engaging in sexual conduct, as defined.

2) Makes the crime punishable by a fine not exceeding $1,000 or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

3) Provides that no person shall be held liable under this section for any activity protected by the First Amendment to the Constitution of the United States.

4) Defines "deepfake" as any audio or visual media in an electronic format, including any motion picture film or video recording that is created or altered in a manner that it would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual depicted in the recording.

5) Provides that "deepfake" does not include any material that constitutes a work of political, public interest, or newsworthy value, including commentary, criticism, satire, or parody, or that includes content, context, or a clear disclosure visible throughout the duration of the recording that would cause a reasonable person to understand that the audio or visual media is not a record of a real event.

6) Defines "distribute" as meaning to publish, make available, or distribute to the public.

7) States that distribution of "deepfake" does not include any alteration of a recording described above, including altering the length of the recording, so long as such alteration does not knowingly remove any content, context, or clear disclosure visible throughout the duration of the recording that would cause a reasonable person to believe that the audio or visual media is not a record of a real event.

8) Defines "sexual conduct" as any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act with a minor under 14 years of age, or excretory functions performed in a lewd or lascivious

manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

EXISTING LAW:

1) Provides that "Congress shall make no law… abridging the freedom of speech..." (U.S. Const., 1st Amend.)

2) Applies the First Amendment to the states through operation of the Fourteenth Amendment. (*Gitlow v. New York* (1925) 268 U.S. 652; *NAACP v. Alabama* (1925) 357 U.S. 449.)

3) Provides that every person may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press. (Cal. Const., art. I, § 2.)

4) Makes it a misdemeanor to intentionally distribute an image of another identifiable person's intimate body parts or depicting the person engaged in one of several specified sex acts, under circumstances in which the persons agree or understand that the image shall remain private, when the person distributing the image knows, or should know, that its distribution will cause serious emotional distress, and where the person depicted suffers that distress. (Pen. Code, § 647, subd. (j)(4)(A).)

5) Provides that a person intentionally distributes an image when that person distributes the image or arranges, specifically requests, or intentionally causes another person to distribute that image. (Pen. Code, § 647, subd. (j)(4)(B).)

6) Defines "intimate body part" as any portion of the genitals, the anus, and in the case of a female, also includes any portion of the breasts below the top of the areola that is either uncovered or clearly visible through clothing. (Pen. Code, § 647, subd. (j)(4)(C).)

7) Makes distribution of the image exempt from prosecution if:

   a) It is made in the course of reporting an unlawful activity;

   b) It is made in compliance with a subpoena or other court order for use in a legal proceeding;

   c) It is made in the course of a lawful public proceeding; or,

   d) It is related to a matter of public concern or public interest. (Pen. Code, § 647, subd. (j)(4)(D)(i)-(iv).)

8) Specifies a second or subsequent violation of the misdemeanors described above, also known as invasion of privacy, is punishable by imprisonment in the county jail not exceeding one year, and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(1).)

9) Specifies that if the victim of the invasion of privacy, as described above, was a minor at the time of the offense, the violation is punishable in a county jail not exceeding one year,

and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(2).)

10) States that the invasion of privacy provisions do not preclude punishment under any section of law providing for greater punishment. (Pen. Code, § 647, subd. (j)(5).)

11) Provides that every person who, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, is guilty of a misdemeanor punishable by up to one year in the county jail and/or a fine not exceeding $1,000. (Pen. Code, § 653.2, subd. (a).)

12) Provides that a depicted individual has a cause of action against a person who does either of the following:

    a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure; or

    b) Intentionally discloses sexually explicit material that the person did not create, and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (Civ. Code, § 1708.86, subd. (b).)

13) Defines "depicted individual" as "an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction." (Civ. Code, § 1708.86, subd. (a)(4).)

14) Defines various crimes related to producing, distributing, or exhibiting (showing someone) obscene matter. (Pen. Code, § 311.2.)

15) Defines "obscene matter" as "matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (Pen. Code, § 311, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Virginia, Texas and California are the first states in the US that have regulations for people to take legal response towards deepfakes. The law in Virginia imposes a criminal penalty on the distribution of nonconsensual deepfake pornography, whereas the law in Texas prohibits the creation and distribution of deepfake videos intended to harm candidates for public office on influence elections."

2) **Background on "Deepfakes"**: "Deepfakes" refer to manipulated videos, or other digital representations produced by sophisticated artificial intelligence, that yield fabricated images

and sounds that appear to be real." (Shao, *What 'Deepfakes' Are and How They May Be Dangerous*, CNBC (1/17/2020), https://www.cnbc.com/2019/10/14/what-is-deepfake-and-how-it-might-be-dangerous.html)

"Deepfake technology enables users to create fake videos, images, or recordings of people that appear authentic. Some of the earliest and most prolific deepfake examples involve pornography—everything from face-swapping a celebrity into a pornographic video to an AI algorithm that creates a realistic nude from a person in an image." (https://www.asisonline.org/security-management-magazine/latest-news/today-in-security/2021/january/U-S-Laws-Address-Deepfakes/)

According to an article by the University of Illinois Law Review, three states have enacted laws related to deepfakes. In 2019, Texas banned political deepfakes designed to influence an election. That same year, Virginia banned deepfake pornography. California's law prohibits the creation of "videos, images, or audio of politicians doctored to resemble real footage within 60 days of an election." (https://illinoislawreview.org/blog/ai-deepfakes/) California's prohibition provides for injunctive relief, as well as a civil cause of action. (See Elec. Code, § 20010.)The California Legislature also enacted AB 602 (Berman), Chapter 491, Statutes of 2019, permitting a person to sue anyone who uses "deepfake" technology to place them in sexually explicit material without their consent. (Civ. Code, § 1708.86.)

California has other laws directed at sexually explicit material, deepfake or otherwise. For example, it is a crime under Penal Code section 311.2 to produce, distribute, or exhibit (show someone) obscene matter.

There are also laws addressing online harassment. For example, it is a crime to use an electronic communication device to make repeated contact with another person with the intent to harass or annoy, or to make a single intentionally harassing contact if it includes any obscene or threatening language. (Pen. Code, § 653m.) Another law makes it a crime to use an electronic communication device to distribute the personal information of another person without their consent, and with the intent to harass them or cause them fear. (Pen. Code, § 653.2) Revenge porn is also a crime -- distributing sexually explicit images or videos of someone without their consent when the person doing so knows or should know it will cause serious emotional distress, and the person suffers that distress. (Pen. Code, § 647, subd. (j)(4).)

Opponents of "deepfake" legislation note there are already laws that regulate the impact of pornographic "deepfakes," including specific measures for "revenge porn" and digital harassment. (Fischer, *California's Governor Signed New Deepfake Laws for Politics and Porn, but Experts Say they Threaten Free Speech*, Business Insider (Oct. 10, 2019), https://www.businessinsider.com/california-deepfake-laws-politics-porn-free-speech-privacy-experts-2019-10) They note such legislation can also have "really worrying consequences on free speech." (*Ibid.*)

Further, "[s]ome believe this type of law attacks a symptom rather than a cause: the overall disinformation environment on Facebook and other platforms." (https://www.cjr.org/analysis/legislation-deepfakes.php) According to the managing editor of fact-checking site Snopes.com who now works for a similar site, "While I understand everyone's desire to protect themselves and one another from deepfakes, it seems to me that

writing legislation on these videos without touching the larger issues of disinformation, propaganda, and the social media algorithms that spread them misses the forest for the trees." (*Ibid.*) According to the University of Illinois Law Review article, "The most feasible short-term solution may come from tech giants like Facebook, Google and Twitter, who can take action to limit the spread of harmful deepfakes." (https://illinoislawreview.org/blog/ai-deepfakes/) "[G]overnments should focus on increasing public awareness of relevant issues, because legislation cannot prevent all deepfakes from circulating, and legal remedies, no matter how good and efficient they might be, can only be applied after the damage has already been done." (*Ibid.*)

3) **First Amendment Concerns:** The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." (U.S. Const., 1st Amend, § 1.) The California Constitution also protects free speech. "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const. Art. I, § 2.) "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

Nevertheless, the protections of the First Amendment are not absolute. Restrictions on the content of speech have been long been permitted in a few limited areas including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. (*United States v. Stevens* (2010) 559 U.S. 460, 130 S.Ct. 1577, 1584 [citations omitted].) The First Amendment permits "restrictions upon the content of speech in a few limited areas which are 'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the societal interest in order and morality.'" (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383.)

Legislation that regulates the content of protected speech must be narrowly tailored to address a compelling government interest. (*Reed v. Town of Gilbert, Ariz.* (2015) 576 U.S. 155, 163.) That the speech in question is false does not by itself change the constitutional calculus. It is true that many types of false speech are not as strongly protected by the First Amendment, such as defamation and perjury, for example, but the U.S. Supreme Court recently made clear that even lies can be a form of protected speech. (*United States v. Alvarez* (2012) 567 U.S. 709.)

In a somewhat analogous area of the law, "revenge porn," courts have grappled with First Amendment challenges to state laws. For example, a former version of California's "revenge porn" law (Pen. Code, § 647, subd. (j)(4)(iii)) survived First Amendment scrutiny in *People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1 (*Iniguez*). There, the defendant argued the statute was overbroad, violating free speech. Under the overbreadth doctrine, a defendant "may challenge a statute not because their own rights of free expression are violated, but because the very existence of an overbroad statute may cause others not before the court to refrain from constitutionally protected expression. [Citations.]" (*In re M.S.* (1995) 10 Cal.4th 698, 709.) To avoid being overbroad, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612 [citations omitted].)

Assuming, without deciding a person has a free speech right to distribute such images, the *Iniguez* court concluded former subdivision (j)(4)(iii) of Penal Code section 647.6 was not constitutionally overbroad because its requirement that a person intend to cause distress served to narrow the law. (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at pp. 7-8.) The court noted this rendered the law inapplicable should a person act under a mistake of fact or by accident. (*Id.* at pp. 7-8.)

The *Iniguez* court also explained that "it is not just *any* images that are subject to the statute, but only those which were taken under circumstances where the parties agreed or understood the images were to remain private. The government has an important interest in protecting the substantial privacy interests of individuals from being invaded in an intolerable manner." (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at p. 8 [citation omitted].) The court stated, "It is evident that barring persons from intentionally causing others serious emotional distress through the distribution of photos of their intimate body parts is a compelling need of society." (*Ibid.*)

Unlike California's revenge porn law, which has to date withstood First Amendment scrutiny, a person would be guilty of the deepfake crime in this bill simply for distributing the altered image without the depicted person's consent. There is no requirement that it have been done maliciously or with intent to cause any harm or distress.

By contrast, the Virginia law, as referenced by the author and discussed above, requires that the altered image have been "maliciously disseminated" and "with the intent to coerce, harass, or intimidate." (https://law.lis.virginia.gov/vacode/18.2-386.2/.)

Additionally, the bill would incorporate a definition of "sexual conduct" taken from a child pornography statute – Penal Code section 311.4.[1] Child pornography is not protected under the First Amendment. (*People v. Gerber* (2011) 196 Cal.App.4th 368, 383 (*Gerber*).) "Unlike adult pornography, child pornography is obscenity per se—the prurient interest of the viewer is irrelevant." (*People v. Manfredi* (2008) 169 Cal.App.4th 622, 626 [citation and quotations omitted].) The reach of this bill is not limited to children.

As applied to adults, it is not clear that the sexual conduct encompassed in this bill would all rise to the level of obscenity lacking First Amendment protection. To be obscene, for example, adult pornography must, at a minimum, "depict or describe patently offensive 'hard core' sexual conduct." (https://www.everycrsreport.com/reports/95-804.html; *Miller, supra,* 413 U.S. at p. 73.)

To determine whether a work is obscene, the Supreme Court in *Miller* created a three-part test which asks: (1) whether the "average person applying contemporary community

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[1] Penal Code section 311.4, subdivision (d)(1), defines "sexual conduct" to mean "any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act with a child, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct." (Pen. Code, § 311.4, subd. (d)(1).)

standards" would find that the work, taken as a whole, appeals to the prurient interest; (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

In contrast to the list of sexual conduct encompassed by the definition of sexual conduct in this bill, the obscene matter prohibited by Penal Code section 311.2 is a codification of the United States Supreme Court's definition of obscenity in *Miller*. (See Pen. Code, § 311.)

That the bill states it would not apply for any activity protected by the First Amendment is of no consequence and, in fact, superfluous. No state law can trump the United States Constitution. The Supremacy Clause of the Constitution states that the "Constitution and the laws of the United States...shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." (U.S. Const., art. VI, cl. 2.)

4) **Argument in Support**: None on file.

5) **Argument in Opposition**: According to According to the *California Public Defenders Association*, "AB 1721 would likely run afoul of the First Amendment. As noted in the Assembly Public Safety Committee analysis of AB 1280 (Grayson) 2019 which also sought to criminalize deepfake recordings of adult sexual activity, while courts have found that laws criminalizing deepfakes involving child pornography serve a compelling governmental interest, prohibitions of depictions of adult sexual activity are not afforded the same protection.

> "Though prohibitions on altering photos and video to make it appear that a minor is engaging in sexual conduct have passed constitutional muster in at least some circumstances, it's not clear that the same result would follow for a prohibition on deepfakes that depict adults engaging in sexual conduct.
>
> "Because AB 1280 "expressly aims to curb a particular category of expression... by singling out the type of expression based on its content and then banning it," it is considered a content-based regulation of speech, and is thus presumptively unconstitutional. *Free Speech Coalition v. Reno* (9th Cir. 1999) 198 F.3d 1083, 1090-91, aff'd sub nom. *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234.
>
> "To overcome this presumption, a content-based regulation of speech, such as the one found in AB 1280, must serve a compelling state interest that it is narrowly drawn to achieve that end. Id. It is not clear that AB 1280's prohibition on deepfakes depicting adult sexual conduct would clear this hurdle. "Cases, such as *U.S. v. Anderson* (8th Cir. 2014) 759 F.3d 891, which have upheld prohibitions on child pornography have relied on the government's interest in safeguarding the physical and psychological well-being of minors as the compelling interest that supports the restriction on expression. Because depictions of adult sexual conduct do not implicate the same interest in protecting the well-being of minors, it's not clear that a compelling government purpose would support the prohibition."

"AB 1721 is not needed. Civil Code section 1708.86 already allows for a civil action for people defamed by deepfakes. This is a far better solution than creating a category of

criminal speech, a category that will surely be endlessly litigated given the constitutional tension that will ensue. While such litigation will surely occur in the civil realm, it does not proceed while a litigant spends months or years in a jail cell."

6) **Related Legislation**: AB 1380 (Berman) would expand the crime of "revenge porn" to include the distribution of specified images obtained without the authorization of the person depicted or by exceeding authorized access from the property, accounts, messages, files, or resources of the person depicted.

7) **Prior Legislation**:

   a) AB 972 (Berman), Chapter 745, Statutes of 2022, extended the sunset date of AB 730 (Berman), Chapter 491, Statutes of 2019 -- from January 1, 2023 to January 1, 2027.

   b) AB 730 (Berman), Chapter 493, Statutes of 2019, prohibited the distribution of materially deceptive audio or visual media with actual malice with the intent to injure a candidate's reputation or to deceive a voter into voting for or against a candidate, unless the materially deceptive audio or visual media includes a disclosure that it has been manipulated. AB 730 sunsetted on January 1, 2023.

   c) AB 602 (Berman), Chapter 491, Statutes of 2019, created a private right of action for a "depicted individual" against a person who either creates or intentionally discloses sexually explicit material without the consent of the depicted person.

   d) AB 1280 (Grayson), of the 2019-2020 Legislative Session, would have codified the term "deepfake" to mean "a recording that has been created or altered in a manner that it falsely appears to a reasonable person to be an authentic record of the actual speech or conduct of the individual depicted in the recording," and created three new crimes for the creation and distribution of a deepfake video, as specified. AB 1280 failed passage in this committee.

   e) AB 2065 (Lackey), of the 2019-2020 Legislative Session, would have, as relevant here, made it a misdemeanor to distribute an intimate image, as specified, that has been digitally altered to appear to be that of another person, or to distribute an intimate image and deceptively claim that the image is of another person that is not the person actually depicted. AB 2065 was not heard in this committee.

   f) AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, created a private right of action against a person who intentionally or recklessly distributes a sexually explicit photograph or other image or recording of another person, without the consent of that person.

   g) SB 255 (Cannella), Chapter 466, Statutes of 2013, created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private.

   h) AB 321 (Hernández), of the 2011-2012 Legislative Session, would have required additional penalties be imposed on a minor adjudicated of "sexting." AB 321 was held on the Assembly Appropriations Committee's Suspense File.

i) AB 919 (Houston), Chapter 584, Statutes of 2008, provided that every person who uses an electronic communication device to harass another through the actions of a third party, as specified, is guilty of a misdemeanor.

j) SB 1484 (Ackerman), Chapter 666, Statutes of 2004, expanded the crime of disorderly conduct to include the use of a concealed instrumentality to secretly videotape another fully or partially undressed person for the purpose of viewing that person's body or undergarments without the consent while that person is inside a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or in any other area in which that other person has a reasonable expectation of privacy, with the intent to invade that person's privacy.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Public Defenders Association (CPDA)

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

Date of Hearing: April 18, 2023
Counsel: Liah Burnley

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

AB 1723 (Waldron) – As Amended March 29, 2023

SUMMARY: Allows individuals previously convicted of a felony and employed by an organization that provides rehabilitative programming, or associated with an organization that provides mentorship to currently incarcerated individuals, to enter a local detention facility, as specified. Specifically, **this bill**:

1) Requires local detention facilities to allow individuals who were previously confined in a state prison for a felony, and currently employed by a community-based organization that provides rehabilitative programming to incarcerated individuals, to enter the facility, if all of the following conditions are met:

    a) The facility allows visitors and the individual is requesting to visit pursuant to the visitation policies of the facility;

    b) The individual is not currently charged with the commission of an offense; and,

    c) The individual shows proof they are employed by an organization that provides rehabilitative programming to currently incarcerated individuals. Proof may be shown by, but shall not be limited to, a letter on the organization's letterhead that confirms the individual is employed by the organization.

2) Requires local detention facilities to allow individuals who were previously confined in a state prison for a felony, and are currently associated with an organization that has the primary goal of providing mentorship to incarcerated individuals, to enter the facility, if all of the following conditions are met:

    a) The facility allows visitors and the individual is requesting to visit pursuant to the visitation policies of the facility;

    b) The individual is not on any form of supervision, unless the individual is able to demonstrate evidence of rehabilitation, as defined;

    c) The individual is not currently charged with the commission of an offense;

    d) The individual shows proof they are associated with an organization that provides mentorship services to currently incarcerated individuals. Proof may be shown by, but shall not be limited to, a letter on the organization's letterhead that confirms the individual is associated with the organization; and,

e) The individual is on the facility grounds to provide mentorship services to currently incarcerated individuals.

3) Requires local detention facilities to make any needed changes to procedures and forms to facilitate these provisions.

4) Requires local detention facilities to publish the approval process for visitors on their websites.

5) Defines "mentorship" as meeting with, conducting educational programming for, or facilitating dialogue between incarcerated individuals within the facility.

6) States that "evidence of rehabilitation" includes, but is not limited to, the following:

a) An individual's satisfactory compliance with all terms and conditions of parole, probation, mandatory supervision, or postrelease community supervision, provided that the individual's inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with the terms and conditions of parole or probation;

b) Evidence of maintaining steady employment and employer recommendations, particularly related to an individual's postconviction employment;

c) Educational attainment or vocational or professional training since conviction, including training received while the individual was incarcerated;

d) Completion of, or active participation in, rehabilitative treatment, including alcohol or drug treatment;

e) Letters of recommendation from community organizations, counselors, case managers, teachers, community leaders, parole officers, and probation officers who have observed the individual since the individual's conviction;

f) The age of the individual at the time of the conviction and the amount of time that has passed since the conviction;

g) A credible explanation of precedent coercive conditions, including physical, emotional, or sexual abuse, domestic violence, sexual assault, dating violence, stalking, whether the individual was the victim of crime, untreated substance abuse, mental illness, or disability that contributed to the conviction; and,

h) Evidence that the individual has maintained good standing in the community since the conviction.

EXISTING LAW:

1) Provides that every person who, having been previously convicted of a felony and confined in any state prison, without the consent of the officer in charge of any jail, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, is guilty of a felony. (Pen. Code, § 4571.)

2) States that every person who, without the permission of the officer in charge of any jail, communicates with any person detained therein is guilty of a misdemeanor. (Pen. Code, § 4570.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Penal Code 4571 indefinitely prevents people who served a prison sentence in California from being eligible to visit anyone being held in county jails and state prisons. As a result of an indefinite ban, some counties and CDCR have created internal policies that will allow people who serve state prison sentences to visit incarcerated people, however, the policies are often unclear, vary from carceral institutions, don't take rehabilitative factors into account, and take additional time. This bill would ensure that those people who want to gain entry can, as long as they are documented to be part of a rehabilitative organization for the purposes of mentorship."

2) **Rehabilitative Programing and Mentorship by Formerly Incarcerated Individuals**: Some research suggests that peer mentorship by formerly incarcerated persons leads to improved reentry outcomes. (Matthews, E. *Peer-focused prison reentry programs: Which peer characteristics matter most?* (2021) <https://journals.sagepub.com/doi/full/10.1177/26326663211019958> [as of April 11, 2023].) "Organizations tasked with rehabilitation in various contexts have demonstrated that people with similar lived experiences may be best positioned to help individuals set aside dangerous or unhealthy lifestyles." (*Ibid.*) For example, formerly incarcerated mentors helped mentees returning to the community connect to education, employment, transportation, legal, and housing resources, all while modeling effective coping strategies and interpersonal skills. (*Ibid.*) People leaving incarceration frequently reported finding it easier to ask for help from a peer mentor who had successfully transitioned from prison to the community. (*Ibid.*) Because their mentors had successfully navigated the reentry experience, they were knowledgeable about which resources were reliable. (*Ibid.*) Research further suggests that incarcerated individuals tend to view formally incarcerated mentors as more credible due to their shared lived experiences. Their "credibility is derived from the ability to understand the various inner pains caused by the experience of incarceration." (*Ibid.*) Ultimately, "mentoring was more than just providing advice about how to find housing and employment; it was providing advice about how to do those things while recovering from the deep and varied wounds of incarceration." (*Ibid.*) In one study, "prison staff also often noted their lack of a lived experience as limiting their ability to offer credible reentry support." (*Ibid.*)

   Under existing law, individuals formerly incarcerated in state prisons for a felony cannot come onto jail grounds without the consent of the officer in charge of the facility. (Pen. Code, § 4571.) A violation of this prohibition is a felony. (*Ibid.*) Thus, unless individuals formerly incarcerated in state prison have consent of the officer in charge, they cannot enter the jail, even if they work with an organization that provides rehabilitative programming or mentorship to incarcerated individuals. Accordingly, the existing prohibition is a barrier to the provision of potentially beneficial rehabilitative services and peer mentorship opportunities in local correctional facilities.

This bill would require local correctional officials to allow formerly incarcerated individuals to enter the facility, as long as specified conditions are met, for the purpose of providing mentorship and rehabilitative programing. Notably, nothing in this bill would restrict the ability of a local facility to deny a person entry, pursuant to the facility's visitation policies. In addition, nothing in this bill requires local facilities to allow individuals who are currently charged with an offense or who are on supervision into the facility.

3) **Argument in Support**: According to the *California Public Defenders Association* (CPDA), "The problem is that while community groups who are ready, willing, and able to work with the currently incarcerated are in short supply, many of those groups are staffed by men and women who have themselves previously been convicted of a felony. Formerly convicted men and women who have dedicated their lives to community outreach are often the best mentors for justice-involved individuals, because their "lived experience" provides them with a deeper understanding of the carceral system, the people within it, and the challenges they face.

"AB 1723 addresses this problem by creating an exception to the current total bar against formerly convicted people visiting a local detention facility. Under its provisions, a formerly convicted person could work as a mentor in a local detention facility if they prove that they are working on behalf of a rehabilitative programming organization, and meet other criteria as specified.

"Importantly, the fact that a formerly convicted person is authorized to visit a local detention facility would not make them immune from the normal rules and laws governing other visitors, including provisions requiring a search of their person or property."

4) **Related Legislation**:

   a) AB 581 (Carrillo) would establish clearance levels for program providers that provide rehabilitative programming to incarcerated people to enter State prisons, including rehabilitative programing by formerly incarcerated individuals. AB 581 is being heard in this Committee today.

   b) AB 958 (Santiago) would make the right to visitation in state and local correctional facilities a civil right, as specified. AB 958 is pending in the Assembly Appropriations Committee.

   c) AB 1226 (Haney) would require CDCR to place incarcerated persons in the correctional facility that is located nearest to the primary place of residence of their child to facilitate increased contact between the incarcerated person and their child. AB 1226 is pending in the Assembly Appropriations Committee.

5) **Prior Legislation**: AB 2133 (Goldberg), Chapter 238, Statutes of 2002, required that any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of incarcerated persons recognize and consider the value of visitation as a means of increasing safety in prisons, maintaining family and community connections, and preparing incarcerated persons for successful release and rehabilitation.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)

Opposition

None.

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