# 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

## REGULAR ORDER OF BUSINESS

## HEARD IN SIGN-IN ORDER

| | | | |
|---|---|---|---|
| 1. | AB 60 | Bryan | Restorative justice program. |
| 2. | AB 235 | Blanca Rubio | Civil Rights Department: Labor Trafficking Unit. |
| 3. | AB 380 | Arambula | Division of Labor Standards Enforcement: Labor Trafficking Unit. |
| 4. | AB 428 | Waldron | California Department of Reentry. |
| 5. | AB 505 | Ting | The Office of Youth and Community Restoration. |
| 6. | AB 561 | Chen | Civil actions: service of process. |
| 7. | AB 581 | Wendy Carrillo | Rehabilitative program providers. |
| 8. | AB 797 | Weber | Local government: police review boards. |
| 9. | AB 829 | Waldron | Crime: animal abuse. |
| 10. | AB 1039 | Rodriguez | Sexual activity with detained persons. |
| 11. | AB 1187 | Quirk-Silva | California Victim Compensation Board: reimbursement for personal or technological safety devices or services. |
| 12. | AB 1252 | Wicks | Office of Gun Violence Prevention. |
| 13. | AB 1329 | Maienschein | County jail incarcerated persons: identification card pilot program. |
| 14. | AB 1371 | Low | Unlawful sexual intercourse with a minor. |
| 15. | AB 1380 | Berman | Crimes: disorderly conduct. |
| 16. | AB 1406 | McCarty | Firearms: waiting periods. |
| 17. | AB 1483 | Valencia | Firearms: purchases. |
| 18. | AB 1486 | Jones-Sawyer | Law enforcement and state agencies: military equipment: funding, acquisition, and use. |
| 19. | AB 1497 | Haney | PULLED BY COMMITTEE |
| 20. | AB 1551 | Gipson | Vehicular manslaughter while intoxicated. |
| 21. | AB 1584 | Weber | Criminal procedure: competence to stand trial. |
| 22. | AB 1598 | Berman | Gun violence: firearm safety education. |
| 23. | AB 1708 | Muratsuchi | Theft. |

| | | | |
|---|---|---|---|
| 24. | AB 1721 | Ta | Crimes: false depictions. |
| 25. | AB 1723 | Waldron | Crimes: local carceral facility visitation. |

## COVID FOOTER

SUBJECT:

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

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

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

AB 60 (Bryan) – As Amended March 16, 2023

**SUMMARY**: Establishes the statutory right of victims of crimes to be informed that community-based restorative justice programs are available to them. Specifically, **this bill**:

1) Provides that the victim of a crime has a right to be notified of the availability of community-based restorative justice programs and processes available to them, including, but not limited to, programs servicing their community county, county jails, juvenile detention facilities, and the Department of Corrections and Rehabilitation (CDCR).

2) Provides that the victim has a right to be notified of such programs as early and often as possible, including during the initial contact, during follow-up investigation, at the point of diversion, throughout the process of the case, and in post-conviction proceedings.

3) Requires the Attorney General to include in the "Victim Protections and Resources" card information about the availability of community-based restorative justice programs and processes available to them, including programs serving their community, county, county jails, juvenile detention facilities, and CDCR.

4) Includes legislative findings and declarations.

**EXISTING LAW**:

1) Establishes the following rights as the statutory rights of victims and witnesses of crimes:

   a) To be notified as soon as feasible that a court proceeding to which the victim or witness has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required;

   b) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as specified;

   c) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all sentencing proceedings, and of the right to appear, to reasonably express their views, have those views preserved by audio or video means, and to have the court consider their statements;

   d) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition hearings in which the alleged act would have been a felony if committed by an adult, and of the right

to attend and to express their views, as specified;

e) Upon request by the victim or the next of kin of the victim if the victim has died, to be notified of any parole eligibility hearing and of the right to appear, either personally or by other means, to reasonably express their views, and to have their statements considered;

f) Upon request by the victim or the next of kin of the victim if the crime was a homicide, to be notified of an inmate's placement in a reentry or work furlough program, or notified of the inmate's escape;

g) To be notified that a witness may be entitled to witness fees and mileage;

h) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund;

i) To the expeditious return of property that has allegedly been stolen or embezzled, when it is no longer needed as evidence;

j) To an expeditious disposition of the criminal action;

k) To be notified if the defendant is to be placed on parole;

l) For the victim, upon request, to be notified of any pretrial disposition of the case, to the extent required by the California Constitution.

m) For the victim, to be notified by the district attorney's office of the right to request, upon a form provided by the district attorney's office, and receive a notice if the defendant is convicted of specified offenses; and,

n) When a victim has requested notification, the sheriff shall inform the victim that the person who was convicted of the offense has been ordered to be placed on probation, and give the victim notice of the proposed date upon which the person will be released from the custody of the sheriff. (Pen. Code, § 679.02, subd. (a)(1)-(14).)

2) Requires the Attorney General, by June 1, 2025, to design and make available in PDF or other imaging format to specified agencies a "Victim Protections and Resources" card that contains information in lay terms about victim rights and resources, as specified. (Pen. Code, § 679.027, subd. (b)(3).)

3) Requires a probation officer, upon the request of an alleged victim of a crime and within 60 days of the final disposition of a juvenile's case in a juvenile justice court, to inform that victim by letter of the final disposition of the case. (Welf. & Inst. Code, § 742, subd. (a).)

4) Requires the probation officer, in any case in which a petition to involve a juvenile justice court has been filed, to inform the victim of the offense, if any, of any victim-offender conferencing program or victim impact class available in the county, and of their right to be informed of the final disposition of the case, including their right, if any, to victim restitution, as permitted by law. (Welf. & Inst. Code, § 742, subd. (b).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Restorative Justice is a community-based, non-punitive set of processes that center the needs of people who have been harmed. These programs have shown successful results for participants and survivors in places it has been implemented. They have helped to bring healing and accountability for those who choose to participate.

   "Since there is no one-size-fits-all solution to healing, AB 60 will ensure that all victims of crime are informed of restorative justice programs that are available to them in their county. Victims should be informed of all the possible options they have in order to heal."

2) **Information to Victims:** Existing law provides statutory rights to victims of crimes, including, among other things, the right to be informed of the final disposition; the right to be notified of any pretrial disposition in the case; the right to receive notice that the defendant has been convicted; and the right to receive information about civil recovery and the opportunity to be compensated from the Restitution Fund. (Pen. Code, § 679.02.) Every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime. (Pen. Code, § 679.02, subd. (b).) This bill would provide that victims also have the right to be notified of the availability of community-based restorative justice programs and processes available to them.

   Existing law also requires the Attorney General, by June 1, 2025, to design and make available in PDF or other imaging format to specified agencies a "Victim Protections and Resources" card that contains information in lay terms about victim rights and resources, which a law enforcement agency investigating a criminal act and an agency prosecuting a criminal act will have to provide to each victim. The card must contain information about the victim's rights under applicable laws, including rights relating to housing, employment, compensation, and immigration relief. (Pen. Code, § 679.027, subd. (b)(3).)

   This bill would require the "Victim Protections and Resources" card also to contain information about the availability of community-based restorative justice programs and processes available to the victim, including programs serving their community, county, county jails, juvenile detention facilities, and CDCR.

3) **Argument in Support**: According to the *Conflict Resolution Center of Santa Cruz County*, "Survivors and victims of harm often do not feel their needs are met or that they have a meaningful opportunity to be heard in traditional criminal and juvenile legal processes. Only 14% of California survivors surveyed in 2019 reported feeling 'very supported' by the criminal legal system after their experience of harm. Restorative Justice is an alternative to the criminal legal system that centers the needs of people who have been harmed, and its practice and theory is rooted in indigenous practices. It is a community-based, non-punitive process that provides victims/survivors and their loved ones the opportunity to ask questions, share about the impact of harm, and engage in dialogue with the person who caused them harm. Restorative Justice processes have resulted in higher rates of satisfaction for victims and survivors than going through the criminal legal system. Victims and survivors have also

reported reduced feelings of fear, anger, post-traumatic stress symptoms, and depression after going through a Restorative Justice process.

"AB 60 builds on California's extensive framework of victims' and survivors' protections by expanding awareness about the availability and benefits of Restorative Justice processes, which can be crucial to satisfy their unmet emotional and psychological needs. This bill gives victims and survivors of harm the opportunity to learn about and take advantage of existing community-based programs in their localities."

1) **Argument in Opposition**: None submitted.

2) **Related Legislation**:

   a) AB 1691 (Ortega), would create a grant program within the Department of Justice to provide funds to community-based organizations to implement and operate restorative justice programs for individuals who have committed hate violence, as defined, and their victims. AB 1691 is pending hearing in this committee.

   b) AB 1165 (McCarty), would require a pupil in grades 4-12 who is suspended or recommended for expulsion from school for participating in hate violence, as defined, to participate in a restorative justice program provided by the school. AB 1165 is pending hearing the Assembly Education Committee.

3) **Prior Legislation**:

   a) AB 2167 (Kalra), Chapter 775, Statutes of 2022, requires a court presiding over a criminal matter to consider alternatives to incarceration, including restorative justice.

   b) AB 2598 (Weber), Chapter 914, Statutes of 2022, requires the Department of Education to develop evidence-based practices for restorative justice practice implementation in schools.

   c) AB 886 (Chiu), of the 2021-2022 Legislative Session, is substantially similar to AB 1691 (Ortega) above. AB 886 was held on suspense in the Assembly Appropriations Committee.

   d) AB 1670 (Bryan), of the 2021-2022 Legislative Session, would have created the Commission on Alternatives to Incarceration within the California Health and Human Services Agency to research, among other things, restorative justice practices and opportunities. AB 1670 was held on suspense in the Assembly Appropriations Committee.

   e) AB 160 (Committee on Budget), Chapter 771, Statutes of 2022, requires CDCR, if the victim has submitted a request for notice that an offender is being released from CDCR custody, to provide information to the victim about opportunities for victims or their family members to engage in restorative justice programs.

f) SB 993 (Skinner), of the 2021-2022 Legislative Session, was substantially similar to AB 160 (Committee on Budget). SB 993 died on the inactive file in the Assembly.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California for Safety and Justice (Sponsor)
Crime Survivors for Safety and Justice (Sponsor)
Community Works (Co-Sponsor)
Alliance for Boys and Men of Color
California Public Defenders Association (CPDA)
California-hawaii State Conference of The NAACP
Californians United for A Responsible Budget
Centinela Youth Services
Communities United for Restorative Youth Justice (CURYJ)
Conflict Resolution Center of Santa Cruz County
Deafhope
Ella Baker Center for Human Rights
Grip Training Institute
Initiate Justice
Pacific Juvenile Defender Center
Prosecutors Alliance California
Students Deserve
The Collective Healing and Transformation Project
The Transformative In-prison Workgroup
2 Private Individuals

**Opposition**

None

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

Date of Hearing: April 18, 2023
Consultant: Elizabeth Potter

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

AB 235 (Blanca Rubio) – As Amended February 21, 2023

**SUMMARY**: Establishes the Labor Trafficking Unit (LTU) within the Civil Rights Department (CRD) and requires the LTU to coordinate with the Labor Enforcement Task Force (LETF), the Department of Justice (DOJ), and the Division of Labor Standards Enforcement (DLSE). Specifically, **this bill**:

1) Establishes the LTU within the CRD and requires the LTU to coordinate with the LETF, the DOJ, and the DLSE to take steps to prevent labor trafficking, receive and investigate complaints alleging labor trafficking, and report specified data.

2) Requires the LTU to receive and investigate complaints alleging labor trafficking and take steps to prevent labor trafficking.

3) Requires the LTU to coordinate with, or refer cases to LETF or CRD for potential civil actions relating to labor trafficking violations.

4) Requires the LTU to coordinate with, or refer cases to DOJ for potential criminal actions relating to labor trafficking violations.

5) Permits the LTU to coordinate with local law enforcement agencies or district attorney's offices when investigating criminal actions relating to labor trafficking.

6) States that the LTU must do all of the following:

   a) Follow protocols to ensure survivors are not victimized by the process of prosecuting traffickers;

   b) Coordinating with both state and local agencies to connect survivors with available services;

   c) Ensuring that victims are informed of the services available to them;

   d) Making information on the legal rights of victims available to survivors; and,

   e) Providing a list of pro bono victim's rights attorneys to survivors.

7) Requires the Division of Occupational Safety and Health (Cal/OSHA) to notify the LTU when, upon investigating businesses under their purview, there is evidence of labor trafficking.

8) Requires, on or before January 1, 2025, and annually thereafter, the LTU to submit a report to the Legislature, as specified, that contains the following:

   a) The number of complaints or referrals received;

   b) The number and type of complaints or referrals investigated;

   c) The number of complaints referred to CRD;

   d) The number of complaints referred to the DOJ;

   e) The number of referrals and coordinations with local law enforcement agencies and district attorney's offices;

   f) The outcome of each complaint; and,

   g) A discussion of the major challenges to address labor trafficking complaints and the ongoing efforts to address those challenges.

9) Sunsets the reporting requirement on January 1, 2035.

**EXISTING LAW**:

1) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1., subd. (a).)

2) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civ. Code, § 52.5.)

3) Provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, the Attorney General shall assist any district attorney in the discharge of the district attorney's duties, and may, if deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect, the Attorney General has all the powers of a district attorney. (Gov. Code, § 12550.)

4) Authorizes the CRD to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for, a violation of the crime of human trafficking, as specified. (Gov. Code, 12930, § subd. (f)(3).)

5) Establishes the LETF under the direction of Department of Industrial Relations (DIR) to enforce activities regarding labor, tax, and licensing law violators operating in the underground economy. (Unemp. Ins. Code, §329.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Labor trafficking involves actions such as recruiting, harboring, transporting or providing a person for the purpose of providing labor or services through the use of force, fraud, or coercion. It happens all too often in California, specifically for foreign nationals who are in the U.S. without authorization, while others are lured to the U.S. with promises of legitimate work on valid visas. Labor trafficking must be acknowledged this year. This is why I aim to establish efficient communication and enhanced enforcement for labor trafficking through the Labor Trafficking Unit, while ensuring the survivors are not victimized by the process of prosecuting traffickers and are informed of the services available to them. California does not tolerate exploitation."

2) **Labor Trafficking**: According to the Attorney General's Website: "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return." (*What is Human Trafficking?*, DOJ, available at: https://oag.ca.gov/human-trafficking/what-is. [As of March 29, 2023].)

3) **Little Hoover Commission Reports**: In 2020 the Little Hoover Commission released three reports reviewing the state's response to labor trafficking. The Commission noted that state efforts to combat human trafficking have focused mainly on sex trafficking. In the second report, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, the Commission found that while several state agencies play a role in combatting human trafficking, there is no coordinated strategy to target the crime statewide. No state agency has a mandate to look for labor trafficking and government agencies are siloed. The Commission noted that while issues related to labor exploitation in California fall under the jurisdiction of the DIR, the agency does not proactively look for labor trafficking cases, in part because it does not have the authority to investigate labor trafficking cases. However, members of the Labor Enforcement Task Force – a multi-agency effort led by DIR to combat the underground economy – have observed signs of potential trafficking during inspections or received labor trafficking complaints and made nearly close to one dozen referrals of potential cases to the Department of Justice to investigate. (*Labor Trafficking: Strategies to Uncover this Hidden Crime,* Little Hoover Commission (Sept. 2020), at pp. 6-9. Available at: https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/251/Report251.pdf. [As of March 29, 2023].)

   While the Little Hoover Commission recommends that the best place to establish a LTU would be within the DIR, this bill would establish the LTU within the CRD and requires the LTU to coordinate with the LETF, DOJ, and the DLSE.

4) **Argument in Support**: According to a list of supporters, including the Coalition to Abolish Slavery and Trafficking (CAST), "Despite high rates of human trafficking in our state, there is no specific California State entity that is responsible for responding to labor trafficking. Although certain State entities often respond to labor trafficking claims, oftentimes jurisdictional issues or lack of communication occurs between the various entities and survivors are not protected while they navigate the criminal legal system.

"Human traffickers purposefully prey on vulnerable communities such as immigrants, undocumented or formerly incarcerated individuals, low-income workers, and people of color. This bill will position the state to take a coordinated approach to the prevention and investigation of labor trafficking while working to protect these survivors from criminalization by informing them of their rights and connecting them to appropriate social and legal services. We, therefore, are pleased to support AB 235."

5) **Related Legislation**:

a) AB 380 (Arambula), is substantially similar to this bill. AB 380 would establish the LTU within DLSE and would require the LTU to coordinate with LETF, DOJ, and CRD to investigate and prosecute complaints alleging labor trafficking, and report specified data. AB 380 will be heard in this committee today.

b) AB 1149 (Grayson), would establish, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. AB 1149 bill is currently pending a hearing in the Assembly Committee on Appropriations.

6) **Prior Legislation**:

a) AB 1820 (Arambula), of the 2021-2022 Legislative Session, was nearly identical to AB 380 (Arambula) from this session. AB 1820 was vetoed by the Governor.

b) AB 2553 (Grayson), of 2021-2022 Legislative Session, would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. AB 2553 was held on the Senate Committee on Appropriations suspense file.

c) AB 1684 (Stone), Chapter 63, Statutes of 2016, authorized the DEFH to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Arcadia Police Officers' Association
Burbank Police Officers' Association

California Coalition of School Safety Professionals
Central Valley Justice Coalition
City of Long Beach Health and Human Services
Claremont Police Officers Association
Coalition to Abolish Slavery and Trafficking (CAST)
Corona Police Officers Association
Crime Survivors Resource Center
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Justice At Last
Little Hoover Commission
Los Angeles School Police Officers Association
Newport Beach Police Association
Opening Doors, INC.
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Restoration Diversion Services
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Speaksafe
Treasures
Unicorn Nation
Upland Police Officers Association
Verity, Compassion, Safety, Support

**Opposition**

None on file.

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

Date of Hearing: April 18, 2023
Consultant: Elizabeth Potter

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

AB 380 (Arambula) – As Introduced February 2, 2023

**SUMMARY**: : Establishes the Labor Trafficking Unit (LTU) within the Division of Labor Standards Enforcement (DLSE) and requires the LTU to coordinate with the Labor Enforcement Task Force (LETF), the Department of Justice (DOJ), and the Civil Rights Department (CRD). Specifically, **this bill**:

1) Establishes the LTU and directs it to coordinate with the LETF, the Criminal Investigation Unit, DOJ, and the CRD to combat labor trafficking.

2) Requires the LTU to receive and investigate complaints alleging labor trafficking, as well as take steps to prevent it.

3) Requires the LTU to coordinate with, or refer cases to, LETF or CRD for potential civil actions relating to labor trafficking violations.

4) Requires the LTU to coordinate with, or refer cases to, DOJ for potential criminal prosecution related to labor trafficking violations.

5) Permits the LTU to coordinate with local law enforcement agencies or district attorney's offices when investigating criminal actions relating to labor trafficking.

6) Requires the LTU to follow protocols to ensure survivors are not victimized by the process of prosecuting traffickers and are informed of services available to them.

7) Requires the Division of Occupational Safety and Health to notify the LTU when they find evidence of labor trafficking in the course of investigating businesses.

8) Requires, beginning January 1, 2026, and annually thereafter, LTU to submit a report to the Legislature that contains the following:

   a) The number of complaints or referrals received;

   b) The number and type of complaints or referrals investigated;

   c) The number of complaints referred to CRD and to DOJ respectively;

   d) The number of referrals and coordinations with local law enforcement agencies and district attorney's offices;

e) The outcomes for each complaint; and,

f) A discussion of the major challenges to address labor trafficking complaints and the ongoing efforts to address those challenges.

9) Sunsets the reporting requirement on January 1, 2036.

**EXISTING LAW**:

1) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1., subd. (a).)

2) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civ. Code, § 52.5.)

3) Provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, the Attorney General shall assist any district attorney in the discharge of the district attorney's duties, and may, if deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect, the Attorney General has all the powers of a district attorney. (Gov. Code, § 12550.)

4) Authorizes the CRD to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for, a violation of the crime of human trafficking, as specified. (Gov. Code, 12930, § subd. (f)(3).)

5) Establishes the LETF under the direction of Department of Industrial Relations (DIR) to enforce activities regarding labor, tax, and licensing law violators operating in the underground economy. (Unemp. Ins. Code, §329.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 380 will protect California's most vulnerable workers from being taken advantage of by unscrupulous individuals and businesses who force them to work under duress with little to no pay. There are many different situations that trafficked workers face—threats from employers relating to documentation status, harm to their families, and loss of wages—that prevent victims from trying to escape and seek services available. California first enacted anti-trafficking laws

fifteen years ago, yet no state agency currently has a requirement to look for labor trafficking. This bill will create a Labor Trafficking Unit with the authority to investigate and prosecute claims of human labor trafficking. By establishing a Labor Trafficking Unit in a state agency with the best expertise to enforce labor laws our state can take necessary steps to properly prevent, investigate, and coordinate state efforts to put a stop to the abuses of workers. Subject matter experts have emphasized that the Department of Industrial Relations is the most valuable and more suitable location. Victims are more likely to feel safer and receive better resources from DIR as its work focuses on wages, labor rights and laws. Most importantly, we want to ensure survivors are informed about the services available to them and are not further victimized by the process of prosecuting traffickers."

2) **Labor Trafficking**: According to the Attorney General's Website: "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return." (*What is Human Trafficking?*, California Attorney General. Available at: https://oag.ca.gov/human-trafficking/what-is. [As of March 29, 2023])

3) **Little Hoover Commission Reports**: In 2020 the Little Hoover Commission released three reports reviewing the state's response to labor trafficking. The Commission noted that state efforts to combat human trafficking have focused mainly on sex trafficking. In the second report, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, the Commission found that while several state agencies play a role in combatting human trafficking, there is no coordinated strategy to target the crime statewide. No state agency has a mandate to look for labor trafficking and government agencies are siloed. The Commission noted that while issues related to labor exploitation in California fall under the jurisdiction of the DIR, the agency does not proactively look for labor trafficking cases, in part because it does not have the authority to investigate labor trafficking cases. However, members of the Labor Enforcement Task Force – a multi-agency effort led by DIR to combat the underground economy – have observed signs of potential trafficking during inspections or received labor trafficking complaints and made nearly close to one dozen referrals of potential cases to the Department of Justice to investigate. (*Labor Trafficking: Strategies to Uncover this Hidden Crime,* Little Hoover Commission (Sept. 2020), at pp. 6-9. Available at: https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/251/Report251.pdf. [As of March 29, 2023])

Consistent with these recommendations, this bill would establish LTU to receive and investigate complaints alleging labor trafficking and subsequently refer them for criminal prosecution by the DOJ or for civil action by the DEFH.

4) **Governor's Veto Message:** AB 1820 (Arambula), of 2021-2022 Legislative Session, proposed nearly identical to this bill and was vetoed. The Governor's veto message stated:

"While I am strongly supportive of efforts to combat labor trafficking, the California Civil Rights Department (CCRD) (formerly DFEH) is the appropriate state entity to take the lead in this effort per the amendments offered by my office. DLSE does not have authority to criminally or civilly prosecute these types of cases nor have the tools and resources necessary to assist labor trafficking survivors. CCRD is already active in this space and could seamlessly expand its efforts to more aggressively combat labor trafficking provided it is given new resources in the budget.

This bill does not address the governor's concerns.

5) **Argument in Support**: According to *Sunita Jain Anti-Trafficking Initiative* (SJI) a project at Loyola Law School and Western Center on Law & Poverty, "Human trafficking is the world's fastest-growing criminal enterprise and is an estimated to be a $150 billion- annual global industry. On a global scale, the International Labour Organization estimates that of the 20.9 million forced laborers worldwide, 68 percent are victims of forced labor exploitation. Unfortunately, COVID- 19 has worsened the current status quo. A State Department report underscored that COVID 19 increased the number of people at risk of human trafficking and highlighted "monumental" challenges laid bare by the pandemic, which "may be long lasting, requiring sustained collaboration among governments, civil society organizations, private sector leaders, survivor leaders, and other anti-trafficking actors to adjust and respond aptly to overcome these challenges."

"The passing of this bill is crucial to safeguarding the rights of all workers, including victims of labor trafficking. Now is the time for action as we are seeing numerous cases of labor trafficking coming to light in California across a wide range of industries. The LA Times recently highlighted that many farm workers in the cannabis industry are being forced to work and not being paid for their labor, which is labor trafficking.[1] In 2018, a decades long scheme of labor trafficking was discovered at numerous elder and child care facilities named Rainbow Bright that were operated by the Gamos Family. The Gamos family would require their workers, mostly Filipino immigrants, to live and work in the care homes and would confiscate their passports and threatened to turn them over to U.S. immigration officials.[2]

"California has the highest number of human trafficking cases in the nation reported to the National Human Trafficking Hotline. Despite its prevalence victims who toil in our fields, our restaurants and care for our family members are a "hidden crime." Many victims do not self- identify or self-report, and many do not even recognize they are being trafficked. A report published by the Little Hoover Commission concluded that California's efforts to prevent labor trafficking are fragmented and a major issue is a lack of a directive to current state agencies to lead efforts to prevent labor trafficking and coordinate with other agencies such as California Department of Justice (DOJ) and Department of Fair Employment and Housing (DFEH) to stop trafficking before it starts.

---

[1] L.A. Times Article: "Lawmakers want investigation, hearings into 'Wild West' of California cannabis and farm work'
[2] https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-sentences-rainbow-bright-defendants-bay-area

"AB 380 (Arambula) - the California Labor Trafficking Prevention Act - seeks to protect California's most vulnerable workers from being taken advantage of by unscrupulous individuals and businesses who force them to work under duress with little to no pay. This bill will provide the Department of Industrial Relations (DIR) with statutory authority to investigate and prosecute claims of human labor trafficking and create a Labor Trafficking Unit to take necessary steps to properly prevent, investigate, and coordinate state efforts to put a stop to the abuses of workers."

6) **Related Legislation**:

a) AB 235 (B. Rubio), is substantially similar to this bill. AB 235 would establish a LTU within the CRD and require the LTU to coordinate with the LETF, DOJ, and DLSE to take steps to prevent labor trafficking, receive and investigate complaints alleging labor trafficking, and report specified data. AB 235 is pending hearing in this committee today.

b) AB 1149 (Grayson), would establish, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. AB 1149 bill is currently pending a hearing in the Assembly Committee on Appropriations.

7) **Prior Legislation**:

a) AB 1820 (Arambula), of the 2021-2022 Legislative Session, was nearly identical to this bill. AB 1820 was vetoed by the Governor.

b) AB 2553 (Grayson), of 2021-2022 Legislative Session, would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. AB 2553 was held on the Senate Committee on Appropriations suspense file.

c) AB 1684 (Stone), Chapter 63, Statutes of 2016, authorized the DEFH to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

3strands Global Foundation
Afscme
American Federation of State, County and Municipal Employees - Afl-cio
California Labor Federation, Afl-cio
California Rural Legal Assistance Foundation, INC.
Dolores Street Community Services
Freedom Network USA
Immigrant Defense Advocates

Legal Aid At Work
Little Hoover Commission
Los Angeles Center for Law and Justice
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
National Association of Social Workers, California Chapter
National Council of Jewish Women CA
Pilipino Workers Center
San Diego County District Attorney's Office
Santa Barbara Women's Political Committee
State Building and Construction Trades Council of Ca
Thai Community Development Center
Tradeswomen INC.
Udw/afscme Local 3930
Western Center on Law & Poverty

**Opposition**

None on file.

**Analysis Prepared by**: Elizabeth Potter / 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 428 (Waldron) – As Amended March 29, 2023

**As Proposed to Be Amended in Committee**

**SUMMARY**: Establishes the California Department of Reentry to provide statewide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole. Specifically, **this bill**:

1) Establishes the California Department of Reentry.

2) Provides that the Department of Reentry shall be independent of the Department of Corrections and Rehabilitation (CDCR).

3) States that the Governor may appoint an executive officer to the Department of Reentry, subject to Senate confirmation. The executive officer shall hold the office at the pleasure of the Governor. The executive officer shall be the administrative head of the Department of Reentry.

4) Provides that the mission of the Department of Reentry is to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships with California's criminal justice system to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole.

5) Provides that the Department of Reentry shall carry out its mission in a way that reflects the principle of aligning fiscal policy and correctional practices, including, but not limited to, programs, interventions, individualized educational pathways, reentry planning and execution, and transition to housing and workforce training to promote a strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

6) Requires the Department of Reentry to regularly engage and work with a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections and reentry strategies relevant to its mission.

7) Requires the Department of Reentry to seek to ensure that its efforts meet all of the following requirements:

a) Are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter;

b) Include the participation of those who must implement programs; and,

c) Promote collaboration and innovative problem solving consistent with its mission.

8) Provides that the Department of Reentry may create special committees, with the authority to establish working subgroups as necessary.

9) Requires the Department of Reentry to do all of the following:

a) Focus exclusively on reentry programs in state prisons in coordination with CDCR to ensure successful restorative results upon completion of a sentence;

b) Facilitate the smooth transition of individuals from prison to release and postrelease while under supervision by developing an individualized reentry plan for each person leaving state custody addressing a range of subjects, including, but not limited to, education, career workforce training, mental health, substance use treatment and counseling, assistance with transition to housing, attaining necessary documentation, and maintaining work and housing;

c) Seek various grants to service the needs of reentry including, but not limited to, housing rent subsidies, food vouchers, workforce training assistance, career tech education, and scholarships;

d) Oversee continuity of care for incarcerated people with mental health, physical health, and substance use disorders during community supervision and parole;

e) Focus specifically on programming through the period of incarceration that supports successful reentry to society based on individual needs; and,

f) Work closely with various state departments, including, but not limited to, CDCR, the Department of Housing and Community Development (DHCD), the State Department of Public Health (DPH), the California Workforce Development Board (CWDB), and the State Department of Health Care Services (DHCS), as necessary to perform the functions of the Department of Reentry.

**EXISTING LAW:**

1) Reaffirms a commitment to reducing recidivism among criminal offenders by reinvesting criminal justice resources to support community-based corrections programs and evidence-based practices. (Pen. Code, § 17.5.)

2) Declares that strategies such as standardized risk and needs assessments, transitional housing, treatment, medical and mental health services, and employment, have been demonstrated to significantly reduce recidivism among offenders in other states. (Pen. Code, § 17.7.)

3) Finds and declares that the purpose of sentencing is public safety, which is achieved through punishment, rehabilitation, and restorative justice. (Pen. Code, § 1170, subd. (a)(1).)

4) Finds and declares that incarcerated persons should have educational, rehabilitative, and restorative justice programs available so that their behavior may be modified and they are prepared to reenter the community. (Pen. Code, § 1170, subd. (a)(2).)

5) Requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prisoners and parolees. (Pen. Code, § 2062.)

6) Requires CDCR to implement evidence-based gender specific rehabilitative programs, including wraparound educational, health care, mental health, vocational, substance abuse and trauma treatment programs that are designed to reduce female offender recidivism. These programs shall include, but not be limited to educational programs that include academic preparation in the areas of verbal communication skills, reading, writing, arithmetic, and the acquisition of high school diplomas and GEDs, and vocational preparation, including counseling and training in marketable skills, and job placement information. (Pen. Code, § 3430, subd. (g).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "We must put more focus on the rehabilitative and re-entry side of incarceration. The CA Department of Re-Entry will focus exclusively on programs in the prison system to ensure successful restorative results, facilitate the smooth transition of individuals from prison to release, and oversee continuity of care for mental and physical health, and substance use disorders. This is a necessary step to ensure proper reentry into society."

2) **Recidivism and Reentry**: In recent years, CDCR has consistently expanded rehabilitation and reentry programs to ensure that academic education, career and technical education, cognitive behavioral interventions, and rehabilitative programs are operational in all prisons. The goal of these increased investments are to create a safer and more rehabilitative-focused system, to improve post-release outcomes for incarcerated individuals, and to reduce recidivism. (*Governor's Budget Summary 2023-2024* at pp. 84-85 <https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/CriminalJustice.pdf> [April 11, 2023].) Despite these efforts, recidivism rates have remained high, hovering at around 50% over the past decade. (State Auditor, *California Department of Corrections and Rehabilitation: Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs* (Jan. 2019) <https://www.auditor.ca.gov/reports/agency/22> at p. 1 [Mar. 20, 2023].) These recidivism rates may in part be due to several shortcomings of CDCR's rehabilitation programs as outlined in detail by the California State Auditor's Office (State Auditor). (*Id.* at 1-3.) A report by the State Auditor provides that CDCR's staffing shortfalls, failures to use evidence-based practices, and failures to properly identify and address rehabilitative needs are all factors leading to little change in recidivism rates. (*Id.* at 1, 19, 23.)

In 2007, the California Rehabilitation Oversight Board (C-ROB) was created to provide guidance and recommendations to the CDCR concerning its rehabilitation of incarcerated persons within the State's prison system and those who are released as parolees. C-ROB's goal is to reduce recidivism when incarcerated persons are released into communities. (C-ROB, *About C-ROB* <https://crob.ca.gov/about/> [as of April 11, 2023].) In its most recent report, C-ROB found that, in 2022, 9,864 parolees with a moderate to high California Static Risk Assessment (CSRA)[1] score were released, of whom 9,715 (99%) had received a reentry assessment. Of the released population, 86% had a moderate to high CSRA risk and at least one moderate to high reentry need. Those released with moderate to high scores have a greater risk to reoffend, have rehabilitative needs that require additional programming or resources, or a combination of both. (C-ROB, *September 15, 2022 C-ROB Report* <https://crob.ca.gov/wp-content/uploads/2022/09/2022-C-ROB-Report.pdf> [as of April 11, 2023].)

As of April 12, 2023, there are approximately 95,742 people incarcerated at CDCR. (CDCR, *Division of Correctional Policy Research and Internal Oversight, Office of Research, Weekly Report of Population* (April 12, 2022) <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2023/04/Tpop1d230412.pdf>.) Most of these individuals will eventually be released back into the communities of this State. Given that, most parolees have a moderate to high CSRA risk and high reentry needs, it is incumbent upon the State to cultivate successful reentry with the goal of reducing recidivism.

This bill would establish the Department of Reentry to provide statewide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole. It would require the Department of Reentry to coordinate with not only CDCR, but also various other state departments to carry out this mission. In doing so, this bill aims to reduce recidivism and ensure incarcerated persons succeed upon reentry.

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

---

[1] To determine an incarcerated person's risk of reoffending, CDCR developed a validated risk assessment instrument referred to as the CSRA. (CDCR, *Frequently Asked Questions* <https://www.cdcr.ca.gov/rehabilitation/faq/> [as of April 11, 2023].)

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.

"Because AB 1723 provides greater access to services for the incarcerated, and mentorship programs meaningfully reduce the risk that these individuals will reoffend once released on behalf of CPDA, we respectfully urge your "YES" vote on AB 1723."

4) **Related Legislation**:

a) AB 745 (Bryan) would establish the Reentry Housing and Workforce Development Program to provide five-year renewable grants to counties to fund evidence-based housing, housing based services, and employment interventions to allow people with recent histories of incarceration to exit homelessness and remain stably housed. AB 745 is pending in the Assembly Appropriations Committee.

b) AB 855 (Ortega) would require CDCR to, upon release, provide each incarcerated person, including those incarcerated in youth facilities, informational written materials, regarding vocational rehabilitation services and independent living programs offered by the Department of Rehabilitation, and an enrollment form for these vocational rehabilitation services. AB 857 is pending in the Assembly Human Services Committee.

c) AB 1104 (Bonta) would provide that effective rehabilitation increases public safety and builds stronger communities, and that the purpose of incarceration is rehabilitation and successful community reintegration through education, treatment, and restorative justice programs. AB 1104 is pending in the Assembly Appropriations Committee.

5) **Prior Legislation**:

a) AB 328 (Bryan), of the 2021-2022 Legislative Session, would have established the Reentry Housing and Workforce Development Program to provide stable housing and workforce training for recently incarcerated individuals experiencing or at risk of homelessness. AB 328 was held in Assembly Appropriations Committee.

b) AB 2250 (Bonta), of the 2021-2022 Legislative Session, would have required CDCR to establish a reentry services pilot program to provide comprehensive, structured reentry services for women released from state prison. AB 2250 was held in the Assembly Appropriations Committee.

c) AB 2730 (Villapudua), of the 2021-2022 Legislative Session, would have created the California Anti-recidivism and Public Safety Act pilot program which would have required CDCR to sponsor a program to help incarcerated persons reintegrate into their communities, reduce recidivism, and increase public safety. AB 2730 was vetoed.

d) AB 620 (Holden), of the 2017-2018 Legislative Session, would have required CDCR to provide meaningful opportunity for successful release of incarcerated persons by offering information about and access to effective trauma focused programming, as specified. AB 620 failed passage in the Assembly Appropriations Committee.

e) AB 2590 (Weber), Chapter 696, Statutes of 2016, revised existing legislative declarations concerning the purpose of punishment to instead state that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice, as specified.

f) AB 2129 (Jones-Sawyer), of the 2013-2014 Legislative Session, would have required CDCR to develop a voluntary reentry program that included access to cognitive behavior therapy. AB 2129 was held in the Assembly Appropriations Committee.

g) SB 973 (McLeod), of the 2009-2010 Legislative Session, would have created a parole reentry program in San Bernardino that would, in partnerships with local law enforcement and service agencies, provide assessments of parolees, job training, education, substance abuse treatment, transitional housing and other needed services to parolees. SB 973 was held in the Senate Appropriations Committee.

h) AB 900 (Solario), Chapter 7, Statutes of 2007, created C-ROB to regularly examine and report to the Legislature and Governor on the various mental health, substance abuse, and educational and employment programs for incarcerated persons and parolees operated CDCR.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Public Defenders Association (CPDA)
Peace Officers Research Association of California (PORAC)

**Opposition**

None.

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

# Amended Mock-up for 2023-2024 AB-428 (Waldron (A))

## Mock-up based on Version Number 97 - Amended Assembly 3/29/23
## Submitted by: Staff Name, Office Name

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

**SECTION 1.** Chapter 8.5 (commencing with Section 6150) is added to Title 7 of Part 3 of the Penal Code, to read:

**CHAPTER 8.5.** California Department of Reentry

**6150.** (a) Commencing January 1, 2024, there is hereby established the California Department of Reentry. The California Department of Reentry shall be independent of the Department of Corrections and Rehabilitation. The Governor may appoint an executive officer, subject to Senate confirmation, who shall hold the office at the pleasure of the Governor. The executive officer shall be the administrative head and shall exercise all duties and functions necessary to ensure that the responsibilities of the department are successfully discharged.

(b) The mission of the department is to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships with California's ~~adult and juvenile~~ criminal justice system to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole. The department shall carry out its mission in a way that reflects the principle of aligning fiscal policy and correctional practices, including, but not limited to, programs, interventions, individualized educational pathways, reentry planning and execution, and transition to housing and workforce training to promote a strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

(c) (1) The department shall regularly engage and work with a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections ~~, juvenile justice,~~ and reentry strategies relevant to its mission. Toward this end, the department shall seek to ensure that its efforts meet all of the following requirements.

(A) Are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter.

(B) Include the participation of those who must implement programs.

(C) Promote collaboration and innovative problem solving consistent with the mission of the department.

(2) The department may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the department head.

**6151.** The department shall do all of the following:

(a) Focus exclusively on reentry programs in state prisons ~~and juvenile justice facilities~~ in coordination with the Department of Corrections and Rehabilitation to ensure successful restorative results upon completion of a sentence.

(b) Facilitate the smooth transition of individuals from prison to release and postrelease while under supervision by developing an individualized reentry plan for each person leaving state custody addressing a range of subjects, including, but not limited to, education, career workforce training, mental health and substance use treatment and counseling, assistance with transition to housing, attaining necessary documentation, and maintaining work and housing.

(c) Seek various grants to service the needs of reentry including, but not limited to, housing rent subsidies, food vouchers, workforce training assistance, career tech education, and scholarships.

~~(d) Recommend and design facilities within existing state prisons to create a better environment for overall mental and physical health.~~

~~(e)~~ **(d)** Oversee continuity of care for incarcerated people with mental health, physical health, and substance use disorders during community supervision and parole.

~~(f)~~ **(e)** Focus specifically on programming through the period of incarceration that supports successful reentry to society based on individual needs.

~~(g)~~ **(f)** Work closely with various state departments, including, but not limited to, the Department of Corrections and Rehabilitation, the Department of Housing and Community Development, the State Department of Public Health, **the California Workforce Development Board,** and the State Department of Health Care Services as necessary to perform the functions of the department.

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

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

AB 505 (Ting) – As Amended March 23, 2023

**SUMMARY**: Transfers all authority, responsibilities, and duties regarding juvenile justice from the Board of State and Community Corrections (BSCC) to the Office of Youth and Community Restoration (OYCR). Specifically, **this bill**:

1) Transfers, all authority, responsibilities and duties conferred on the BSCC regarding juvenile justice to the OYCR. The office shall assume all juvenile justice statutory authority, duties and responsibilities including, but not limited to:

   a) Awarding grants;

   b) Collecting data;

   c) Making reports;

   d) Conducting inspections;

   e) Developing and enforcing minimum standards for local facilities; and,

   f) Developing standards for selection and training of personnel.

2) States that, starting on January 1, 2025, the OYCR shall serve as the state planning agency with respect to federal acts pertaining to juvenile justice and delinquency and shall succeed the BSCC regarding all other responsibilities, duties, and authority related to those federal acts.

3) Transfers authority regarding the plans and specifications of every juvenile facility housing persons detained or committed under the juvenile court law from the BSCC to the OYCR.

4) Requires the BSCC to provide copies of reports pertaining to the detention of a minor in an adult facility to the OYCR.

5) Transfers, commencing July 1, 2025, all authority, responsibilities and duties regarding juvenile halls, special purpose juvenile halls, camps, ranches, forestry camps, and secure youth treatment facilities from the BSCC to the OYCR, including developing and enforcing standards, and conducting inspections, as specified.

6) Authorizes, commencing July 1, 2025, any duly authorized officer, employee, or agent of the OYCR to enter and inspect any area of a juvenile facility without notice for inspection purposes, and also authorizes the OYCR to inspect any adult lock up facility that was used

for the secure detention of any minor in the preceding year.

7) Requires the OYCR to provide notices of non-compliance with suitability standards for juvenile facilities, and corrective action plans, as specified.

8) Requires the OYCR to notify the Legislature of any findings related to facility suitability within 30 days of making any findings.

9) Specifies the data that the OYCR is mandated to collect, requires that is be disaggregated by descriptors, and that all data, reports, and notices of findings prepared or received by the OVCR be made publicly available on its website.

10) Allows OYCR personnel to access to juvenile case files in order to carry out the duties of its office.

11) Confers the OYCR with the sole authority to make recommendations in respect to plans and specifications for the construction of local juvenile facilities or for alterations thereto, except recommendations that the office may request from any such state department or agency.

12) Provides that for any grant programs applicable to both youth and adult services, and for any programs that continue to be administered by the BSCC, the BSCC shall consult with the OYCR regarding grant design, solicitation, and awards that could be directed towards youth programs and services.

13) Requires the OYCR to develop guidelines and procedures for determining the suitability of juvenile halls no later than July 1, 2025. OYCR shall conduct a publicly-noticed hearing to gather input regarding suitability standards.

14) Requires the OYCR to implement a system of graduated sanctions by regulation applicable to all juvenile facilities in the state. The sanctions shall include the option for facility closure, and may also include training, technical assistance, and assessment of fines and civil penalties.

15) Requires the OYCR to promptly notify the county board of supervisors of any sanctions related to facilities within its county, as well as provide an annual report to the Legislature, beginning July 1, 2026, of sanctions imposed.

16) Requires the OYCR to adopt and periodically amend regulations establishing minimum standards for the selection and training of personnel employed by local entities or agencies to provide for the custody, supervision, treatment, or rehabilitation of juvenile court wards, as specified.

17) Grants the ombudsperson of the OYCR access to all juvenile facility records, as defined, at all times.

18) Grants the ombudsperson access to meet and communicate with youth housed in juvenile facilities at all times and without notice, and allows the ombudsperson to take notes, make audio or video recordings, or take photographs to the extent not otherwise prohibited under

state or federal law.

19) Grants the ombudsperson of the OYCR access to all juvenile facilities at all times, with or without prior notice.

20) Requires ombudsperson staff to conduct a site visit to every juvenile facility within a county at least once per year.

21) Authorizes the ombudsperson to recommend changes to improve services or correct systemic issues.

22) Requires the ombudsperson to advise all complainants that retaliation is prohibited and constitutes the basis for filing a subsequent complaint.

23) States that ombudsperson reports to the Legislature pertaining to data collected over the course of the year should include recommendations for improving the juvenile justice system that are consistent with the data collected.

24) Makes conforming changes.

**EXISTING LAW:**

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

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

3) Requires any construction/alteration plans for jails, prisons or detention facilities costing over $15,000 to be submitted to the BSCC for recommendations. (Pen. Code, § 6029, subd. (a).)

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

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

6) Requires the BSCC to inspect each local detention facility in the state biennially, at a minimum. This includes those that house minors. (Pen. Code, §§ 6031, subd. (a) & 6031.4.)

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

8) Establishes the OYCR in the California Health and Human Services Agency, whose mission is to promote trauma responsive, culturally informed services for youth involved in the juvenile justice system that support their successful transition to adulthood and help them become responsible, thriving, and engaged members of the community. (Welf. & Inst. Code,

§ 2200, subds. (a) & (b).)

9) Requires the OYCR to have an ombudsman who shall have the authority to investigate complaints from youth, families, staff, and others about harmful conditions or practices, violations of law and regulations governing facilities, and circumstances presenting an emergency. (Welf. & Inst. Code, § 2200, subd. (d).)

10) Provides that all juvenile justice grant administration functions in the BSCC shall be moved to the OYCR no later than January 1, 2025. (Welf. & Inst. Code, § 2200, subd. (f).)

11) Establishes the Regional Youth Programs and Facilities Grant program, which appropriates $9,600,000 to award one-time grants to counties for the purposes of providing resources for infrastructure related needs and improvements to counties. (Welf. & Inst. Code, § 2200, subd. (a).)

12) Establishes the Juvenile Justice Realignment Block Grant program for the purpose of providing county based custody, care, and supervision of youth who are realigned from the Division of Juvenile Justice (DJJ). (Welf. & Inst. Code, § 1990.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "California youth deserve every opportunity to grow, learn, and thrive. The State began transforming its juvenile justice system from a corrections model to an evidence-driven, healthbased approach when the Legislature passed SB 823 in 2020. It opened the state's first office of youth justice, the Office of Youth and Community Restoration (OYCR), to facilitate this transformation, and created an Ombudsperson to investigate violations of youth rights in the juvenile justice system. AB 505 ensures the new state youth justice office has the tools it needs to partner with counties in continuing the youth justice system transformation that began in 2020, and to keep them safe. The bill clarifies existing law and strengthens accountability, ensures county plans are consistent with health-based approaches, enables the Ombudsperson to respond quickly to youth who may be facing abuse, and consolidates regulatory authority and technical assistance under the state's youth justice expert, the OYCR."

2) **Background on the OYCR**: In 2020, with the passage of SB 823 (Committee on Budget), the state planned the closure of the Division of Juvenile Justice run by the California Department of Corrections and Rehabilitation and re-aligned the responsibility for managing all youth under the jurisdiction of the juvenile courts to county probation departments. As noted by the California Health and Human Services Agency, as part of this transition, "Effective July 1, 2021, pursuant to Senate Bill 823, a new Office of Youth and Community Restoration (OYCR) operates within the California Health & Human Services (CalHHS) Agency. Supporting the transition of justice involved youth being served in local communities, the OYCR will promote a youth continuum of services that are trauma responsive and culturally informed, using public health approaches that support positive youth development, build the capacity of community-based approaches, and reduce the justice involvement of youth.

"By promoting the use evidence-based and promising practices, the OYCR will improve youth and public safety outcomes by

- Reducing the transfer of youth into the adult criminal justice system,
- Reducing racial and ethnic disparities, and
- Increasing community-based responses and interventions.

"The OYCR will also assess the efficacy of local programs, provide technical assistance and support, review local Juvenile Justice Realignment Grants, fulfill statutory obligations of an Ombudsperson and develop policy recommendations." (https://www.chhs.ca.gov/oycr/ [as of April 11, 2023].)

OYCR is currently responsible for developing a report on youth outcomes; identifying policy recommendations for improved outcomes and integrated programs and services to best support delinquent youth; identifying and disseminating best practices to help inform rehabilitative and restorative youth practices, including education, diversion, re-entry, religious and victims' services; and providing technical assistance to probation departments, as requested. (See https://www.counties.org/juvenile-justice-realignment [as of April 11, 2023].) In addition, all juvenile justice grant administration functions in the BSCC shall be moved to the OYCR no later than January 1, 2025. (Welf. & Inst. Code, § 2200, subd. (f).)

This bill would transfer all other juvenile justice related responsibilities from the BSCC to the OYCR in order fully complete juvenile justice realignment.

3) **Argument in Support**: According to *Human Rights Watch*, and the other co-sponsors of this bill, "The OYCR must be well-equipped to help fulfill the promises of SB 823 to youth and the community. AB 505 provides for this in three ways:

"First, AB 505 makes the allocation of state funds to counties subject to OYCR approval. The state provides more than $200 million annually to counties that, starting this year, are responsible for the custody of all youth in locked facilities, including youth who previously would have been committed to the state Division of Juvenile Justice (DJJ). Under existing law, counties must submit plans to receive these funds, but there is no clear requirement that these plans comply with state law and be approved before the funding is awarded. Under AB 505, the OYCR would be authorized to review and approve county plans so that the use of state funds are consistent with legislative intent. AB 505 also clarifies that counties must develop their plans with ongoing engagement from the local community.

"Second, AB 505 ensures that the OYCR Ombudsperson can promptly visit facilities and access records to ensure a youth's safety in a locked facility. The OYCR Ombudsperson, modeled after the state Office of the Foster Care Ombudsperson, was created to investigate violations of youths' rights. Under existing law, however, the Office of the Ombudsperson cannot carry out its duties effectively and efficiently. For example, current law provides the Ombudsperson access to youth and facilities with advance notice of a minimum of 48 hours. AB 505 would allow the Ombudsperson to, like the Foster Care Ombudsperson, have immediate access to youth and facilities to avoid any further harm and address potential violations as quickly as possible. In addition, the Ombudsperson does not have explicit access to important records, such as a youth's case file or incident reports. These types of records are crucial to the investigation process, particularly when it comes to investigating

specific complaints. AB 505 would add the Ombudsperson to the list of people who may access and make copies of important records throughout the course of their investigation, while still protecting the youth's confidentiality.

"Third, AB 505 transfers youth-related duties currently vested in the Board of State and Community Corrections (BSCC) to the OYCR. The OYCR is a singular and pioneering state entity with the focused mission of implementing a health-based approach to youth justice. Therefore, the OYCR is best situated to ensure that the BSCC's grantmaking, data collection, and locked facility regulation and inspection duties specific to youth are consistent with the Legislature's transformative vision. AB 505 will ensure that the state's juvenile justice efforts are coordinated and effective by placing all of these functions under the OYCR.

"California youth deserve every opportunity to grow, learn, and thrive. We appreciate your dedication to youth in California's juvenile justice system and thank you for carrying AB 505, which will continue the Legislature's important work of transforming the way that youth, families, and communities experience youth justice."

4) **Argument in Opposition**: According to the *Chief Probation Officers of California*, "We are concerned that the substantial organizational and programmatic changes proposed in this bill would destabilize the implementation work that has been asked of probation and counties, and is currently and earnestly underway, to implement SB 823 (DJJ Realignment) with the impending closure of June 30, 2023.

"The changes proposed in this bill would create instability in implementation and add additional barriers to the work being done locally to best serve the DJJ realigned youth and all youth being served locally in our communities.

"What is needed at this time is stability, continuity, and the ability to implement SB 823 and related juvenile policies without concurrently moving the overarching structure for training, standards and inspection duties."

5) **Related Legislation**:

   a) AB 695 (Pacheco), would establish the Juvenile Detention Facilities Improvement Grant Program within the BSCC to provide grants, pursuant to this chapter, to a county of the first class to address the critical infrastructure needs of the state's supervised youth who are detained in county facilities. AB 695 is pending hearing in this committee.

   b) AB 898 (Lackey), would require probation departments to annually report to the BSCC all injuries to juvenile hall staff and juvenile hall residents resulting from an interaction with staff and a resident AB 898 is pending in the Assembly Appropriations Committee.

   c) AB 912 (Jones-Sawyer), among other things, transfers the allocation of funding for the Youth Reinvestment Grant Program from the BSCC to the OYCR. AB 912 is pending hearing in the Assembly Appropriations Committee.

6) **Prior Legislation**: SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, closed DJJ effective July 1, 2021, and as of that date, shifted the responsibility for

all youth adjudged a ward of the court to county governments. SB 823 also created, commencing July 1, 2021, the OYCR.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Anti-recidivism Coalition (Co-Sponsor)
Haywood Burns Institute (Co-Sponsor)
Human Rights Watch (Co-Sponsor)
National Center for Youth Law (Co-Sponsor)
Pacific Juvenile Defender Center (Co-Sponsor)
The Alliance for Children's Rights (Co-Sponsor)
The Young Women's Freedom Center (Co-Sponsor)
Alliance for Boys and Men of Color
Arts for Healing and Justice Network
Asian Prisoner Support Committee
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association (CPDA)
California Youth Connection (CYC)
Center for Juvenile Law and Policy, Loyola Law School
Ceres Policy Research
Children Now
Children's Defense Fund - CA
Children's Law Center of California
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources, Advocacy and Services
East Bay Community Law Center
Equal Justice Society
Everychild Foundation
Freedom 4 Youth
Fresh Lifelines for Youth
Fresno Barrios Unidos
Fresno County Public Defender's Office
Friends Committee on Legislation of California
Grace Institute - End Child Poverty in Ca
Healing Dialogue and Action
Immigrant Legal Resource Center
Initiate Justice
Insideout Writers
John Burton Advocates for Youth
Justice Policy Institute
Juvenile Law Center
Kids in Common
Legal Services for Children

Legal Services for Prisoners With Children
Milpa (motivating Individual Leadership for Public Advancement)
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Juvenile Justice Network
Nextgen California
Public Counsel
Root & Rebound
Ryse Center
Safe Return Project
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Sow a Seed Community Foundation
Spirit Awakening Foundation
The Children's Initiative
The Gathering for Justice
The Sentencing Project
Uncommon Law
Underground Grit
Urban Peace Institute
Young Women's Freedom Center
Youth Alliance
Youth Forward
Youth Law Center

**Opposition**

Chief Probation Officers of California

**Analysis Prepared by**: Sandy Uribe / 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 561 (Chen) – As Amended March 15, 2023

**SUMMARY**: Provides that service of process for a summons or civil subpoena may be deemed completed for an incarcerated individual on the first delivery attempt by delivering a copy to a warden or jailer, as specified. Specifically, **this bill**:

1) States that, if the only known address for an incarcerated person is a state prison or jail, service of process of a summons may be completed on the first delivery attempt by leaving the document with the warden or sheriff overseeing the facility.

2) States that if an incarcerated person has been transferred or released, a warden or sheriff who received a summons on the incarcerated person's behalf must notify the process server within 24 hours of that fact and service will not be considered completed.

3) Provides that, if the only known address for an incarcerated person is a state prison or jail, service of a subpoena may be considered completed by leaving a copy of the document with the warden or sheriff.

4) States that if an incarcerated person has been transferred or released, a warden or sheriff who received a summons on the incarcerated person's behalf must notify the process server within 24 hours of that fact and service will not be considered completed.

**EXISTING LAW**:

1) Provides that a person may not be deprived of life, liberty, or property without due process of law or be denied equal protection of the laws. (Cal. Const. Art. I § 7.)

2) States that an incarcerated person may, during the period of confinement, be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)

3) States that a court in which an action is pending has jurisdiction over a party from the time a summons is served on the party. (Code Civ. Proc., § 410.50.)

4) Defines "process" to include a writ or summons issued in the course of judicial proceedings. (Code Civ. Proc., § 17, subd. (b)(7).)

5) States that if no provision of law covers the manner in which a service of summons may be made, the court in which the action is pending may prescribe the manner of service in a way reasonably calculated to give actual notice. (Code Civ. Proc., § 413.30.)

6) States that personal service may be deemed completed by personally delivering the document to the person to be served. (Code Civ. Proc., § 415.10.)

7) Provides that, in lieu of personal service, substitute service may be completed as follows:

   a) For corporations, dissolved corporations, joint stock companies, unincorporated associations, or public entities by leaving the document during usual office hours at their office, or, if their office address is not known, their mailing address, aside from a post office box, with the person apparently in charge thereof. And by afterwards mailing a copy of the document to the person to be served at the place where the document was left. Service is deemed complete 10 days after the mailing;

   b) For minors, individuals under conservatorship or other guardianship, or persons otherwise not specified, if the document cannot with reasonable diligence be personally served, by leaving the document at the individual's home, usual place of abode, business, or mailing address aside from a post office box, in the presence of a competent adult in the household, person apparently in charge of the business or mailing address. And by afterwards mailing a copy of the document to the person to be served at the place where the document was left. Service is deemed complete 10 days after the mailing; or,

   c) For persons whose only reasonably known address is a private mailbox managed by a commercial mail receiving agency (CMRA), wherein the person signed an agreement authorizing the CMRA to be their agent for service of process, by the document with the CMRA. Service is deemed complete upon delivering the document to the CMRA. (Code Civ. Proc., § 415.20.)

8) States that service by mail may be completed by sending the document through first-class mail to the individual with an acknowledgement of receipt of the document. Service is deemed completed on the date when a written acknowledgment of receipt of the document is executed, if such acknowledgement is thereafter returned to the sender. (Code Civ. Proc., § 415.30.)

9) Outlines various other methods in which service may be completed, such as service by publication. (Code Civ. Proc., §§ 415.40 *et seq.*)

10) Provides that a specified person must be granted access to a gated community or a covered multifamily dwelling to perform lawful service of process. (Code Civ. Proc., § 415.21.)

11) Provides that a warden or jailer, upon receiving a paper deriving from a judicial proceeding directed to an incarcerated person in their custody, must forthwith deliver the paper to the incarcerated person with a note of the time of its service. Provides that a failure to do so will result in liability to the incarcerated person for all damages occasioned. (Pen. Code, § 4013, subd. (a).)

12) States that any person who can lawfully serve process may serve process to an incarcerated person. (Pen. Code, § 4013, subd. (b).)

13) States that a defendant may file a motion to quash a service of summons on the ground of lack of jurisdiction of the court. (Code Civ. Proc., § 418.10, subd (a)(1).)

14) Authorizes a court, among other things, to grant relief from a default judgment because of a party's mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473.)

15) States that service of a civil subpoena for a witness, who is not a party to the action, is effected by delivering the subpoena to the witness personally. (Code Civ. Proc., § 1987, subd. (a).)

16) Classifies disobedience of a duly served subpoena as contempt of court. (Code Civ. Proc., § 1209, subd. (a)(10).)

17) Authorizes a court to issue a warrant for the arrest of a witness who failed to appear pursuant to a subpoena. (Code Civ. Proc., § 1993, subd. (a)(1).)

**FEDERAL LAW**: Provides that no state shall deprive any person of life, liberty, or property without due process of law. (U.S. Const. Amend. XIV.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 561 will help prevent some courts interpretation that process servers must try to personally serve an inmate multiple times before leaving them the litigation coordinator, even when the jail or prison staff has said that they will not present the inmate. This bill clarifies that reasonable diligence is not necessary when leaving the judicial documents with a warden, sheriff or jailer pursuant to Penal Code Section 4013.

   "AB 561 also seeks to clarify the process by which an incarcerated person can be served for judicial documents which require personal service. This bill allows these judicial documents to be left with the warden, sheriff or jailer as specified in Penal Code Section 4013 if the only known address for the person is a state prison or county jail. This approach is similar to the process for substitute service of out-of-state corporations."

2) **Due Process and Service of Process**: The word "jurisdiction" is often used in a number of ways, however, it generally means the right to adjudicate an action or proceeding. (*Harrington v. Superior Court of County of Placer* (1924) 194 Cal.185, 188.) One crucial part of obtaining proper jurisdiction over a proceeding, and those involved in the proceeding, is ensuring that the parties have been given proper notice of the proceeding. (*Mullhane v. Cent. Hanover Bank & Trust Co.* (hereafter *Mullane*) (1950) 339 U.S. 306, 314.) The method of ensuring parties are given notice is often referred to as "service of process." The term "process" signifies a writ or summons issued in the course of a proceeding and "service of process" is the means by which a court asserts its jurisdiction over a party and gives the parties notice. (*Rockefeller Technology Investments VII v. Changzhou Sino Type Technology Co.,* (2020) 9 Cal.5th 125 139.) In proceedings where a party is considered to be given proper notice or service of process, the party is at risk of losing by default if they do not appear at the proceeding. (See e.g. Code Civ. Proc., § 473.)

However, parties must not only be given notice, but must be given proper notice. The Fourteenth Amendment's Due Process clause requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to present their objections. (*Mullane*, *supra*, 339 U.S. at 314.) As the results of a proceeding can result in the deprivation of life, liberty, or property, the U.S. Supreme Court has stated notice and a fair opportunity to be heard are, "among the most important procedural mechanisms for purposes of avoiding erroneous deprivations." (*Wilkinson v. Austin* (2005) 545 U.S. 209, 226.)

Assessing the adequacy of a particular form of notice requires a balancing of the interest in having a judicial proceeding be settled, against the individual interest protected by the Fourteenth Amendment. (*Jones v. Flowers* (hereafter *Jones*) (2006) 574 U.S. 220, 229.) As mentioned above, the adequacy of notice depends on whether, under all the circumstances, it was reasonably calculated to apprise parties of the proceeding. This means that service of process should take into account the totality of the circumstances to avoid going through the motions of effecting notice without meaning it. "When notice is a person's due, process which is a mere gesture is not due process." (*Mullane, supra,* 339 U.S. at 315.) When setting up a statutory scheme for service of process, "[t]he government must consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." (*Jones, supra,* 547 U.S. at 230.)

3) **Service of Process in California**: There are four usual methods for completing service within California. (*Crane v. Dolihite* (2021) 70 Cal.App.5th 772, 786.) The methods for completing service are personal delivery to an individual (i.e. personal service), delivery to someone else where the individual's usual residence or place of business is (i.e. substitute service), delivery by mail with acknowledgement of receipt (i.e. service by mail), and service by publication.

   In broad terms, this bill deals with substitute service, which can be used in lieu of personal service based on certain situations. (Code Civ. Proc., § 415.20.) Substitute service allows for a document to be left with someone other than the person who is a party to an action. For example, in the case of a corporation, a document could be left at the corporation's office or mailing address with a person who is apparently in charge of the place and afterwards mailing a copy of the document to that location. (Code Civ. Proc., § 415.20, subd. (a).) For a natural person, substitute service allows for a document to be left at their dwelling, usual place of abode, or place of business, with an adult member of the household or person seemingly in charge of the office and afterwards mailing a copy of the document to that location. (Code Civ. Proc., § 415.20, subd. (b).) In both situations, service of process is considered complete 10 days after mailing a copy of the document.

   Substitute service may be used on corporations and other business entities without ever needing to attempt to personally serve those entities. (Code Civ. Proc., § 415.20, subd. (a).) However, substitute service can only be used for "natural persons" if the person cannot, with reasonable diligence, be personally served. (Code Civ. Proc., § 415.20, subd. (b).) For natural persons, existing law allows for substitute service without attempting personal service if the person has a private mailbox through a commercial mail agency and cannot otherwise be located. (Code Civ. Proc., § 415.20, subd. (c).) However, that person must have first signed an agreement allowing the mailing agency to accept service of process for them. (Bus. &

Prof. Code, § 17538.5, subd. (d).) By expressly signing such waiver, they are consenting for service to be made in such manner.

Requiring reasonable diligence to personally serve natural persons seems to stem from the Fourteenth Amendment's Due Process clause. California courts have said that "[i]f the form of substituted service 'is reasonably calculated to give an interested party actual notice and an opportunity to be heard…, the traditional notions of fair play and substantial justice implicit in due process are satisfied.' " (*Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1182; *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1391-92; *Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1392.)

4) **Service on Incarcerated Individuals**: Under Penal Code Section 4013, a warden or sheriff who is given a paper in a judicial proceeding that is directed to an incarcerated person in their custody must deliver the paper forthwith and notate the time of its service; failure to do leaves the warden or sheriff liable to the incarcerated person for all damages resulting from neglecting to do so. California case law has interpreted this section to authorize wardens or sheriffs to accept service on an incarcerated person's behalf. (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852; *Crane v. Dolihite* (2021) 70 Cal.App.5th 772.) In terms of substitute service, this has been interpreted to mean that a warden or sheriff are authorized to accept a judicial document on an incarcerated person's behalf if reasonably diligent attempts to personally serve the incarcerated individual fail.

This bill would allow for substitute service on an incarcerated individual without attempting to personally serve the incarcerated individual. This bill seeks to allow such service in the case of a court summons and subpoena. Failure to respond to a summons can result in a default judgment and failure to respond to a subpoena can result in the issuance of an arrest warrant or contempt of court. (Code Civ. Proc., §§ 473, 1209, 1993.)
Proponents of the bill point out that process servers have consistently been denied access by wardens and sheriffs to personally serve an incarcerated individual. Proponents say that courts still, in order to show reasonable diligence, require process servers to make multiple attempts to personally serve an incarcerated individual before allowing substitute service be made on the warden or sheriff, even in circumstances where they are told the incarcerated individual will not be produced. This situation is not optimal, as it delays both the incarcerated person from receiving their judicial documents and burdens process servers.

However, would removing reasonable diligence before allowing substitute service adhere to the due process principles mentioned above? Opponents argue that legal service is a serious legal action affecting contracts, damage to property, divorce, child support, and adoptions. Opponents say that the bill would turn substitute service, which is supposed to be an exception, into the rule.

California previously faced a similar issue with individuals who needed to be served but lived in gated communities. (*Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387.) In that case, a process server attempted to serve an individual at their home, but their home was in a gated community, and the guard denied the process server access into the community. (*Id.* at 1390-91.) After three attempts to serve the individuals, the process server left the documents with the guard. (*Id.* at 1391-92.) The court found that, because the process server was reasonably diligent in attempting to personally serve the individuals in the home, that substitute service upon the guard was adequate. (*Id.* at 1393-94.) Two years after that

case, the California Legislature created a new statute that, rather than simply allow substitute service on the first attempt, required gated communities to allow process servers into the community. (AB 3307 (Takasugi) Chapter 691, Statutes of 1994.) Instead of removing the reasonable diligence requirement, should this bill instead try to extend the consideration afforded to those living in a gated community, to incarcerated individuals as well?

The California Department of Corrections and Rehabilitation (CDCR) Department Operations Manual outlines the procedures that are supposed to occur when process servers want to personally serve and incarcerated person. Section 14010.7.4 of the Department Manual in part provides:

- A non-sworn process server may be permitted to complete personal service if:
    - The server desires to make personal service and has made prior arrangements.
    - The inmate can reasonably be brought to the visiting area.
    - Permitting the personal service does not compromise the institution security.

Although the manual outlines the procedure for process servers to follow, it is unclear how close CDCR institutions are following such procedures. Should this bill attempt to bring wardens and sheriffs to the table to discuss other means of solving this issue? Especially when, in its current form, it may run contrary to due process principles.

Due process, as mentioned above, requires that "[t]he government must consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." (*Jones, supra,* 547 U.S. at 230.) Is this bill be reasonably calculated to provide notice to an incarcerated individual? This bill would allow a process server to complete substitute service upon a warden or sheriff without even asking if they could go and personally serve the incarcerated individual. One of the major issues with substitute service is that there is no guarantee the person handed the document will actually be able to deliver it to the person to be served, which is presumably why current law requires reasonable diligence at personal service before allowing substitute service for natural persons.

5) **Argument in Support**: According to the *California Association of Legal Support Professionals*, "California law and constitutional guarantees of due process require that in order for a party to be brought within the jurisdiction of the court, the party receive formal notice that the legal process has begun. California requires a sheriff, who is served with a paper in a judicial proceeding and is directed to an inmate in their custody, to deliver the paper to the inmate and to note when the paper was served. Until last year with the enactment of AB 1974 (Chen; Chapter 255, Statutes of 2022), there was no corresponding statute applying this requirement to state prisons. AB 561 seeks to address two remaining issues which were not resolved: whether this law should similarly apply to subpoenas and whether due diligence is required under service left with a sheriff and warden?

"Existing law is unclear whether serving the court documents to a sheriff or warden constitutes personal service. If this service is not considered personal service, courts generally require the exercise of due diligence to effect service. Frequently to show due diligence, the process server will have to make multiple attempts to personally deliver the documents to the inmate even when the jail or prison staff indicate that they will not produce the inmate. AB 561 clarifies that if the only reasonably known address for an incarcerated

person is the prison or jail then service may be effected on the first delivery attempt by leaving the summons and complaint with the warden or sheriff. This is similar to existing law for service of an individual who's only reasonably known address is a private mailbox at a commercial mail receiving agency. For subpoenas which require the party to be personally served, AB 561 similarly provides that service may be effected by leaving a copy of the subpoena with the sheriff or warden. This approach is again similar to how subpoenas are served for out-of-state corporations. AB 561 resolves the two remaining ambiguities relating to civil service of process of an incarcerated person and ensures the due process rights of the individual are protected.

"Recently, we received concerns from several organizations concerning the due process established by Penal Code Section 4013 and AB 561. We share in their concerns regarding due process and have committed to strengthening the bill's language to address these concerns. We remain committed to working with these organizations and ask that the bill proceed forward to continue our recent conversations."

6) **Argument in Opposition**: According to the *American Civil Liberties Union California Action*, "AB 561 would unjustifiably permit process servers to forego meaningful effort to effect personal service of subpoenas and summons in civil action. Service of process is a very serious legal action—this is the mechanism by which the courts establish jurisdiction over a person in cases involving contracts, damage to property, and family law cases such as divorce, child support, child custody, and adoptions. Consequently, service of a complaint and summons is to be made by personal delivery.

"Merely leaving a copy of a summons at the front gate of a jail or prison does not respect the solemnity of the legal procedure. 'For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'

"Under AB 561, process servers would never attempt to notify a person via personal service. Rather, they would leave the complaint and summons with corrections staff, presumably at the front gate of prisons and jails. In this way, AB 561 would turn substitute service – the exception – into the rule. 'Ordinarily, two or three attempts at personal service at a proper place should fully satisfy the requirement of reasonable diligence and allow substituted service to be made.'

"The US Supreme Court has consistently observed that notice and a fair opportunity to be heard are 'among the most important procedural mechanisms for purposes of avoiding erroneous deprivations.' Although Penal Code section 4013 makes correctional representatives liable for damages occasioned by failing to deliver judicial papers 'forthwith,' any such damages will not compensate for irreparable harm flowing from erroneous deprivations.

"The Bein case is instructive here. In that case, a process server tried multiple times to serve a person living in a gated community. The server was denied access. The court held that because the process server had tried personal service several times, valid substitute service had been effected when the server left the summons with the community's gate guard. Subsequently, the legislature passed CCP section 415.21, which allows process servers entry into gated communities without truncating the right to personal service. A similar problem is

said to exist here—process servers experiencing barriers to entry to certain residences. An appropriate solution could include legislation to grant process servers access to jails and prisons to effect personal service. Respectfully, the solution is not to abridge the constitutional rights of incarcerated people."

7) **Prior Legislation**:

a) AB 3131 (Diep), of the 2019-2020 Legislative Session, would have, among other things, made service upon a warden or jailer constitute personal service for an individual incarcerated in the warden or jailer's facility. AB 3131 was pulled by the author and was not heard in this Committee.

b) SB 1368 (Ortiz), of the 2003-2004 Legislative Session, would have authorized substitute instead of personal service for a summons on an insured individual's insurer, if the insurer acknowledged the claim and not denied coverage on the loss. SB 1368 failed passage in the Assembly Judiciary Committee.

c) AB 3307 (Takasugi), Chapter 691, Statutes of 1994, required that gated communities allow process servers in to serve residents.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Association of Legal Support Professionals

**Opposition**

ACLU California Action
California Public Defenders Association (CPDA)

**Analysis Prepared by**: Mureed Rasool / 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 581 (Wendy Carrillo) – As Amended March 16, 2023

**SUMMARY**: Establishes clearances for program providers that provide rehabilitative programming at state prisons. Specifically, **this bill**:

1) Establishes four clearances for program providers that provide rehabilitative programing to incarcerated people at state prisons including: (1) a short-term clearance, (2) an annual clearance (3) a program provider identification card and, (4) a statewide program provider identification card.

2) Defines "Short-term clearance" as a clearance that allows a program provider to enter an institution for three or fewer days per specific event, and provides all of the following in relation to short-term clearances:

   a) The California Department of Corrections and Rehabilitation (CDCR) shall provide the forms to institutions for short-term clearances;

   b) Institutions shall only use the forms provided by CDCR to process short-term clearances;

   c) Institutions shall not require additional institution-specific local forms for short-term clearances;

   d) CDCR shall not require a tuberculosis test or Live Scan fingerprinting for a program provider applying for a short-term clearance;

   e) CDCR shall not limit the number of short-term clearances a program provider can receive; and,

   f) CDCR is required to notify all short-term clearance applicants of the decision to approve or deny the application within specified timeframes.

3) Defines "Annual clearance" as a clearance allowing a program provider to enter one institution for a full calendar year and provides the following in relation to annual clearances:

   a) CDCR shall provide standardized clearance packets to institutions for annual clearances;

   b) Institutions shall only use the standardized clearance packet provided by CDCR for annual clearances;

c) Institutions shall not require additional institution-specific local forms for annual clearances;

d) A program provider applying for an annual clearance is subject to the same infectious disease testing policies as CDCR staff;

e) Program providers must submit fingerprints concurrently with the annual clearance application. The fingerprinting shall be taken and processed via Live Scan;

f) If program provider has already provided fingerprints to an institution or CDCR, no additional fingerprinting is required;

g) An annual clearance may be renewed on an annual basis;

h) A program provider with an annual clearance shall have either a program provider identification card, as defined, or a custody sponsor, as defined;

i) CDCR cannot limit the number of annual clearances a program provider can receive; and,

j) CDCR must notify all program provider applicants for annual clearance of the decision to approve or deny the application within 30 days of receipt of the application.

4) Defines "Program provider identification card" as a clearance that allows program providers to enter a specified institution without a custody sponsor, and provides the following in relation to program provider identification cards:

a) CDCR must provide a standardized clearance packet to institutions for program provider identification cards;

b) Institutions can only use the clearance packet provided by CDCR for program provider identification cards;

c) Institutions cannot require additional institution-specific local forms for program provider identification cards;

d) Program provider identification cards are valid for five years, provided the program provider meets testing and annual training requirements;

e) A program provider with a program provider identification can escort other authorized program providers within the institution for which the program provider identification card is valid;

f) A program provider applying for a program provider identification card shall be subject to the same infectious disease testing policies as CDCR staff;

g) Program providers applying for a program provider identification card must submit fingerprints concurrently with the application. The fingerprinting shall be taken and processed via Live Scan;

h) If the program provider has already provided fingerprints to an institution or the department, no additional fingerprinting shall be required;

i) CDCR cannot limit the number of program provider identification cards a program provider can receive; and,

j) CDCR must notify all program provider card applicants of the decision to approve or deny the application within 30 days.

5) Defines "Statewide program provider identification card" as a clearance provided to a program provider entering more than three institutions on a routine basis consistent with their program provider status, and provides the following in relation to statewide program provider identification cards:

a) A statewide program provider identification card is valid for five years, provided the program provider meets testing and annual training requirements;

b) A program provider applying for a statewide program provider identification card shall be subject to the same infectious disease testing policies as CDCR staff;

c) A program provider applying for a statewide program provider identification card must submit fingerprints concurrently with the application. The fingerprinting shall be taken and processed via Live Scan. If the program provider has already provided fingerprints to an institution or CDCR, no additional fingerprinting shall be required;

d) A program provider with a statewide program provider identification card can escort other authorized program providers within each institution for which the statewide program provider identification card is valid;

e) A program provider with a statewide program provider identification card can provide programs at facilities without a custody sponsor; and,

f) CDCR must notify all statewide program provider card applicants of the decision to approve or deny the application within 30 days.

6) Requires CDCR to designate a standardized approval process for people who were formerly incarcerated and who are applying for any of the four types of clearances, and provides the following in relation to formerly incarcerated program providers:

a) CDCR shall not exclude people who were formerly incarcerated from applying based on the type of institution or local area the person is applying to, unless extraordinary circumstances exist, such as verified or credible evidence by a warden that the person who was formerly incarcerated has introduced contraband into the institution;

b) For applicants who were formerly incarcerated and who are currently under supervision by the Division of Adult Parole Operations and who require documentation from the division to be provided any type of clearance, the division shall provide the documentation within 14 calendar days of the receipt of the request; and,

c) Institutions must explain in a memorandum the reasons for denying a formerly incarcerated person's program provider application for clearance, which shall be provided to the applicant by email.

7) Requires CDCR to notify all applicants for clearance of their right to appeal clearance application decisions and of the process for filing an appeal. CDCR shall notify applicants of the final disposition of their appeal within 90 days.

8) Defines "Custody sponsor" as correctional staff at an institution assigned to escort program providers within the institution.

9) Defines "Institution" as a California state prison.

10) Defines "Program provider" as an individual affiliated with a nonprofit organization that originates outside CDCR and provides rehabilitative programming to incarcerated people.

11) States legislative findings and declarations.

**EXISTING LAW**:

1) Reaffirms a commitment to reducing recidivism among criminal offenders by reinvesting criminal justice resources to support community-based corrections programs and evidence-based practices. (Pen. Code, § 17.5.)

2) Finds and declares that incarcerated persons should have educational, rehabilitative, and restorative justice programs available so that their behavior may be modified and they are prepared to reenter the community. (Pen. Code, § 1170, subd. (a)(2).)

3) Requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for incarcerated persons. (Pen. Code, § 2062.)

4) Establishes a program to provide grants to community based organizations that provide rehabilitative services to incarcerated individuals. (Pen. Code, § 5007.3.)

5) Provides that every person previously convicted of a felony and confined in any state prison, without the consent of the warden in charge of any state prison or prison road camp, or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, comes upon the grounds of any such institution, or lands belonging or adjacent thereto, is guilty of a felony. (Pen. Code, § 4571.)

6) States that every person who, without the permission the warden in charge of any state prison or prison road camp, or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, 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, "Over the last five years, the legislature has invested significant taxpayer dollars toward community based organization programming. While these programs are being positioned to expand and provide high-need services, program providers continue to cite access issues as a serious barrier in delivering these services to incarcerated people who need and want programs. Addressing access issues is fundamental to ensure the continuity and success of these programs, AB 581 addresses routine access issues to further facilitate the delivery of vital programs."

2) **CDCR's Existing Policies on Volunteers**: According to CDCR, the statuses for volunteers and program providers include:

   - ***Outside Guests***: Outside guests are individuals who provide services on a temporary or infrequent basis. For example, an outside guest may include guest speakers associated with community-based organizations, individuals who volunteer their talents for entertainment purposes or participate in an athletic event, and those who have been approved to observe or monitor such events.

   - ***Provisional Volunteers***: Provisional volunteers or program providers are individuals who provide escorted service as determined by the facility's Community Resources Manager. Provisional volunteers are subject to performance evaluation review.

   - ***Regular Volunteers***: Regular volunteers or program providers are individuals who provide services on an ongoing basis as provisional volunteers at the institution and have completed a minimum of six months of evaluation as a provisional volunteer at the institution. Services provided by regular volunteers are generally performed under indirect supervision and are subject to performance requirements and evaluations. A volunteer seeking regular volunteer status who provides services at multiple institutions shall complete a six month evaluation period at each institution, unless otherwise approved by the warden at the specific institution. Regular volunteers may be allowed unescorted access to their programming area with the use of volunteer identification cards.

   - ***Volunteer Identification Card***: Regular volunteers or program providers can enter facilities without an escort if they hold a Volunteer Identification Card. Volunteers and Program Providers may obtain an unescorted gate clearance and Volunteer Identification Card upon approval and regular service to the inmate population. The warden or designee determines Volunteer Identification Card Status.

   - ***Volunteer Mentors***: Volunteer mentors are regular volunteers that have been approved by the warden to provide ongoing rehabilitative guidance and support to one or more incarcerated persons.

   (CDCR, *Volunteer and Program Providers* <https://www.cdcr.ca.gov/community-partners/volunteer-and-program-providers/becoming-a-volunteer-or-program-service-provider/ > [April 12, 2023].)

According to CDCR, individuals interested in volunteering and becoming program service providers need to coordinate with the Community Resources Manager (CRM) at each institution. All of the following items must be submitted to the CRM:

- ***Letter of Interest***: All new applicants that would like to be a volunteer or program provider must submit a letter that provides justification of the services they are providing, how long they have been providing services, and where they have been providing services. Additionally, this letter should include the applicant's employment, academic status, and participation in the community.

- ***Volunteer and Program Service Provider Application***: The application includes the following documents:

    - CDCR Form 966 Volunteer Application and Service Agreement
    - CDCR Form 181 Primary Rules and Regulations
    - CDCR Form 894 Emergency Notification Information
    - STD 910 Essential Functions Health Questionnaire
    - CDCR Form 7354 Tuberculosis Infectious Free Staff Certification
    - CDCR Form 7336 Employee Tuberculin Skin Test (TST) and Evaluation
    - CDCR Form 1049 Certification of Volunteer Participation
    - CDCR Form 8019 Nepotism and Fraternization Policy Acknowledgement
    - CDCR Form 2301 PREA Policy Information for Volunteers and Contractors
    - CDCR Form 1887 Parent Consent for Participation (Only if the applicant is under the age of 18)
    - CDCR Form 2037 Request for Volunteer Contact with Inmate
    - CDCR Form 894-A Personnel Identification Card Information

- ***Training***: At the onset of service and annually thereafter, regular and provisional volunteers must complete the volunteer training modules and on-the-job training courses listed below. The trainings are to be completed annually:

    - Communicable Disease Prevention (Approximately 30 Minutes)
    - Inmate/Staff Relations (Approximately 30 Minutes)
    - Emergency Operations (Approximately 1 Hour)
    - Equal Employment Opportunity and Sexual Harassment Prevention (Approximately 45 Minutes)
    - Prison Rape Elimination Act (Approximately 1 Hour)
    - Information Practices Act (Approximately 1 Hour)
    - Fire Prevention and Life Safety (Approximately 30 Minutes)
    - Tuberculosis Testing Self-Education (Approximately 1 Hour)

- ***Live Scan Fingerprint Screening***: According to CDCR, after submitting the required documents, provisional and regular volunteers are required to complete a live scan. The live scan can be done at CDCR Headquarters in Sacramento or at an institution close to the volunteer's residence. Live scan is provided at no cost to the applicant.

- ***Tuberculosis Screening***: volunteers and program providers are required to annually submit a tuberculosis screening.

(CDCR, *Becoming a Volunteer or Program Provider* <https://www.cdcr.ca.gov/community-partners/volunteer-and-program-providers/becoming-a-volunteer-or-program-service-provider/ > [April 12, 2023].)

CDCR's current process for approving clearances for volunteers and program providers is complicated, time-consuming and often requires significant resources, including state staff time. This bill would direct CDCR to standardize the process and forms for all prisons in order to simplify the processes that program providers must adhere to in order to provide rehabilitative services in prisons.

3) **Clearances for Formerly Incarcerated Persons Who Provide Rehabilitative Programing**: According to CDCR, wardens may approve formerly incarcerated persons, parolees, and those on probation to serve as volunteers or program providers. In addition to all of the other existing onerous requirements, CDCR's website further provides that formerly incarcerated individuals interested in becoming a volunteer or program provider must submit the following, as applicable: if on parole, "written approval from a regional parole administrator"; if under supervised probation, "written approval from chief probation officer"; and, if currently on an informal probation, "written approval from the court or representative of the court." (CDCR, *Volunteer and Program Providers* <https://www.cdcr.ca.gov/community-partners/volunteer-and-program-providers/becoming-a-volunteer-or-program-service-provider/> [as of April 10, 2023].)

This bill would require CDCR to designate a standardized approval process for formerly incarcerated individuals who are applying for any of the four types of clearances. It provides that CDCR shall not exclude people who were formerly incarcerated from applying based on the type of institution or local area the person is applying to, unless extraordinary circumstances exists. This bill further provides that for applicants currently on parole who require documentation for any type of clearance, Division of Adult Parole Operations must provide the documentation within 14 calendar days of the receipt of the request.

4) **Arguments in Support**:

a) According to the *Center for Council*, "Despite our experience and successful programming, we operate with a small staff and limited resources for operations. The Department of Corrections and Rehabilitation has a complicated, time-consuming, and needlessly costly process for approving clearances for rehabilitative program providers to enter the prisons. Currently, regulations fail to provide a set of guidelines to standardize and simplify the processes that program providers must adhere to in order to gain access to provide their vital programs.

"In-prison program providers operate with limited budgets and resources, which makes it imperative that they allocate funds and time to provide adequate support and services to the individuals they serve as opposed to unnecessary and overly burdensome bureaucratic requirements.

"This bill seeks to solve complications in routine processes that require significant resources, including state staff time and program staff time, multiple and needlessly repetitive Live Scans, and unnecessarily onerous and duplicative tuberculosis testing. These costs quickly add up and put a strain on state budgets and resources and, in turn, program providers' budgets and resources.

"By investing in programs that aim to improve the lives of incarcerated Californians, the State is demonstrating its commitment to reducing crime and improving public safety in a more comprehensive and effective way. Rehabilitative programs interrupt cycles of incarceration and promote public safety by providing incarcerated people with the skills, knowledge, and support they need to make positive changes in their lives. Unlike other types of in-prison programming, such as vocational training, educational classes, or cognitive-behavioral therapy, community-based in-prison programs employ a more holistic and collaborative approach to rehabilitation, which recognizes that transformation requires a range of services to address the complex needs of incarcerated people.

"If this bill were to achieve its desired effect, community based organizations could deploy their staff much more efficiently and consistently, improving the quality and reliability of their programming. Time and money would be saved for both the State and program providers by minimizing bureaucratic barriers to program delivery and allowing program providers to spend more of their time and energy on helping their program participants.

"Additionally, standardizing the process by which formerly incarcerated program providers can get cleared to enter prisons in order to deliver rehabilitative programming will aid the Department of Corrections and Rehabilitations' mandate. Formerly incarcerated individuals face significant barriers to reintegration, and in many cases their ability to find employment with community based organizations to deliver rehabilitative programming is dependent on getting cleared to enter prisons. By standardizing the regulations for clearance, this bill will support the reintegration efforts of formerly incarcerated program providers and will allow them to credibly deliver vital programming more effectively."

b) According to the *Transformative in-Prison Workgroup* (TPW), "While security clearance processes are critical to facilitate entry for rehabilitative program providers into CDCR facilities to interact with and provide programming for incarcerated people, the process is often unnecessarily cumbersome, inefficient, and costly. Further, though formerly incarcerated program providers provide critical, and credible, services to incarcerated individuals, they also face a bewildering array of often inexplicable rules and regulations, mostly institution specific, that hinder rather than support these individuals who willing to go back inside to help others prepare for a successful reentry.

"AB 581 (Carrillo) directly addresses the practice of having different clearance requirements at each institution, with each institution requiring paperwork and forms specific to that institution, by mandating that the CDCR promulgate one set of standardized forms for all institutions. [...] And this bill corrects the practice of each prison enforcing different standards for formerly incarcerated program providers, such that the same person may be approved at one prison and denied at another based solely on

their formerly incarcerated status, by mandating one system-wide set of standards."

5) **Related Legislation**:

   a) 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.

   b) AB 1723 (Waldron), would allow 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 local detention facilities, as specified. AB 1723 is being heard in this Committee today.

6) **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 Catholic Conference
California Public Defenders Association (CPDA)
Center for Council
Communities United for Restorative Youth Justice (CURYJ)
Creative Acts
Defy Ventures
Ella Baker Center for Human Rights
Freedom Within Project
Grip Training Institute
Healing Dialogue and Action
Initiate Justice
Insight Garden Program
Jail Guitar Doors
Prison Yoga Project
Project Rebound, San Francisco State University
Root & Rebound
Sacred Purpose LLC
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
The Lionheart Foundation
The Place4grace
The Transformative In-prison Workgroup
Uncommon Law
Vnon Activist Musician's Movement

Women's Foundation California

1 Private Individual

**Opposition**

None

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

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

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

AB 797 (Weber) – As Amended March 23, 2023

**SUMMARY**: Requires cities and counties to establish independent community-based commission to investigate excessive force complaints against law enforcement officers. Specifically, **this bill**:

1) Requires the governing body of each city and county to create an independent community-based commission on law enforcement officer practices by January 15, 2025.

2) Requires each commission to be comprised of an executive director, independent investigators, independent legal counsel, commissioners, and support staff.

3) Requires the mayor or the chair of the board of supervisors to appoint the executive director of the commission.

4) Provides that, in the case of a city commission, one commissioner shall be appointed by the mayor and the other commissioners shall be appointed by the city council.

5) Provides that, in the case of a county commission, one commissioner shall be appointed by the chair of the board of supervisors and the other commissioners shall be appointed by the board of supervisors.

6) Prohibits the appointed independent legal counsel from, in other legal matters, concurrently representing the governing body that has employed or contracted with the law enforcement officer under investigation by the commission.

7) Authorizes independent commissions on law enforcement practices to do all of the following:

   a) Conduct independent investigations of complaints against a police officer or sheriff alleging physical injury to a person, including injury resulting in a person's death; and,

   b) Issue and enforce compliance of subpoenas compelling production of all evidence and testimony of witnesses a commission may require in the course of its investigations.

8) Requires each commission to prepare a report after an investigation and to include the results of the investigation and a recommended course of action, if any, to be taken by the governing body regarding the law enforcement officer investigated by the commission.

**EXISTING LAW:**

1) States that each law enforcement agency shall make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency. (Pen. Code, § 832.12, subd. (a).)

2) Authorizes a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense to use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (Pen. Code, § 835a, subd. (b).)

3) Authorizes a peace officer to use deadly force when the officer believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

   a) To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or

   b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code, § 835a, subd. (c)(1)(A) & (B).)

4) Prohibits a peace officer from using deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (c)(2).)

5) Defines "deadly force" as any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a, subd. (e)(1).)

6) Provides that an arrest is made by an actual restraint of the person, or by submission to the custody of an officer, and that the person arrested may be subjected to such restraint as is reasonable for their arrest and detention. (Pen. Code, § 835.)

7) Permits a peace officer who is authorized to make an arrest and who has stated their intention to do so, to use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists. (Pen. Code, § 843.)

8) Requires peace officers to immediately report all uses of force by the officer to the officer's department or agency. (Pen. Code, § 832.13.)

9) Requires that each law enforcement agency shall maintain a policy that provides a minimum standard on the use of force. (Gov. Code, § 7286, subd. (g).)

10) Requires the Commission on Peace Officers Standards and Training (POST) to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption

and promulgation by California law enforcement agencies for use of force. (Pen. Code, § 13519.10, subd. (a).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "This bill will remedy inadequate, non-transparent review of complaints against law enforcement actions taken against individuals and eliminate ineffective or non-existent disciplinary recommendations even when such complaints are justified. Many California counties and cities currently have no community based commissions to review and make such recommendations; or the commissions that have been established are ineffective, as they lack sufficient resources to adequately review such complaints and make effective disciplinary recommendations when such complaints are justified. Community distrust of internal law enforcement review of its own personnel's actions against individuals creates unnecessary tension between the communities and law enforcement, leads to costly civil unrest, and unfortunately sometimes creates unnecessary and avoidable damages and losses to individuals and to the business community during protests. By creating independent, community based commissions to review complaints against law enforcement actions taken against individuals, this bill will restore community confidence in the integrity of the review and recommendation process regarding these complaints."

2) **Civil Oversight Commissions:** This bill would require cities and counties to establish independent community-based commissions to investigate physical injury complaints against law enforcement officers. According to one report:

> Variously referred to as citizen oversight, civilian review, external review and citizen review boards, this form of police accountability is often focused on creating a framework that allows non-police actors to provide input into police department operations, with a historical—and often primary—focus on the citizen complaint process. Civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department whose work focuses on holding that department and its officers and employees accountable. In some jurisdictions, members of the public review, audit or monitor complaint investigations that were conducted by police internal affairs investigators. In other jurisdictions, civilians conduct independent investigations of allegations of misconduct lodged against sworn law enforcement officers. Civilian oversight can also be accomplished through the creation of oversight mechanisms that are authorized to review and comment on police policies, practices, training and systemic conduct. Some mechanisms involve a combination of systemic analysis and complaint handling or review.
>
> Civilian oversight mechanisms are usually implemented based on the assumption that members of the community do not have faith in the ability of a police or sheriff's department to police itself. When the public believes that officers are not being held accountable for violating the law or department policy, then a consensus may develop that misconduct allegations can be more effectively handled by a civilian organization external to the police. Underlying this view is the belief that having non-police actors play a role within the process for handling complaints can lead to more thorough,

> complete and impartial investigations and findings. A second common assumption is that involving non-sworn individuals in the oversight of the police has the potential to increase public confidence and trust in the police, or at least trust in local government more generally.

(De Angelis et al., *Civilian Oversight of Law Enforcement: Assessing the Evidence*, National Association for Civil Oversight of Law Enforcement (Sept. 2016) p. 13.)

Generally, there are three models of civilian oversight of law enforcement—investigation-focused models, review-focused models, and auditor/monitor-focused models:

> *Investigation-focused Models.* A form of oversight that operates separately from the local police or sheriff's department. While the structure, resources and authority of these types of agencies can vary among jurisdictions, these agencies are tied together by their ability to conduct independent investigations of allegations of misconduct against police officers.
>
> *Review-focused Models.* A type of oversight that focuses its work on reviewing the quality of completed internal affairs investigations. Many review agencies take the form of volunteer review boards or commissions and are designed around the goal of providing community input into the internal investigations process. Instead of conducting independent investigations, review agencies may evaluate completed internal affairs investigations, hear appeals, hold public forums, make recommendations for further investigation and conduct community outreach.
>
> *Auditor/monitor-focused Agencies.* One of the newest forms of police oversight. While there can be variation in the organization structure of this type of civilian oversight, auditor/monitor agencies tend to focus on promoting large-scale, systemic reform of police organizations while often also monitoring or reviewing individual critical incident or complaint investigations.

(De Angelis et al., *supra*, at p. 7.) The type of oversight body may impact how often law enforcement agencies accept the body's recommendations. "Some models of oversight may be more effective at getting recommendations implemented. Almost all of the oversight agencies reported that police executives listened carefully to the recommendations made by oversight staff (78 percent). However, auditor/monitor agencies were much more likely to report that police or sheriff's agencies implemented their recommendations frequently or very frequently (72 percent) as compared to investigative (42 percent) and review agencies (34 percent)." (*Id.* at p. 10)

This bill would require all California cities and counties to adopt an investigation-focused model.

3) **Practical Concerns:** This bill would require cities and counties to establish independent community-based commission to investigate physical injury complaints against law enforcement officers. Some communities already have police oversight commissions, but they may not comply with the requirements established by this bill. For example, the City of Berkeley's city charter establishes the Police Accountability Board and Director of Police Accountability. The charter requires, "To the extent possible, the City Manager shall

recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting." (https://berkeley.municipal.codes/Charter/125). The Board of Supervisors appoints the executive director of County of Los Angeles Civilian Oversight Commission. (https://coc.lacounty.gov/our-work/) However, this bill requires a city's mayor or a county's chair of the board of supervisors to appoint the director of the commission.

Would cities have to abandon established processes, often part of their city's charter, to comply with the requirements established by this bill?

Moreover, this bill has no transparency measures. Cities with existing commissions often provide for some level of transparency or public participation. Oakland, for example, requires the Director of the Community Police Review Agency to "respond[] to questions and issues raised by the public[.]" (https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.46COPOREAG) The Berkeley city charter requires, among other things, that the city council "appoint the Director of Police Accountability at a noticed public meeting," and requires the Director to "prepare an annual report to the public." (https://berkeley.municipal.codes/Charter/125) Although a commission would have to prepare a report after an investigation, this bill does not require public disclosure of the report. Nor does this bill require public notice of or public comment on appointments. Indeed, there is nothing in this bill preventing a city's commission from acting in complete secrecy.

Finally, this bill would be authorize each commission to conduct investigations of complaints against a law enforcement officer alleging physical injury to a person, even a minor injury. A law enforcement officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. (Pen. Code, § 835a.) Reasonable force occasionally causes physical injury. Under this bill, each commission could investigate a complaint alleging physical injury even when there has not been an allegation that the injury was the result of excessive force—even when there is no question that a law enforcement officer acted lawfully. Typically, civil oversight commissions have the authority to investigate or audit law enforcement misconduct. But an allegation of misconduct by an officer is not required by this bill.

4) **Argument in Support**: According to *Oakland Privacy*, "Assembly Bill 797 continues the Legislature's work towards law enforcement oversight and increasing transparency, accountability and community responsibility in policing. As with Assemblymember McCarty's work on civilian deaths at the hands of police, AB 797 asserts that police overseeing themselves has not worked in California.

"There is plenty of evidence to support that assertion, from allegations of destroying evidence in police shootings in Vallejo to racist text messages in police departments from San Francisco to Torrance to Antioch, and ongoing law enforcement gang scandals.

"While the state Department of Justice is making an effort to independently investigate the deaths of unarmed civilians at the hands of police, and that program may be expanded (AB 807), 6 there are a large number of other incidents that should be independently investigated. These include the use of excessive force and misconduct that are subject to no independent

investigation at all, if a police oversight body is not present.

"According to the Bad Apple database, there are approximately 27 civilian police oversight bodies in the state, with approximately 130 located in the other 49 states. California has over 400 different law enforcement agencies.

"NACOLE, the national association of civilian police oversight professionals, which provides resources, training and peer support to members of police oversight bodies, provides a list of 13 benefits of civilian oversight of law enforcement agencies including:

- Complainants are given a place to voice concerns outside of the law enforcement agency.
- The community at large can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process.
- Oversight agencies can improve department policies and procedures.
- Oversight agencies can assist a jurisdiction in liability management and reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed.

"Academic studies of the success and failures of existing law enforcement civilian oversight agencies have established a mixed record of success, hinging largely on whether the bodies had the tools needed to perform effective oversight, or were handicapped by significant limitations.

"AB 797 identifies two of the most common limitations that weaken the performance of oversight bodies: lack of subpoena power and lack of access to independent legal counsel.

"Without subpoena power, the investigations conducted by investigatory agencies are necessarily insufficient, lacking the power to compel the testimony of witnesses or the records that are relevant to investigating a complaint.

"Voters across California have recently acted to provide subpoena power to oversight commissions, including ballot initiatives in Sonoma County, San Diego, Berkeley and San Francisco. The Legislature themselves endorsed the notion that sheriff oversight agencies should have subpoena power when it passed, and the governor signed, AB 1185.

"When oversight commissions are dependent on City Attorneys for legal guidance, there are frequent potential conflicts of interest. A city attorney or county counsel is contractually obligated to perform in the best interests of the city or county and all of its participant agencies and departments. This includes the law enforcement agencies that are being investigated. The potential conflicts of interest are significant and an independent legal counsel is a best practice that eliminates this concern.

"AB 979 wisely attempts to empower all existing civilian police oversight bodies, and the hundreds of new ones that it seeks to create, with the tools needed for successful performance.

"We are sure there will be financial concerns regarding the bill, especially from smaller cities and counties. We want to be clear that misconduct payouts from municipal coffers are immense. Reductions in those amounts are beneficial to local government finances. Even in cities and counties that have not had significant payouts, we would argue that they are only one unfortunate incident away from a large settlement.

"While oversight commissions cannot always prevent civil lawsuits, they can prevent repeated settlements from policies, practices and cultures that may need changing. Additionally, in our experience, many individuals who bring complaints against police departments for excessive force or unconstitutional policing practices don't necessarily want to file lawsuits. It is difficult to find lawyers, the process is always long in duration, emotionally draining and can be expensive. The motivation is one of wanting to keep what happened to them from happening to another person, to change policies, practices and cultures, to see appropriate discipline meted out, and to achieve justice."

5) **Arguments in Opposition**:

a) According to the *City of Chino*, "The Chino Police Department has taken significant efforts to work collaboratively with the Chino community. The Chino Police Department believes it cannot effectively police and protect Chino residents without the trust and understanding of the community. To that end, the Chino Police Department commits time and resources to build valuable programs that support collaborative, community policing…

"Beyond public outreach programs, the Chino Police Department takes pride in holding its personnel to the highest standards of professionalism and integrity. In the rare moments where the Chino Police Department has been made aware of its employees falling below this standard, the response has been swift, transparent, and decisive. Although the bill intends to increase transparency, it does not consider the trust that may already exist between a community and its police department. Rather, it appears to unfortunately be a wholesale reaction to the decisions of other police departments that has no bearing on the Chino Police Department and its commitment to the Chino community."

b) According to the *California State Sheriff's Association*, "AB 797 ignores the significant oversight of law enforcement that is already in place. In addition to the opportunities for oversight provided to voters in electing the sheriff, significant oversight of the sheriff's office already exists. The state and federal Departments of Justice, the Board of State and Community Corrections, state and federal courts, county grand juries, district attorneys, and civilian review entities, including the sheriff oversight boards and inspector general offices created as a result of AB 1185 of 2020, all exercise oversight authority related to the office of the sheriff.

"AB 797 is also duplicative of existing law in terms of the charge of the commissions contemplated by this bill. Every law enforcement agency is required by current law to establish a procedure to investigate complaints by members of the public against law enforcement personnel. If the complainant is unsatisfied by the outcome of that process and the complaint involves an alleged criminal act, the complainant can seek redress from

the district attorney. If neither of those paths are satisfactory, the complainant can file a complaint with the state Attorney General's Office. In terms of subpoenas, AB 1185 allows sheriff oversight boards and inspector general offices to issue subpoenas to compel testimony and the production of evidence, and county counsels and grand juries already hold subpoena powers.

"This bill is an unnecessary, duplicative, and unfunded mandate."

6) **Related Legislation**:

a) AB 1291 (McCarty), requires cities and counties to post financial details about law enforcement use-of-force settlements and judgments on their internet websites, including how much each settlement cost and how the state and municipalities will pay for each settlement. AB 1291 is pending hearing the Assembly Appropriations Committee.

b) AB 807 (McCarty), would require a state prosecutor to investigate incidents in which the use of force by a peace officer results in the death of a civilian. AB 807 is pending hearing in the Assembly Appropriations Committee.

c) SB 838 (Menjivar), would revise the definition of "crime" for purposes of the Victim Compensation Program to include an incident in which an individual sustains serious bodily injury or death as the result of a law enforcement officer's use of force and make changes to eligibility factors as they would apply to these types of claims. SB 838 has been placed on the Senate Appropriations Committee suspense file.

7) **Prior Legislation**:

a) AB 26 (Holden), Chapter 403, Statutes of 2021, requires use of force policies for law enforcement agencies to include the requirement that officers immediately report potential excessive force, and specifies the requirement to "intercede" if another officer uses excessive force.

b) SB 2 (Bradford), Chapter 409, Statutes of 2021, grants new powers to the Commission on Peace Officers Standards and Training (POST) by creating a process to investigate and determine the fitness of a person to be a peace officer, and to decertify peace officers who are found to have engaged in "serious misconduct." Makes changes to the Tom Bane Civil Rights Act by eliminating specified immunity provisions.

c) AB 1022 (Holden), of the 2019-2020 Legislative Session, would have clarified and strengthened policies related to law enforcement officers' duty to intervene when excessive force is used. AB 1022 was held on the Senate Appropriations Suspense File.

d) SB 731 (Bradford), of the 2019-2020 Legislative Session, would have created a process for decertification of police officers. SB 731 was never heard on the Assembly Floor.

e) AB 1022 (Holden), of the 2019-2020 Legislative Session, would have disqualified a person from being a peace officer if they have been found by a law enforcement agency that employees them to have either used excessive force that resulted in great bodily injury or death or to have failed to intercede in that incident as required by a law

enforcement agency's policies. AB 1022 was held on the Senate Appropriations Suspense File.

f) SB 230, Caballero, Chapter 285, Statutes of 2019, requires each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things.

g) AB 1506 (McCarty), Chapter 326, Statutes of 2020, requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian, as defined.

h) AB 2327 (Quirk), Chapter 966, Statutes of 2018, requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file. Requires each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency.

i) AB 619 (Weber), of the 2015-2016 Legislative Session, would have required law enforcement agencies to report use of force incidents to the Attorney General (AG) and would have required the AG to annually issue a report containing this information. AB 619 was held in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Public Defenders Association (CPDA)
National College Players Association
Oakland Privacy
San Jose State University Black Student Athlete Association

**Opposition**

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Peace Officers Association
California State Sheriffs' Association
City of Chino
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Murrieta Police Officers' Association

Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

**Analysis Prepared by**: Andrew Ironside / 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 829 (Waldron) – As Amended April 13, 2023

**SUMMARY**: Requires a court to consider ordering a defendant who has been granted probation after conviction of specified animal abuse crimes to undergo a mental health evaluation, and requires the defendant to complete mandatory counseling as directed by the court, if the evaluator deems it necessary. Specifically, **this bill**:

1) Requires the court to consider for every defendant who is granted probation for specified animal abuse offenses, whether to order that the person undergo a mental health evaluation by an evaluator chosen by the court. These offenses include:

   a) Sexual contact with an animal;

   b) Willful poisoning of an animal;

   c) Animal cruelty;

   d) Keeping an animal in specified places without proper care; and,

   e) Intentionally causing injury or death to a guide or service dog.

2) Specifies that if the mental health evaluator deems a higher level of treatment than general counseling is necessary, the defendant shall complete such treatment as directed by the court.

3) Requires the defendant to pay for both any mental health evaluations and any subsequent treatment, but if the court determines that the defendant is unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay.

4) Provides that a person who is receiving specified public benefits or whose monthly income is 200% or less of the current federal poverty guidelines shall not be responsible for any costs.

5) Specifies that the required counseling is in addition to any other terms and conditions of probation, including any term of imprisonment and fine.

6) Makes confidential the finding that the defendant suffers from a mental disorder, as well as any progress reports concerning the defendant's treatment, or any other records created pursuant to these provisions, and prohibits their release or use in connection with any civil proceeding without the defendant's consent.

**EXISTING LAW:**

1) Provides that a person who has sexual contact with an animal is guilty of a misdemeanor. (Pen. Code, § 286.5.)

2) Provides that a person who, without the consent of the owner, willfully administers poison to any animal is guilty of a misdemeanor. (Pen. Code, § 596.)

3) Provides that an owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, or other specified places without proper care and attention is guilty of a misdemeanor. (Pen. Code, § 597.1.)

4) Provides that a person who intentionally causes injury to, or the death of, a guide, signal, or service dog is guilty of a misdemeanor. (Pen. Code, § 600.5.)

5) Provides that a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of animal cruelty. (Pen. Code, § 597, subd. (a).)

6) Punishes a violation of animal cruelty as a felony with imprisonment in the county jail under realignment, or by a fine of not more than $20,000, or by both; or alternatively, as a misdemeanor with imprisonment in a county jail for not more than one year, or by a fine of not more than $20,000, or by both. (Pen. Code, § 597, subd. (d).)

7) States that if a defendant is granted probation for a conviction animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. (Pen. Code, § 597, subd. (h).)

8) States that if the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. (Pen. Code, § 597, subd. (h).)

9) Specifies that the counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. (Pen. Code, § 597, subd. (h).)

**FISCAL EFFECT**: Unknown

**COMMENTS:**

1) **Author's Statement**: According to the author, ""Over the past 30 years, researchers and professionals in a variety of human services and animal welfare disciplines have established significant correlations between animal abuse and violence toward humans. Despite the recognition of this correlation, current sentencing options for animal abuse crimes are largely punitive measures that do little to help end the cycle of violence or rehabilitate offenders. Appropriate mental health counseling and education are important tools that can benefit public safety as well as reduce offender recidivism rates."

1) **Current Counseling Requirements for Animal Abuse Cases:** Existing law provides that if a defendant is granted probation for an animal cruelty conviction, the court must order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. (Pen. Code, § 597, subd. (h).)

   Cases involving animal cruelty can vary significantly in terms of their nature and severity. Some cases involve simple neglect where an animal is not provided proper food or care, while others involve significant intentional acts of cruelty. Current law imposes a mandatory sentencing requirement of counseling. That mandatory sentencing requirement does not necessarily fit the needs or circumstances of all cases of animal cruelty. "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.)

   This bill would require the court to consider a mental health evaluation for a defendant who is granted probation for specified animal abuse offenses, including several that do not currently require mandatory counseling. This bill would not make the mental health evaluation mandatory. However, if a mental health evaluation is conducted and the evaluating mental health professional deems it necessary, the defendant must complete counseling as a condition of probation. This bill does not dictate the higher level of treatment to be ordered, but rather leaves that determination to the court.

2) **Ability to Pay Provisions**: Existing law provides that if the court finds that the defendant is financially unable to pay for that counseling related to a conviction for animal cruelty, the court may develop a sliding fee schedule based upon the defendant's ability to pay. (Pen. Code, § 597, subd. (h).) Existing law allows an indigent defendant to negotiate a deferred payment plan, but requires the defendant to pay a nominal fee if able to do so. (*Ibid.*)

   This bill would provide that that a person who is receiving specified public benefits, such as supplemental security income, supplemental nutrition assistance program, Medi-Cal, and unemployment compensation, or a person whose monthly income is 200% or less of the current federal poverty guidelines shall not be responsible for any costs of counseling or treatment.

3) **Argument in Support**: According to *Social Compassion in Legislation*, the sponsor of this bill, "Over the past 30 years, researchers and professionals in a variety of human services and animal welfare disciplines have established significant correlations between animal abuse and violence toward humans. Despite the recognition of this correlation, current sentencing options for animal abuse crimes are largely punitive measures that do little to help end the cycle of violence or rehabilitate offenders. Fines, jail time, probation, and forced animal surrender are the primarily utilized options, but may not be enough to address the underlying issues leading to animal abuse. Appropriate mental health counseling and education are important tools that can benefit public safety as well as reduce offender recidivism rates.

   "Thankfully, animal cruelty is a growing issue of concern for law enforcement as well as mental health professionals. In fact, currently more than half of all states now have provisions that allow for courts to order psychiatric evaluation and/or counseling as part of an animal abuser's sentence. Such laws recognize that animal abuse can be a symptom of

underlying mental health issues. Offenders who display violence towards animals often subsequently commit violent acts towards humans whether it be child abuse, domestic violence, or, as we saw tragically in Parkland, Florida, mass shootings.

"Mental health evaluations for animal abusers is an important tool that should be available to courts. They are crucial for rehabilitation of animal abusers and will have a significant impact on the reduction of recidivism rates among animal abusers as well on preventing these abusers from escalating to human victims. It is long overdue that our laws, law enforcement, and correctional system recognize that animal abuse and its probable escalation to further violence is a significant issue, and we must take steps as early as possible to prevent more victims."

4) **Argument in Opposition**: According to the *California Public Defenders Association*, "While we greatly appreciate the amendments as proposed, AB 829 falls short in protecting the confidentiality of mental health treatment. The bill only provides for confidentiality of the mandatory treatment as it relates to civil proceedings. The bill should be amended to assure that any mandatory mental health treatment is confidential and not discoverable in any civil or criminal proceeding. The need for free exchange in the rare case of the need of mental health evaluation and treatment is paramount in ensuring community trust in health care privacy as well as protecting youth and young people from the lifelong stigma of being diagnosed with a 'conduct disorder.'"

5) **Prior Legislation**:

   a) SB 580 (Wilk), of the 2019-2020 Legislative Session, was substantially similar to this bill. SB 580 was held in the Assembly Appropriations Committee.

   b) SB 1024 (Wilk), of the 2017-2018 Legislative Session, was also substantially similar to this bill. SB 1024 was held in the Assembly Appropriations Committee.

   c) AB 611 (Nazarian), Chapter 613, Statutes of 2019, prohibits sexual contact, as defined, with any animal and provides for seizure and forfeiture of animals involved in such violations.

   d) AB 3040 (Nazarian), of the 2017-2018 Legislative Session, would have prohibited sexual contact, as defined, with any animal, and would require a person convicted of a violation of sexual contact with an animal to participate counseling as directed by the court. AB 3040 was held in the Senate Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Social Compassion in Legislation (Sponsor)
Animal Place
Animals & Society Institute
Clinica Sierra Vista
Compassionate Bay
Do Good International

Faith Action for All
Grassroots Coalition
Humane Decisions
In Defense of Animals
Los Angeles Alliance for Animals
Los Gatos Plant-based Advocates
Our Honor
Outta the Cage
Project Minnie
Start Rescue
Take Me Home
The Animal Rescue Mission
Tippedears
Vegan Flag

139 Private Individuals

**Opposition**

California Public Defenders Association

**Analysis Prepared by**: Sandy Uribe / 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 1039 (Rodriguez) – As Amended March 16, 2023

**SUMMARY**: Increases the penalty for specified consensual sexual activity with a confined adult from a misdemeanor to an alternative felony-misdemeanor. Specifically, this **bill**:

1) Increases the penalty for "sexual touching" from a misdemeanor to an alternative felony-misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine of not more than ten thousand dollars $10,000, or by both.

2) Expands the definition of "sexual touching" to include rubbing or touching of breasts, sexual organs, anus, groin, or buttocks of another or touching these parts of oneself in the presence of another.

**EXISTING LAW**:

1) Provides that any employee, officer, agent, staff, or volunteer of a detention facility, and any peace officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense. (Pen. Code, § 289.6, subd. (a)(2).)

2) Provides that any employee with a department, board, or authority under the Department of Corrections and Rehabilitation (CDCR) or a facility under contract with a department, board, or authority under CDCR, who, during the course of their employment directly provides treatment, care, control, or supervision of incarcerated persons, wards, or parolees, and who engages in sexual activity with a consenting adult who is an incarcerated person, ward, or parolee, is guilty of a public offense. (Pen. Code, § 289.6, subd. (a)(3).)

3) Provides that consent by a confined person or parolee to sexual activity proscribed by this offense is not a defense. (Pen. Code, § 289.6, subd. (e).)

4) Defines "sexual activity" for purposes of this offense as sexual intercourse, sodomy, oral copulation, sexual penetration, and the rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another. (Pen. Code, § 289.6, subds. (d)(1)-(5).)

5) States that a person who commits this offense by rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another, is guilty of a misdemeanor. (Pen. Code, § 289.6, subd. (g).)

6) States that a person who commits this offense by committing sexual intercourse, sodomy, oral copulation, sexual penetration, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or of a felony punishable by imprisonment in the state prison, or by a fine of not more than $10,000, or by both. (Pen. Code, § 289.6, subd. (h).)

7) Provides that any person previously convicted of a violation of this offense shall, upon a subsequent violation, be guilty of a felony. (Pen. Code, § 289.6, subd. (i).)

8) Provides that anyone convicted of a felony violation of this offense who is employed by a department, board, or authority within CDCR shall be terminated and shall not be eligible to be hired or reinstated by a department, board, or authority within CDCR. (Pen. Code, § 289.6, subd. (j).)

9) States that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding 6 months, or by both. "Touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(1).)

10) States that any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 289.)

11) Provides that rape is an act of sexual intercourse against person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (Pen. Code, § 261, subd. (a)(2).)

12) Provides that rape is an act of sexual intercourse accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. (Pen. Code, § 261, subd. (a)(6).)

13) Provides that rape is an act of sexual intercourse against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. (Pen. Code, § 261, subd. (a)(7).)

14) Provides that rape is a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 264, subd. (a).)

15) Provides that any person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when their consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is a alternative felony-

misdemeanor, punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years. (Pen. Code, § 266c.)

16) Establishes a statewide process to decertify officers who have been fired for serious misconduct, including but not limited to sexual assault. For purposes of this decertification, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (Pen. Code, § 832.7, subd. (b)(1)(B)(ii).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "No person in a detention facility should fear sexual assault, especially from a superior. Inmates rely on officers for their daily needs, including food, clothing, and medication. Refusing sexual advances risks retaliation and deprivation of necessities. To better address the abuse of power by officers, this bill would allow for punishment as a felony, should the situation warrant it."

2) **Prohibition on Staff Sexual Activity with Incarcerated Persons**: The Legislature enacted Penal Code section 289.6 for the purpose of "prohibiting peace officers or employees of a law enforcement agency to engage in sexual activity with a prisoner housed in a detention facility." (See *People v. Bojorquez* (2010) 183 Cal.App.4th 407, 426.) Consent is not a defense to the offense. (Pen. Code, § 289.6, subd. (e).) "Sexual activity" includes sexual intercourse, sodomy, oral copulation, sexual penetration, and rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another (i.e., sexual touching). (Pen. Code, § 289.6, subd. (d)(1)-(5).)

   The penalties for this offense depend on the type of sexual activity conducted by the officer. The offense is an alternative felony-misdemeanor for acts of sexual intercourse, sodomy, oral copulation, and sexual penetration. (Pen. Code, § 286.9, subd. (h).) The offense is a misdemeanor for acts of sexual touching. (Pen. Code, § 286.9, subd. (g).)

   This bill would expand the crime by change the definition of sexual touching to also include the touching of the anus, groin, or buttocks. This bill would also increase penalties for peace officers and corrections staff who participate in consensual sexual touching with an incarcerated person. Specifically, this bill would increase the penalty for sexual touching, from a misdemeanor to an alternative felony-misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in a state prison, or by a fine of up to $10,000 or by both.

   Notably, such conduct, if *non-consensual* (in both, custodial and non-custodial settings), is considered sexual battery, which is punishable as a misdemeanor by imprisonment in a county jail for up to six months and/or a fine not exceeding $2,000. (Pen. Code, § 2434, subd. (e)(1).) Therefore, this bill would make the penalty for *consensual* sexual touching more severe than the penalty for non-consensual sexual battery.

3) **Impetus for this Bill**: Recently an Orange County Sheriff's Deputy was "accused of establishing an inappropriate relationship with two female inmates incarcerated at the Theo

Lacy Facility, including sexually assaulting the incarcerated women on multiple occasions by touching them over their jail uniforms and showing them pornographic videos of himself while they were in their housing locations." (Orange County District Attorney, *Orange County Sheriff's Deputy Charged with Sexually Assaulting Female Inmates, Showing Pornographic Videos of Himself* (Jan. 4, 2023) <https://orangecountyda.org/press/orange-county-sheriffs-deputy-charged-with-sexually-assaulting-female-inmates-showing-pornographic-videos-of-himself/> [as of April 7, 2023].) Based on the misdemeanor charges brought by the Orange County District Attorney, the deputy "faces a maximum sentence of 18 months in the Orange County Jail if convicted on all counts." (*Ibid.*) The Orange County District Attorney "is seeking a change to state law to allow prosecutors to charge the behavior as a felony or a misdemeanor." (*Ibid.*)

4) **Increased Penalties Do Not Deter Crime**: This bill would increase penalties for officers and corrections staff who participate in consensual sexual activity with an incarcerated person. 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].) 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].) "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).)

5) **Other Options for Prosecuting Staff Sexual Abuse**: To the extent that this bill is aimed at increasing penalties for staff sexual abuse of incarcerated persons, there are several options currently available to prosecutors under existing law.

   Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 289.)

Any person who commits an act of sexual intercourse against person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury is guilty of rape, a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, §§ 261, subd. (a)(2), 264, subd. (a).) Rape can also be accomplished by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat and by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim. (Pen. Code, § 261, subd. (a)(6) -(7).) Also, any person who induces another person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when their consent is procured by a pretense made with the intent to create fear, is guilty of an alternative felony-misdemeanor, punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years. (Pen. Code, § 266c.)

Additionally, a person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding 6 months, or by both. (Pen. Code, § 243.4, subd. (e)(1).)

Further, if an officer commits sexual intercourse, sodomy, oral copulation, and sexual penetration, whether or not the incarcerated person consents, the officer can be charged with a felony, punishable by imprisonment in a state prison, or by a fine of up to $10,000 or by both. The officer can also be charged with misdemeanor for this offense, punishable by imprisonment in a county jail not exceeding one year. (Pen. Code, § 289.6, subd. (h).)

Finally, SB 2 (Bradford), Chapter 409, Statutes of 2021 established a statewide process to automatically decertify officers who have been fired for serious misconduct including sexual assault. For the purposes of officer decertification, the propositioning for or commission of "any sexual act" while on duty is considered a sexual assault. (Pen. Code, § 832.7.)

6) **Regulations on Staff Sexual Misconduct**: Title 15 Regulations strictly prohibit sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of CDCR, which involves or is directed toward an incarcerated person or parolee. (15 Cal. Code Regs., § 3401.5.) The Regulations specify that the legal concept of "consent" does not exist between departmental staff and incarcerated persons or parolees; any sexual behavior between them constitutes sexual misconduct and "shall subject the employee to disciplinary action and/or to prosecution under the law." (15 Cal. Code Regs., § 3401.5.) Title 15 regulations further specify that a grievance brought by an incarcerated person at CDCR containing allegations of staff-on-inmate sexual misconduct or sexual harassment shall be immediately reviewed and a response must be provided within 48 hours. The incarcerated person shall not be required to attempt to resolve the incident with staff and there is no time limit for allegations of staff sexual misconduct. (15 Cal. Code Regs., § 3084.)

Any CDCR employee who observes, or who receives information from any source concerning staff sexual misconduct, is required to immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. (15 Cal. Code Regs., § 3401.5.) Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action. (*Ibid.*) All

allegations of staff sexual misconduct are required to be subject to investigation, which may lead to disciplinary action or criminal prosecution. (*Ibid.*)

CDCR's regulations additionally provide that alleged victims who report criminal staff sexual misconduct shall be advised that their identity may be kept confidential, upon their request. (15 Cal. Code Regs., § 3401.5.) The regulations state that "retaliatory measures against employees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution." Such retaliatory measures include, but are not limited to, unwarranted denials of promotions, merit salary increases, training opportunities, or requested transfers; involuntary transfer to another location/position as a means of punishment; or unsubstantiated poor performance reports. (*Ibid.*) Likewise, retaliatory measures against incarcerated persons and parolees who report incidents of staff sexual misconduct "shall not be tolerated and shall result in disciplinary action and/or criminal prosecution." (*Ibid.*) Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual misconduct. (*Ibid.*)

CDCR is also required to consider multiple protection measures to protect incarcerated victims who report staff sexual misconduct or cooperate with staff sexual misconduct investigations including but not limited to housing changes or transfers, removal of alleged staff from contact with victims, and emotional support services for incarcerated persons or staff who fear retaliation for reporting staff sexual misconduct or sexual harassment or for cooperating with investigations. (15 Cal. Code Regs., § 3401.5.)

Facility administrators at local detention facilities are required to develop and publish a manual of policy and procedures, made available to all employees that address emergency procedures, including "zero tolerance in the prevention of sexual abuse and sexual harassment." (15 Cal. Code Regs., § 1029, subd. (a)(7).) Further, each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility including security measures specific to prevention of sexual abuse and sexual harassment. (15 Cal. Code Regs., § 1029, subd. (a)(6).) Facilities are required to provide for, multiple internal ways for incarcerated people to privately report sexual abuse and sexual harassment, retaliation by other incarcerated persons or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. (15 Cal. Code Regs., § 1029, subd. (e)(1).) Facilities are also required to provide a method for uninvolved incarcerated persons, family, community members, and other interested third parties to report sexual abuse or sexual harassment, which shall be publicly posted at the facility. (15 Cal. Code Regs., § 1029, subd. (e)(2).)

7) **Argument in Support**: According to the *California District Attorneys Association* (CDAA), "Under existing law, it is a misdemeanor for an employee or officer of a CDCR or public detention facility to engage in certain sexual activity with a consenting adult who is confined therein. Sexual activity between a custodial officer and an inmate is always non-consensual. There is an inherent power imbalance that prevents inmates from exercising free will. Inmates rely on officers for their daily needs, including food, clothing, and medication. Refusing sexual advances risks retaliation and deprivation of necessities. This creates an opportunity for law enforcement officers to use their positions of power to sexually abuse inmates with minimal potential punishment. For example, in January 2023, an Orange

County Sheriff's Deputy faced only misdemeanor charges for sexually assaulting two female inmates over a period of eight months."

8) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "While it is good public policy to discourage consensual sexual contact between employees and patients or inmates in these facilities; making sexual contact between *consenting* adults a felony is draconian. This bill would subject an employee who has minor sexual contact e.g. rubbing someone's buttocks, with a consenting patient or inmate to a potential prison term. This bill would elevate the penalty for such consensual sexual conduct to be comparable to the penalty for the same *nonconsensual* sexual contact in the general population.

"Longer potential prison sentences will not make state mental facilities or prisons safer for patients or inmates. Better training and oversight of employees would be more useful in addressing the problem. A potential prison sentence for such behavior would just contribute to the ongoing mass incarceration problem in California and divert limited resources from true public goods such as mental health, housing and education. Wasting taxpayers' precious funds to incarcerate people who engaged in consensual sexual conduct when the state is facing a $22 billion deficit is shortsighted."

9) **Prior Legislation**:

a) SB 2 (Bradford), Chapter 409, Statutes of 2021 established a statewide process to decertify officers who have been fired for serious misconduct such as, but not limited to, sexual assault.

b) AB 2078 (Nielsen), Chapter 123, Statutes of 2012, clarified that peace officers are prohibited from engaging in consensual sex with a person in a detention facility or being transported after arrest to a detention facility.

c) SB 377 (Polanco), Chapter 806, Statutes of 1999, increased the penalty for a detention facility employee convicted of engaging in sexual activity with a consenting adult confined in the facility, from a misdemeanor to an alternative felony-misdemeanor.

d) AB 685 (Wayne), Chapter 209, Statutes of 1997, added to the definition of "detention facility," for purposes of the statute, a health facility in which the victim has been detained involuntarily.

e) AB 1568 (Solis), Chapter 499, Statutes of 1994, created the crime of consensual sexual activity with a confined adult.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Orange County District Attorney (Sponsor)
California District Attorneys Association

**Opposition**

California Public Defenders Association (CPDA)

**Analysis Prepared by**: Liah Burnley / 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 1187 (Quirk-Silva) – As Amended April 10, 2023

**SUMMARY**: Authorizes the California Victim Compensation Board (the Board) to reimburse the expense of counseling services provided by a Certified Child Life Specialist (CCLS) certified by the Association of Child Life Professionals who provides counseling under the supervision of a licensed provider, subject to the Board's approval and the limitations and restrictions the Board may impose.

**EXISTING LAW**:

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

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

3) Requires the Board to verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the Board. (Gov. Code, § 13954, subd. (a).)

4) 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).)

5) Authorizes the Board to reimburse for the following types of pecuniary losses:

    a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

    b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center;

    c) 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;

    d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

e) The expense of installing or increasing residential security;

f) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;

g) Relocation expenses if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;

h) Funeral or burial expenses;

i) Costs to clean the scene of the crime; and,

j) Costs of veterinary services. (Gov. Code, § 13957, subd. (a).)

6) Authorizes reimbursement for psychiatric, psychological or other mental health counseling-related services if those services are provided by a person who is licensed in California to provide those services, or who is properly supervised by a person who is licensed in California. (Gov. Code, § 13957, subd. (a)(2)(D)(i).)

7) Authorizes reimbursement for psychiatric, psychological or other mental health counseling-related services if those services are provided by a person who is licensed in the state in which the victim lives to provide those services, or who is properly supervised by a person who is licensed in the state where the victim lives. (Gov. Code, § 13957, subd. (a)(2)(D)(ii).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Children who witness and/or are bereaved by family violence and other violent acts should receive referrals for support and therapeutic grief-focused interventions from highly skilled and trained professionals, which includes Certified Child Life Specialist (CCLS). CCLS are trained professionals who provides care and interventions that are family-centered, evidence-based, trauma-informed, and developmentally-psychologically-appropriate. California has a shortage of a wide range professionals including mental health, behavioral health, counselors, social workers and psychologists. Including services provided by a CCLS that are reimbursable by the California Victims of Crime Program will increase access to vital services to these children and their families."

2) **CCLSs**: The Association of Child Life Professionals administers an examination-based Child Life Certification program for CCLSs. According to its website, the Association of Child Life Professionals is a nonprofit organization founded in 1982. The Association of Child Life Professionals represents trained professionals with expertise in helping infants, children, youth, and families cope with the stress and uncertainty of illness, injury, and treatment. Its members include CCLSs, child life assistants, university educators and students, hospital administrators and staff, teachers, therapeutic recreation specialists, and professionals in related fields. (Association of Child Life Professionals, *About ACLP*

<https://www.childlife.org/about-aclp/mission-values> [as of March 16, 2023].)

According to the Association of Child Life Professionals, the CCLS credential is the "exclusive child life certification and is issued by the Child Life Certification Commission, a subsidiary of the [Association of Child Life Professionals]…The CCLS credentialing program is a rigorous, examination-based professional certification designed to promote the proficiency of child life professionals by identifying a body of knowledge, establishing a level of comprehension, and verifying mastery of critical child life concepts." (Association of Child Life Professionals, *Certification* <https://www.childlife.org/certification> [as of March 16, 2023].) To be eligible for certification, a person must have a bachelor's degree in any field of study, successfully complete 10 college/university courses, including but not limited to a "Child Life course taught by a CCLS", complete a minimum of 600 hours of a child life clinical internship under the direct supervision of a CCLS, and complete the Association of Child Life Professional's150 multiple-choice question examination. (*Ibid.*)

3) **Generally, the Board's Regulations Require Mental Health Providers to be Licensed by the State of California**: The Board assists in bill payment for expenses incurred by victims that are the result of violent crimes including mental health services. Regulations require that mental health providers must be licensed in California to be eligible to provide services to victim compensation claimants. (Cal. Code Regs., tit. 2 § 649.29) The following mental health providers licensed in California are eligible to provide services to claimants pursuant to Title 2 Regulations: licensed psychiatrists that have medical license and have completed their residency in psychiatry, or are certified in field of psychiatry with the American Board of Medical Specialists; licensed psychologists; licensed clinical social workers; marriage family therapists; psychologists registered with Board of Psychology; licensed professional clinical counselors; associate professional clinical counselors; associate social workers; associate marriage and family therapists; peer counselors, only for rape crisis counseling; psychiatric mental health nurses; and, clinical nurse specialists. (*Ibid.*)

There are a few limited exceptions to the rule that providers be licensed by the State. According to the Board, it can pay for services provided by psychology associates if they are registered, and if a supervising licensed mental health professional bills those services. (The Board, *Mental Health Service Providers* <https://victims.ca.gov/for-service-providers/mental-health-service providers/#:~:text=2%2C%20%C2%A7%20649.29.,Board%20of%20Medical%20Specialists%20(ABMS)> [as of March 15, 2023].) In addition, "Senate Bill 877, effective Jan. 1, 2023, allows [the Board] to compensate crime victims for mental health treatment outside California, if the provider is licensed in the same state in which the victim lives. (*Ibid.*) The third exception is peer counseling provided by rape crisis centers, only in the cases of rape. Peer counselors are required to be a provider of mental health counseling services, to complete a specialized course in rape crisis counseling skills development, participate in continuing education in rape crisis counseling skills development, and provide rape crisis counseling in consultation with a mental health practitioner licensed within the State of California. (Pen. Code, §§ 13837, 13838.)

CCLSs are not licensed by the State of California to provide mental health services. Accordingly, this bill would only allow the Board to reimburse the expense of counseling services provided by a CCLS who is certified by the ACLP and provides counseling under the supervision of a licensed provider, subject to approval by the Board and any limitations

set by the Board.

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 eligibility for victim compensation to CCLS, when the proposed backfill only allows the Board to continue operating at its current level?

5) **Argument in Support**: According to the *Los Angeles County District Attorney's Office*, "Children who witness and/or are bereaved by family violence and other violent acts should receive referrals for support and therapeutic grief-focused interventions from highly skilled and trained professionals, such as Certified Child Life Specialists (CCLS).

   "A CCLS helps infants, children, youth, and families cope with the stress and uncertainty of acute and chronic illness, injury, trauma, disability, loss, and bereavement. A CCLS provides care and interventions that are family-centered, evidence-based, trauma-informed, and developmentally- psychologically-appropriate. CCLS are equipped and experienced to respond to trauma cases, in emergency departments and intensive care units, where death is a common occurrence, and are well-prepared to provide grief and crisis interventions for family members of all ages, in the face of tragedy. CCLS facilitate grief interventions that seek to lessen the trauma of loss, including but not limited to emotional support and companioning, developmentally-appropriate education about death, memory-making and legacy-building activities, identification and rehearsal of coping strategies, and connection to community resources.

   "Most professionals are not specifically trained for the difficult conversations that arise and are necessary when supporting children and family members dealing with trauma and death. Multi-agency professionals who respond to these cases, may find it very difficult, uncomfortable, overwhelming, or at a loss for words or actions in the moment. The education of many professionals is specific to their career choice and does not generally include supporting bereaved, traumatized, and brokenhearted children and family members. When children enter the system, whether it be Child Protective Services, Law Enforcement, Dependency or Criminal Court, the need for grief counseling may be overlooked due to the

many other pending challenges and competing priorities at the time.

"Unfortunately today the California Victim Compensation Board does not include a CCLS on the list of authorized mental health treatment providers and therefore valuable services provided by a CCLS is not reimbursable from the Victims of Crime Program. [...]

"A CCLS is required to have a Bachelor's degree, with many possessing a Master's degree while meeting specific, rigorous academic requirements, such as coursework and a core foundation in child development, family systems, therapeutic play, grief, loss, and coping. In addition, clinical requirements including a 600-hour internship and the passing of the Child Life Professional Certification exam, establishes a level of comprehension and verifies a master of critical Child Life knowledge (Association of Child Life Professionals, 2021)."

6) **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 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.

c) SB 86 (Seyarto), would require the crime victim resource center to provide information through a website and to the families of crime victims, including but not limited to, information on obtaining restitution from the Board. SB 86 is pending in Senate Appropriations Committee.

7) **Prior Legislation**:

a) SB 877 (Eggman), Chapter 877, Statutes of 2022, authorized the Board to reimburse for psychiatric or mental health counseling provided by a person who is licensed in the state in which the victim lives or who is supervised by a person who is licensed in the state in which the victim lives.

b) AB 2100 (Bonta), of the 2017-2018 Legislative Session, would have, in pertinent part, extended the limitation on reimbursement for peer counseling services from 10 weeks of counseling services to 20 weeks of counseling services and establishes a reimbursement rate for the providers of these services. AB 2100 was held in the Assembly Appropriations Committee.

c) AB 1061 (Gloria), of the 2017-2018 Legislative Session, would have, in pertinent part, broadened the circumstances under which psychological, and mental health counseling could be reimbursed for derivative victims. AB 1061 was held in the Assembly Appropriations Committee.

d) AB 1629 (Bonta) Chapter 535, Statues of 2014, authorized the Board to reimburse a crime victim or a derivative victim for outpatient violence peer counseling expenses

incurred.

e) 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**

Los Angeles County District Attorney's Office (Sponsor)
California Catholic Conference
Prosecutors Alliance California

**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 1252 (Wicks) – As Amended March 23, 2023

**As Proposed to be Amended in Committee**

**SUMMARY**: Creates the Office of Gun Violence Prevention (OGVP) within the Department of Justice (DOJ) to study and issue a public report on improving the implementation, coordination, and efficacy of gun violence prevention laws. Specifically, **this bill**:

1) Establishes the OGVP within the DOJ.

2) Requires the OGVP, contingent upon sufficient state funding, to convene a Commission to End Gun Violence (commission).

3) States that the commission's membership must include recognized outside experts and stakeholders.

4) Provides that within one year of the commission's creation, it must issue a public report identifying which methods should be given priority for improving the implementation, coordination, and effectiveness of gun violence prevention laws and programs.

5) States that the report must also do the following:

   a) Highlight best practices, propose strategies to replicate such practices, and identify gaps or barriers that would impede the successful replication of such practices;

   b) Identify, evaluate, and strategize on how to plan coordination across different state and local agencies; and,

   c) Include recommendations for improving best practices, implementation, and coordination for court, victim, health care, and law enforcement systematic responses to gun violence.

**EXISTING LAW**:

1) Declares that too little is known about firearm violence and its prevention, that too little research has been done on firearm violence, and that California's uniquely rich data related to firearm violence have made possible important, timely, policy-relevant research that cannot be conducted elsewhere. (Pen. Code, § 14230, subd. (e).)

2) States the intent of the Legislature to establish a center to research firearm-related violence and that the center, the Firearm Violence Research Center (FVRC) be administered by the University of California. (Pen. Code, § 14231, subd. (a).)

3) States that interdisciplinary work of the FVRC shall address the following:

   a) The nature of firearm violence, including individual and societal determinants of risk for involvement in firearm violence, whether as a victim or a perpetrator;

   b) The individual, community, and societal consequences of firearm violence; and

   c) Prevention and treatment of firearm violence at all societal levels. (Pen. Code, § 14231, subd. (a)(1).)

4) Provides that the FVRC shall also:

   a) Conduct basic, translational, and transformative research with a mission to provide the scientific evidence on which sound firearm violence prevention policies and programs can be based. Its research shall include, but not be limited to, the effectiveness of existing laws and policies intended to reduce firearm violence, including the criminal misuse of firearms, and efforts to promote the responsible ownership and use of firearms.

   b) Work on a continuing basis with policymakers in the Legislature and state agencies to identify, implement, and evaluate innovative firearm violence prevention policies and programs;

   c) To help ensure a long-term and successful effort to understand and prevent firearm violence, the FVRC shall recruit and provide specialized training opportunities for new researchers, including experienced investigators in related fields who are beginning work on firearm violence, youth investigators who have completed their education, postdoctoral scholars, doctoral students, and undergraduates; and,

   d) As a supplement to its own research, the FVRC may administer a small grant program for research on firearm violence. (Pen. Code, § 14231, subd. (a)(2)-(5).)

5) Establishes the California Violence Intervention and Prevention Grant Program (CalVIP) within the Board of State and Community Corrections (BSCC) to issue grants, until January 1, 2025, to hospital-based violence intervention programs, street outreach programs, and focused deterrence strategies that interrupt cycles of violence in order to reduce homicides, shootings, and aggravated assaults. (Pen. Code, § 14131.)

6) States that, in awarding CalVIP grants, the BSCC must give preference to applicants demonstrating the greatest likelihood of reducing violence, without also contributing to mass incarceration. (Pen. Code, § 14131, subd. (g).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 1252 codifies the Department of Justice's Office of Gun Violence Prevention in statute, and establishes a Commission to End Gun Violence, tasked with issuing a public report identifying top priorities to improve the

implementation, coordination, and effectiveness of gun violence prevention-focused laws and programs.

"The Office of Gun Violence Prevention and the Commission to End Gun Violence can and should lead a strategic effort to foster more coordination and planning across different state and local agencies and help cement the new Office's central role in advising and shaping policy makers' responses to gun violence."

2) **Gun Violence in California**: The amount of gun violence in California is relatively low compared to other states. In 2019, California's firearm mortality rate was 7.22 deaths per 100,000 people. (John Hopkins Center for Gun Violence Solultions. *California Gun Deaths: 2019*. [last viewed Apr. 10, 2023].) As such, California has one of the lowest rates of firearm mortality in the country—ranking 44th out of the 50 states. (DOJ Office of Gun Violence Prevention. *Do California's Gun Safety Laws Work?* <https://oag.ca.gov/ogvp/data> [as of Apr. 10, 2023].)

   Although California's firearm mortality rate has generally been low on a national level, it far exceeds the firearm mortality rate of most developed countries. In 2019, the firearm mortality rate for the United Kingdom was 0.2, Canada's was 2.4, Germany's was 1.2, France's was 3.2, and India's was 1.1. (U.S. News. *Guns: U.S. Remains an Outlier in Firearm Possession, Gun-Related Deaths*. (Jan. 30, 2023) <https://www.usnews.com/news/best-countries/articles/2023-01-30/how-the-u-s-compares-to-the-world-on-guns> [as of Apr. 10, 2023].) California's firearm mortality rate is more on par with countries such as the Philippines (8.3), South Africa (6.5), Iraq (10.5), and Argentina (7.3). (*Ibid.*)

   This bill seeks to lay the foundation for shifting the state's focus when addressing gun violence from a criminal justice approach to a data-driven public health one. (See The Education Fund to Stop Gun Violence, Public Health Approach to Gun Violence Prevention <https://efsgv.org/learn/learn-more-about-gun-violence/public-health-approach-to-gun-violence-prevention/> [last visited Apr. 10, 2023].)

3) **Codifying the OGVP**: On September 21, 2022, California's Attorney General launched the OGVP so that the DOJ can assist in the implementation of strategic and innovative programs to reduce gun violence. (DOJ. *Attorney General Bonta Launches Office of Gun Violence Prevention.* (Sept. 21, 2022) <https://oag.ca.gov/news/press-releases/attorney-general-bonta-launches-office-gun-violence-prevention> [as of Apr. 10, 2023].) Currently, the OGVP's stated mission is, "to reduce and prevent gun violence, firearm injury, and related trauma. OGVP will support DOJ's ongoing gun violence reduction efforts led by the Bureau of Firearms and several litigation teams – including seizure of firearms from dangerous individuals using the Armed and Prohibited Persons System, Prosecution of firearms trafficking cases, and defense of California's commonsense guns laws." (DOJ. *Office of Gun Violence Prevention*. <https://oag.ca.gov/ogvp> [as of Apr. 10, 2023].)

   This bill would codify the existence of the OGVP, and also require it to convene a commission which would issue a report within one year of its creation that would improve the effectiveness of gun violence prevention-focused laws by identifying strategies to replicate best strategies, coordinate planning across different state and local agencies, and make recommendations for improving court, law enforcement, health care, and crime victim system responses to gun violence. As the OGVP already exists and already has certain

functions, could this bill's language requiring a commission be convened and a report be issued change the nature of the current OGVP?

Furthermore, does this bill duplicate existing programs? In 2016, the Legislature passed the California Firearm Violence and Research Act declaring gun violence a significant public health problem in California and establishing the FVRC at UC Davis to "provide the scientific evidence on which sound firearm violence prevention policies and program can be based." (AB 1602 (Committee on Budget), of the 2015-2016 Legislative Session, amended by AB 173 (Committee on Budget), of the 2021-2022 Legislative Session.) The principle work of FVRC is researching the nature of firearm violence and its individual, community, and societal consequences. This work is done by experts in firearm policy in varied fields, "including medicine, epidemiology, statistics and biostatistics, criminology, the law, economics, and policy studies." (https://health.ucdavis.edu/vprp/UCFC/index.html)

The difference between FVRC and OGVP appears to be the focus of their pursuits. Whereas FVRC primarily focuses on research projects and publishing peer-reviewed literature, OGVP would create a plan for developing a new policy framework for addressing firearm violence.

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

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

6) **Related Legislation**:

   a) AB 912 (Jones-Sawyer), would, among other things, create within the DOJ the Violence Reduction Grant Program, which would provide grants to evidence-based programs seeking to preemptively reduce and eliminate violence and gang involvement. AB 912 is currently pending hearing in the Assembly Education Committee.

   b) AB 762 (Wicks), would repeal the sunset date for the California Violence Intervention and Prevention Program. AB 762 is currently pending hearing in the Assembly Public Safety Committee.

   c) SB 266 (Newman), would create the Public Safety Collaborative Fund in the State Treasury. SB 266 would require the board, upon appropriation by the Legislature, to administer public safety collaborative grants from the fund to regional public safety collaboratives established for violence prevention, intervention, and suppression activities. SB 266 is pending hearing in the Senate Public Safety Committee.

7) **Prior Legislation**:

   a) AB 2253 (Bonta), of the 2021-2022 Legislative Session, would have established the Office of Gun Violence Prevention within the DOJ to address gun violence as a public health crisis and develop a strategy for incorporating a public health approach to address gun violence. AB 2253 was held in the Assembly Appropriations Committee.

   b) AB 173 (Ting), Chapter 253, Statutes of 2021, among other things, authorized the California Firearm Violence Research Center at UC Davis to be provided information on

gun violence for research purposes.

c) AB 1603 (Wicks), Chapter 735, Statutes of 2019, required the Board of State and Community Corrections (BSCC) to administer California Violence Intervention and Prevention Grant Program (CalVIP), a program which seeks to reduce the incidence of homicides, shootings, and aggravated assaults by supporting and replicating evidence-based violence reduction practices.

d) SB 746 (DeSaulnier), of the 2009-2010 Legislative Session, would have expressed the intent of the Legislature to create the Gun Safety Board within the Department of Public Health to implement strategies to reduce gun violence and accidental shootings. SB 746 was not assigned by the Senate Rules Committee to a policy committee.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

None.

**Opposition**

None.

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

# Amended Mock-up for 2023-2024 AB-1252 (Wicks (A))

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

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

**SECTION 1.** Title 12.3 (commencing with Section 14245) is added to Part 4 of the Penal Code, to read:

**TITLE 12.3.** GUN VIOLENCE PREVENTION

**14245.** (a) There is hereby established within the Department of Justice the Office of Gun Violence Prevention.

(b) Contingent upon sufficient state ~~or private funding~~, the office shall convene a Commission to End Gun Violence, to include in its membership recognized outside experts and stakeholders.

(c) Within one year of the commission's creation, it shall issue a public report identifying top priorities to improve the implementation, coordination, and effectiveness of gun violence prevention-focused laws and programs. The report shall also do all of the following:

(1) Identify gaps and barriers to success, and highlight and propose strategies to replicate best practices.

(2) Evaluate and identify coordination and strategic planning across different state and local agencies.

(3) Include best practice recommendations for improving implementation and coordination in court, law enforcement, health care, and crime victim system responses to gun violence.