California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, April 20, 2021
1:30 p.m. -- State Capitol, Room 4202

PART II

AB 124 (Kamlager) – AB 277 (Cooper)

Date of Hearing: April 20, 2021
Counsel: Cheryl Anderson

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

AB 124 (Kamlager) – As Amended April 15, 2021

SUMMARY: Expands access to vacatur relief and the affirmative defense of coercion for victims of human trafficking and creates that same relief for victims of intimate partner violence and sexual violence; requires courts, in making sentencing determinations, to consider whether trauma, youthfulness, or being a victim of human trafficking or intimate partner violence contributed to commission of the current offense; and makes evidence of mental state admissible on the issue of whether or not the accused actually formed the required mental state for the crime charged, as specified. Specifically, **this bill**:

(1) Requires the court to impose the lower term where any of the following was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances so far outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice:

   (a) The person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence (hereinafter "trauma");

   (b) The person is a youth, or was a youth, as defined, at the time of the commission of the offense (hereinafter "youthfulness"); or,

   (c) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(2) Defines youthfulness as including any person under 26 years of age at the time of the offense.

(3) Specifies this does not prohibit the court from imposing the lower term even if none of these contributing factors is present.

(4) Requires the court, when recalling and resentencing an inmate, to consider whether trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.

(5) Allows the court, when recalling and resentencing a defendant who was under 18 years of age at the time of the offense, was sentenced to life without the possibility of parole (LWOP), and who has been incarcerated for at least 15 years, to impose a term less than the original sentence if trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.

(6) Prohibits the court, except as otherwise provided by law and unless contrary to the interests of justice, from imposing consecutive terms of imprisonment for two or more felonies where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.

(7) Prohibits the court, unless contrary to the interest of justice, from imposing a term of imprisonment for any enhancement that is found true where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense. This section does not apply if an initiative requires the court to impose a term of imprisonment for the enhancement.

(8) States that in the interest of justice, and in order to reach a just resolution during plea negotiations, the prosecutor must consider, among other factors in support of a mitigated sentence, whether trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.

(9) Makes the affirmative defense for victims of human trafficking applicable to all crimes the defendant was coerced to commit, deleting the provision which excluded serious and violent crimes.

(10) Creates a new affirmative defense for victims of intimate partner violence or sexual violence which mirrors the human trafficking affirmative defense.

(11) Provides that the defendant may present evidence relevant to their identification as a victim of human trafficking or intimate partner violence or sexual violence that is contained in government reports, as specified, even if the peace officer did not identify them as a victim.

(12) Makes evidence that an individual suffers from a mental disease, mental defect, or mental disorder admissible on the issue of whether or not the accused actually formed the required mental state for the crime that is charged, including whether or not the accused committed a willful act, premeditated, deliberated, harbored malice aforethought, acted knowingly, acted maliciously, or acted with conscious disregard for human life.

(13) Makes vacatur relief for victims of human trafficking applicable to all crimes, rather than just nonviolent crimes.

(14) Creates vacatur relief for victims of intimate partner violence or sexual violence which mirrors the vacatur relief for victims of human trafficking.

EXISTING LAW:

(1) Authorizes the court, until January 1, 2022, to pick the term that best serves the interests of justice when a judgment of imprisonment is imposed and specifies three possible terms. As of January 1, 2022, in those circumstances, the court must impose the middle term unless there are circumstances in aggravation or mitigation of the crime. (Pen. Code, § 1170, subd. (b).)

(2) Provides that in determining the term, the court may consider the record in the case, the probation officer's report, other reports, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. (Pen. Code, § 1170, subd. (b).)

(3) Requires the court to set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended. (Pen. Code, § 1170, subd. (b).)

(4) Provides that until January 1, 2022, when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. As of January 1, 2022, the court must impose the middle term unless there are circumstances in aggravation or mitigation. (Pen. Code, § 1170.1, subd. (d)(1).)

(5) Authorizes a court, within 120 days after sentencing the defendant or at any time upon a recommendation from specified correctional entities or the prosecution, to recall an inmate's sentence and resentence that inmate to a lesser sentence. (Pen. Code, § 1170, subd. (d).)

(6) Requires the court in resentencing to apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, § 1170, subd. (d)(1).)

(7) Allows the court in resentencing to reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. (Pen. Code, § 1170, subd. (d)(1).)

(8) Allows the resentencing court to consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. (Pen. Code, § 1170, subd. (d)(1).)

(9) Provides that a defendant who is serving an LWOP sentence for an offense committed when the defendant was under 18 years of age and who has been incarcerated for at least 15 years may submit to the sentencing court a petition for recall and resentencing. (Pen. Code, § 1170(d)(2)(A)(i).)

(10) Provides that sentencing choices that require a statement of a reason include selecting one of three authorized terms in prison or county jail for either a base term or enhancement. (Cal. Rules of Court, rule 4.406(b)(4).)

(11) Requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, rule 4.409.)

(12) Provides that, in exercising discretion to select one of the three authorized terms of imprisonment, the sentencing judge may consider circumstances in aggravation or mitigation,

and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing. (Cal. Rules of Court, rule 4.420(b).)

(13) Prohibits the sentencing court from using a fact charged and found as an enhancement as a reason for imposing a particular term unless the court exercises its discretion to strike the punishment for the enhancement. (Cal. Rules of Court, rule 4.420(c).)

(14) Prohibits the sentencing court from using a fact that is an element of the crime to impose a particular term. (Cal. Rules of Court, rule 4.420(d).)

(15) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, rule 4.421.)

(16) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, rule 4.423.)

(17) Enumerates circumstances affecting concurrent or consecutive sentences, as specified. (Cal. Rules of Court, rule 4.425.)

(18) Enumerates factors affecting imposition of enhancements, as specified. (Cal. Rules of Court, rule 4.428.)

(19) Authorizes the court, generally, to dismiss or strike an enhancement. The court is expressly prohibited from striking prior serious felony conviction enhancements. (Pen. Code, § 1385.)

(20) Provides that if a person was arrested for, or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, the person may petition the court to vacate their convictions and arrests. (Pen. Code, § 236.14, subd. (a).)

(21) Requires the petitioner to establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking. (Pen. Code, § 236.14, subd. (a).)

(22) States that the petition to vacate conviction or arrest shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking. (Pen. Code, § 236.14, subd. (b).)

(23) Provides that if opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition. (Pen. Code, § 236.14, subd. (d).)

(24) States that if the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition, as specified. (Pen. Code, § 236.14, subd. (f)(1)-(3).)

(25) Allows the court after considering the totality of the evidence presented, to vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

(a) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed;

(b) The commission of the crime was a direct result of being a victim of human trafficking;

(c) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme; and,

(d) It is in the best interest of the petitioner and in the interests of justice. (Pen. Code, § 236.14, subd. (g)(1)-(4).)

(26) States that the order vacating a conviction or expunging and arrest shall do the following:

(a) Set forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense;

(b) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner; and,

(c) Notify the Department of Justice (DOJ) that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered. (Pen. Code, § 236.14, subd. (h)(1)-(3).)

(27) Specifies that a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid. (Pen. Code, § 236.14, subd. (i).)

(28) Specifies that when the court orders the conviction vacated, the court shall also order the law enforcement agency having jurisdiction over the offense, DOJ, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. (Pen. Code, § 236.14, subd. (k).)

(29) Requires the petition to vacate the conviction be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section. (Pen. Code, § 236.14, subd. (l).)

(30) States petitioner, or his or her attorney may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically,

via videoconference, or by other electronic means established by the court. (Pen. Code, § 236.14, subd. (n).)

(31) Specifies that notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board. (Pen. Code, § 236.14, subd. (p).)

(32) Defines a "nonviolent offense" for the purposes of vacatur relief, as one that does not appear on California's violent felony list. (Pen. Code, § 236.14, subd. (t).)

(33) Provides that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and in reasonable fear of harm. (Pen. Code, § 236.23, subd. (a).)

(34) States that this affirmative defense does not apply to a serious felony, a violent felony, or the offense of human trafficking, as specified. (Pen. Code, § 236.23, subd. (a).)

(35) Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard. (Pen. Code, § 236.23, subd. (b).)

(36) States that certifying records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, may be presented to establish the affirmative defense. (Pen. Code, § 236.23, subd. (c).)

(37) Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing. (Pen. Code, § 236.23, subd. (d).)

(38) Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:

(a) Sealing of all court records in the case;

(b) Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and,

(c) Permission to attest in all circumstances that he or she has never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications. (Pen. Code, § 236.23, subd. (e).)

(39) Provides that records sealed after prevailing on the human trafficking affirmative defense may still be accessed by law enforcement for subsequent investigatory purposes involving persons other than the defendant. (Pen. Code, § 236.23, subd. (e)(1)(B).)

(40) States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records. (Pen. Code, § 236.23, subd. (f).)

(41) States that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief. (Pen. Code, § 236.23, subd. (e)(3)(C).)

(42) Provides that in a criminal action expert testimony is admissible by either the prosecution or defense regarding the effects of human trafficking on its victims, including, but not limited to the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims. (Evid. Code, § 1107.5.)

(43) Provides that in a criminal action, expert testimony is admissible by either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge. (Evid. Code, § 1107, subd. (a).)

(44) Defines "plea bargaining" to mean "any bargaining, negotiation, or discussion between a criminal defendant, or their counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant." (Pen. Code, § 1192.7, subd. (b).)

(45) Abolishes the defense of diminished capacity. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect is not admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged. (Pen. Code, § 25, subd. (a).)

(46) Provides that all persons are capable of committing crimes except those belonging to specified classes which includes persons (unless the crime is punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. (Pen. Code, § 26.)

(47) Prohibits introducing evidence of mental disease, mental defect, or mental disorder to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. (Pen. Code, § 28, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: "We know that survivors of sexual violence, intimate partner violence, and other severe forms of trauma are more likely to be incarcerated. In fact, according to the ACLU, nearly 60% of female state prisoners nationwide and more than 90% of certain

female prison populations experienced physical or sexual abuse before being incarcerated. Yet, California's legal system currently lacks any consideration for the relevant experiences of survivors in the sentencing or resentencing process.

"AB 124 would provide a path for courts to consider the full context of the trauma that contributed to a survivor's actions or inactions. It would create a trauma-informed response to sentencing that provides just outcomes for survivors. Currently, the societal trauma caused by criminalizing these individuals spans generations and perpetuates cycles of abuse and trauma. can end. AB 124 ensures that survivors of sexual violence are able to receive justice through our legal system."

2) **Sentencing Factors:** In determining what term to impose where the statute specifies three possible terms (low term, middle term, high term), California Rules of Court, rule 4.420(b) allows the court to consider "circumstances in aggravation on or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing."

In *People v. Charron* (1987) 193 Cal.App.3d 981, the court "observed that '[the] essence of "aggravation" relates to the effect of a particular fact in making the offense distinctively worse than the ordinary.'" (*Id.* at p. 994.) Rule 4.421 allows the court to consider certain specified aggravating circumstances in its decision of which term to impose. (Cal. Rules of Court, rule 4.421.) These include factors relating to the crime – e.g., whether the crime involved great violence, whether the victim was particularly vulnerable, whether the defendant threatened witnesses, whether the defendant induced others to participate in the crime, etc. (Cal. Rules of Court, rule 4.421(a).) The aggravating factors specified in Rule 4.421 also includes factors relating to the defendant – e.g., whether the defendant has engaged in violent conduct that indicates a serious danger to society, whether the defendant has numerous prior convictions or prior convictions that are increasing in seriousness, whether the defendant has served a prior prison term, the defendant's prior performance on probation, parole, or mandatory supervision, etc. (Cal. Rules of Court, rule 4.421(b).) The court may also consider, "[a]ny other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed." (Cal. Rules of Court, rule 4.421(c).)

Similarly, the Rules of Court allow the court to consider certain specified mitigating circumstances in its decision of which term to impose. (Cal. Rules of Court, rule 4.423.) These include factors relating to the crime – e.g., whether the defendant was a passive participant or played a minor role in the crime, whether the victim was an initiator or willing participant or provoker of the incident, whether the crime was committed because of an unusual circumstance unlikely to recur like great provocation, the defendant suffered from repeated or continuous physical, sexual, abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; the abuse does not amount to a defense, etc. (Cal. Rules of Court, rule 4.423(a).) The mitigating factors specified in Rule 4.423 also include factors relating to the defendant – e.g., whether the defendant has no prior record or an insignificant prior record of criminal conduct, whether the defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime, whether the defendant

voluntarily acknowledged wrongdoing at an early stage, etc. (Cal. Rules of Court, rule 4.423(b).) And as with aggravating factors, the court may consider "[a]ny other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed." (Cal. Rules of Court, rule 4.423(c).)

The Rules of Court allow the trial court to consider aggravating factors or mitigating circumstances in deciding whether to impose consecutive rather than concurrent sentences, with certain exceptions. (Cal. Rules of Court, rule 4.425(b).) The trial court may also consider facts relating to the crimes, including whether or not the crimes and their objectives were predominantly independent of each other; the crimes involved separate acts of violence or threats of violence; or the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior. (Cal. Rules of Court, rule 4.425(a).)

If an enhancement is punishable by one of three terms, under the Rules of Court, the court has the discretion to impose the term that best serves the interest of justice. In exercising its discretion in selecting the appropriate term, the court may consider aggravating and mitigating factors as described in these rules or any other factor reasonably related to the decision being made. (Cal. Rules of Court, rule 4.428(a).)

If the court has discretion to strike an enhancement or its punishment in the interests of justice, in making that determination, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant's criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration. (Cal. Rules of Court, rule 4.428(b).) The court may also consider any other criteria reasonably related to the decision being made. (*Ibid.*; Cal. Rules of Court, rule 4.408(a); see also Pen. Code, § 1170.1, subd. (d)(1) [as of January 1, 2022, the court must impose the middle term unless there are circumstances in aggravation or mitigation].)

This bill would require the court to consider additional criteria in making these sentencing decisions – whether trauma, youthfulness, or being a victim of human trafficking or intimate partner violence was a factor contributing to the commission of the offense. The bill defines youthfulness as including any person who was under 26 years of age at the time of the offense.

3) **The United States Supreme Court's Decision in *Cunningham***: The Sixth Amendment right to a jury applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. [*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.]

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because

the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities of the DSL:

> As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions.

(*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code Sections 1170 and 1170.1, to make the choice of lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Chapter 3, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. Now, the sentencing court is permitted to impose any of the three terms in its discretion, and need only state reasons for the decision so that it will be subject to appellate review for abuse of discretion. (*Id.* at pp. 843, 847.)

SB 40 included legislative intent language stating that its purpose was to address *Cunningham*, and to stabilize the criminal justice system while sentencing and correctional policies in California are being reviewed. Thus, SB 40, by its own terms, was intended to be a temporary measure. The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. Since then, the Legislature has extended the sunset provisions several times. The provisions of SB 40 currently sunset on January 1, 2022. The provisions of SB 150 have also been extended but are currently due to sunset on January 1, 2022

This bill would require the court to impose the lower term where any of specified factors was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances so far outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice. The specified factors are trauma, youthfulness, or having been a victim of human trafficking or intimate partner violence. Does the presence of any one of these factors create a presumptive lower term? To the extent any aggravating factor in this calculation is viewed as "sentence-elevating fact finding," it will be within the province of the fact-finder/jury.

This bill would also prohibit, the court from imposing consecutive sentences or enhancements where one of the aforementioned factors was a contributing factor, unless doing so would be contrary to the interests of justice, contrary to other law (in the case of consecutive sentences), or contrary to an initiative (in the case of enhancements). Does the presence of any one of the factors create a presumption against imposing consecutive sentences or an enhancement? Again, to the extent any aggravating factor in this calculation is viewed as "sentence-elevating fact finding," it will be within the province of the fact-finder/jury.

4) **Jurisdiction to Recall and Resentence**: As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Ibid.*)

   Penal Code section 1170, subdivision(d)(1) authorizes the court, "within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence." This provision thus creates "an exception to the common law rule that the court loses resentencing jurisdiction once execution of sentence has begun." (*Dix, supra*, 53 Cal.3d at p. 455; accord, *People v. McCallum* (2020) 55 Cal.App.5th 202, 210.)

   In resentencing a defendant, the court must apply the sentencing rules of the Judicial Council in order to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, § 1170, subd. (d)(1).) The court may also consider postconviction factors. These include, but not limited to, the incarcerated person's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the incarcerated person's risk for future violence, and evidence that reflects that circumstances have changed since the incarcerated person's original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, § 1170, subd. (d)(1).)

   This bill would require the court, when recalling and resentencing an incarcerated person, to consider whether trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.

5) **Human Trafficking Affirmative Defense**: Penal Code section 236.23 provides an affirmative defense to a crime that is not serious or violent if the person accused establishes by a preponderance of evidence that they were "coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm." (Pen. Code, § 236.23, subds. (a), (b).) In addition to being a non-violent offense, the following elements must be met for the defense to apply: "(i) the accused was a victim of human trafficking at the time the offense was committed, (ii) the accused was coerced to commit the offense as a direct result of being a human trafficking victim, (iii) the accused

had a reasonable fear of harm when the offense was committed." (*In re D.C.* (2021) 60 Cal.App.5th 915, 920.)

Notably, the human trafficking affirmative defense is much broader than California's duress defense. The duress "is available as a defense to defendants who commit a crime 'under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.' (Pen. Code, § 26, subd. Six; *People v. Otis* (1959) 174 Cal.App.2d 119, 124-125 [(*Otis*)].)" (*People v. Saavedra* (2007) 156 Cal.App.4th 561, 567.) However, duress is not a defense to murder. (Pen. Code, § 26, subd. Six.) The policy behind that is that it isn't better to murder an innocent person to prevent being murdered yourself. (*People v. Anderson* (2002) 28 Cal.4th 767, 772.)

This bill would extend the human trafficking affirmative defense to serious and violent crimes, and would create a new affirmative defense for victims of intimate partner violence and sexual violence. As proposed by this bill, these defenses would be available to defendants who are coerced to commit a serious or violent offense as a direct result of being a victim of human trafficking, as long as they had a "reasonable fear of harm." The harm they fear need not be serious nor violent.

6) **Vacatur Relief:** Penal Code. Section 236.14 allows a person arrested for, or convicted of, a nonviolent offense committed while a victim of human trafficking to petition the court for vacatur relief. The statute was intended to provide relief for nonviolent offenses a human trafficking victim commits "at the direction of the victim's trafficker" or for such offenses the trafficking victim was "forced to commit during [her] exploitation." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analyses of Sen. Bill No. 823 (2015-2016 Reg. Sess.) as amended May 31, 2016; Sen Rules Com., Off. of Sen. Floor Analyses, unfinished business of Sen. Bill No. 823 (2015-2016 Reg. Sess.) as amended Aug. 23, 2016.)

This bill would extend the vacatur relief for victims of human trafficking to include violent crimes. This bill would also create vacatur relief for victims of intimate partner violence or sexual violence which mirrors the relief available to human trafficking victims.

7) **Plea Bargains**: "'[P]lea bargaining'" is statutorily defined as "any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant." (Pen. Code, § 1192.7, subd. (b).) A plea bargain is a contract between the accused and the prosecutor. (*People v. Vargas* (2001) 91 Cal.App.4th 506, 533.) Both these parties are bound to the terms of the agreement; when the court approves the bargain, it also agrees to be bound by its terms. (*People v. Armendariz* (1993) 16 Cal.App.4th 906, 910-911.)

This bill would require the prosecution, in so negotiating and bargaining, to consider whether trauma, youthfulness, or being a victim of human trafficking or intimate partner violence was a contributing factor in the commission of the offense.

8) **Penal Code section 28 and Admissibility of Mental State Evidence**: Generally "every crime has two components: (1) an act or omission, sometimes called the actus reus; and (2) a necessary mental state, sometimes called the mens rea." (*People v. Williams* (2009) 176

Cal.App.4th 1521, 1528.) "In criminal law, there are two descriptions of criminal intent: general intent and specific intent. 'A crime is characterized as a "general intent" crime when the required mental state entails only an intent to do the act that causes the harm; a crime is characterized as a "specific intent" crime when the required mental state entails an intent to cause the resulting harm.' (*People v. Davis* (1995) 10 Cal.4th 463, 518-519, fn. 15, 41 Cal. Rptr. 2d 826, 896 P.2d 119.) 'General criminal intent thus requires no further mental state beyond willing commission of the act proscribed by law.'" (*People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1172-1173, quoting *People v. Sargent* (1999) 19 Cal.4th 1206, 1215.)

Evidence of a mental disease, mental defect, or mental disorder is not admissible "to show or negate the capacity to form any mental state" including intent, but it may be admissible to show whether the defendant actually formed a required specific intent. (Pen. Code, § 28, subd. (a).)

While current law restricts mental state evidence to specific intent cases, prior to a 1982 amendment, this evidence was admissible in general intent cases. (See *People v. Whisett* (1983) 149 Cal.App.3d 213.) This bill would essentially restore the law to its pre 1982. It expands the admissibility of this evidence to the issue of whether or not the defendant formed the required mental state for the crime, generally. This includes whether or not the defendant committed a willful act.

9) **Argument in Support**: According to the *National Center for Youth Law*, a co-sponsor of this bill: "According to the ACLU, nearly 60% of female state prisoners nationwide and as many as 94% of certain female prison populations have a history of physical or sexual abuse before being incarcerated (The American Civil Liberties Union, "Prison Rape Elimination Act of 2003"). Black women make up 25% of the incarcerated population in California, which when considered alongside the reality that Black women are only 5% of the adult population yet are incarcerated at five times the rate of white women, demonstrates a deplorable overrepresentation of Black women in prison (Public Policy Institute of California, "California's Prison Population"). Similar disparities exist for other individuals of color, including Latinx, Asian and Pacific Islander, and indigenous communities. Also, transgender, lesbian, and bisexual women, trans men, and gender non-conforming people are disproportionately survivors of violence and overrepresented in prisons, though little quantitative research is available to highlight these disparities.

"Despite the body of research showing that the effect of trauma and abuse drives girls into the juvenile and criminal justice systems, the system itself typically overlooks the context of abuse when determining whether to arrest or charge a girl. Many trafficking survivors are incarcerated for crimes committed to protect themselves from further violence. Numerous studies show that survivors of coerced into participating in illegal activities by their abusive partners (Survived and Punished, "Research Across the Walls: A Guide to Participatory Research Projects and Partnerships to Free Criminalized Survivors"). Additionally, many survivors may be hesitant to disclose their experiences of abuse or exploitation, due to distrust of systems, fear of how an abusive partner may respond, or a belief that they are not a survivor (Institute of Medicine and National Research Council, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: A Guide for the Health Care Sector*).

"When law enforcement does not identify trauma victims as victims in cases, and instead labels them and treats them as the perpetrators, it compounds the existing trauma instead of healing it. Further, when cases aren't dismissed or diverted, but instead enhanced with more punitive sentences, a twofold injustice occurs: their abusers are shielded from accountability, and the trauma that is the underlying cause of their behavior is left unaddressed. The choice to punish instead of support sets in motion a cycle of abuse and imprisonment that has harmful consequences for victims of trauma and their families as well as society more broadly (Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women, "The Sexual Abuse to Prison Pipeline: The Girls' Story").

"Moreover, judges often lack the discretion to dismiss charges, reduce harsh sentences, and strike sentence enhancements to tailor court responses to adequately serve vulnerable populations in the interest of justice. Too often, limited opportunities to present relevant mitigating evidence and limited judicial discretion to make fair and balanced decisions lead to inequitable outcomes for trauma victims.

"AB 124 would create just outcomes moving forward, provide full context of the experiences that contributed to a survivor's actions or inactions, and use a more humanizing and trauma-informed response to criminal adjudication. This legislation will:

1. Expand a survivor's access to the human trafficking affirmative defense;

2. Grant judges the discretion to avoid imposing sentencing enhancements when the court finds that circumstances, such as human trafficking and intimate partner violence, contributed to the survivor's criminal behavior;

3. Require judges to give "great weight" to youthfulness, trauma, sexual violence, and victimization through intimate partner violence and human trafficking when exercising discretion at sentencing stages;

4. Allow courts to consider whether the survivor's experience of childhood trauma, intimate partner violence, sexual violence, and human trafficking was a contributing factor in the commission of the offense when evaluating whether to grant a reduced sentence; and

5. Expand the vacatur law to allow survivors to petition the court to vacate convictions and expunge arrests for any crime that was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence."

10) **Argument in Opposition**: According to the *California District Attorneys Association*, "AB 124 requires the court, when determining sentencing, to consider if the inmate experienced intimate partner violence, commercial sex trafficking, and if the trauma of those experiences was a contributing factor to the defendant's criminal behavior that would make a sentence other than the lowest possible sentence unduly harsh. While we support this consideration, there is no mention of the evidence required to prove the inmate's experience and whether the trauma was a contributing factor to their crime."

11) **Related Legislation**:

a) AB 262 (Patterson) prohibits a court from denying a petition to set aside a conviction of a non-violent offense alleging the person was a victim of human trafficking on the basis that the petitioner has outstanding fine or fees, among other things. AB 262 is pending in the Assembly Committee on Appropriations.

b) AB 560 (Quirk-Silva) makes a person who causes, induces, or persuades, or attempts to cause, induce, or persuade, an adult, whom the person reasonably believes to be a minor at the time of commission of the offense, to engage in a commercial sex act with the intent to effect or maintain a violation of specified other offenses, including child pornography and extortion, guilty of human trafficking. AB 560 is pending in this committee.

c) AB 1245 (Cooley) authorizes a petition for recall and resentencing by a defendant who has served at least 15 years of their sentence and has at least 24 months of their sentence remaining. AB 1245 is pending in this committee.

d) AB 1540 (Ting) requires the court to provide notice to the defendant of a request to recall and resentence, set an initial conference within 60 days of the request, and appoint counsel for the defendant; additionally creates a presumption favoring recall and resentencing the defendant in those hearings, as specified. AB 1540 is pending in this committee.

e) SB 382 (Caballero) requires a court, if protective orders are not issued in a case involving the commercial sexual exploitation of a minor, to consider issuing an order restraining the defendant from possessing a firearm. SB 382 is pending in the Senate Committee on Appropriations.

f) SB 481 (Durazo) extends the applicability of resentencing provisions, as specified, to any inmate serving a sentence of life without the possibility of parole for an offense that was committed when the inmate was under 26 years of age, and makes the process available to those inmates serving a sentence for murder in which the inmate tortured their victim, or in which the victim was a public safety official, including a firefighter or peace officer. SB 481 is scheduled to be heard in the Senate Committee on Public Safety on April 27, 2021.

g) SB 567 (Bradford) requires the court to impose a term of imprisonment not exceeding the middle term unless there are circumstances in aggravation that, in the case of a trial by jury, are submitted to a jury and proved beyond a reasonable doubt or are stipulated by the defendant. SB 567 is pending in the Senate Committee on Appropriations.

12) **Prior Legislation**:

a) AB 2868 (Patterson), of the 2019-2020 Legislative Session, would have provided additional legal rights in the judicial process when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. AB 2868 was not heard in this committee.

b) AB 2869 (Patterson), of the 2019-2020 Legislative Session, would have allowed a petitioner, on a petition to vacate a non-violent conviction because the petitioner was

victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel. AB 2869 was not heard in this committee.

c) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allowed the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.

d) SB 1016 (Monning), Chapter 887, Statutes of 2016, extended the sunset date from January 1, 2017 to January 1, 2022 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice as required by SB 40 (Romero), Chapter 40, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009; and *Cunningham vs. California* (2007) 549 U.S. 270.

e) SB 823 (Block), Chapter 650, Statutes of 2016, allowed a person arrested or convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest.

f) AB 1761 (Weber), Chapter 636, Statutes of 2016, created a human trafficking affirmative defense applicable to non-violent, non-serious, non-trafficking crimes.

g) SB 1202 (Leno), of the 2015-2016 Legislative Session, would have provided that aggravating factors relied upon by the court to impose an upper term sentence must be tried to the jury and found to be true beyond a reasonable doubt. SB 1202 was held in the Assembly Committee on Appropriations.

h) AB 1156 (Brown), Chapter 378, Statutes of 2015, provided, in pertinent part, that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

i) SB 463 (Pavley), Chapter 598, Statutes of 2013, extended to January 1, 2017 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

j) AB 593 (Ma), Chapter 803, Statutes of 2012, expanded the provisions allowing a habeas corpus petition in cases where intimate partner battering was not introduced into evidence to include cases where the evidence was not competent or substantial and where such evidence may have changed the sentence not just the conviction.

k) AB 1593 (Ma), Chapter 809, Statutes of 2012, required the Board of Parole Hearings (BPH), when reviewing a prisoner's suitability for parole, to give great weight to any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering and provide that they cannot use the fact that the prisoner brought in the evidence to find that a prisoner lacks insight to his or her crime.

l) SB 576 (Calderon), Chapter 361, Statutes of 2011, extended to January 1, 2014 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

m) AB 2263 (Yamada), Chapter 256, Statutes of 2010, extended to January 1, 2012 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

n) SB 150 (Wright), Chapter 171, Statutes of 2009, eliminated the presumption of the middle term relating to sentencing enhancements found in Penal Code Section 1170.1, subdivision (d).

o) SB 1701 (Romero), Chapter 416, Statutes of 2008, extended to January1, 2011, the provisions of SB 40 which were originally due to sunset on January 1, 2009.

p) SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's DSL to eliminate the presumption for the middle term and to state that where a court may impose a lower, middle or upper term in sentencing a defendant, the choice of appropriate term shall be left to the discretion of the court.

q) AB 1385 (Burton), Chapter 609, Statutes of 2004, allowed a writ of habeas corpus in specified domestic violence cases to be brought on offenses that occurred prior to August 26, 1996, rather than January 1, 1992, and replaced the phrase "battered women's syndrome" with "intimate partner battering and its effects."

r) SB 799 (Karnette), Chapter 858, Statutes of 2001, allowed women who were convicted of homicide prior to the enactment of the Evidence Code provision providing for the admissibility of evidence relating to battered women's syndrome to bring a writ of habeas corpus when there is a reasonable probability that the result of the case may have been different had evidence of battered women's syndrome been admissible in the original trial.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Women Prisoners (Sponsor)
National Center for Youth Law (Sponsor)
Survived and Punished (Sponsor)
Young Women's Freedom Center (Sponsor)
3strands Global Foundation
Alliance for Children's Rights
American Civil Liberties Union
Anti-recidivism Coalition
Asian Prisoner Support Committee
California Against Slavery
California Attorneys for Criminal Justice
California Catholic Conference
California Legislative Women's Caucus

California Partnership to End Domestic Violence
California Prison Focus
California Public Defenders Association (CPDA)
Center for Community Action & Environmental Justice
Center for Public Interest Law/children's Advocacy Institute/university of San Diego
Ceres Policy Research
Children's Defense Fund - CA
Children's Law Center of California
Citizens for Choice
Coleman Advocates for Children & Youth
Communities United for Restorative Youth Justice (CURYJ)
Community Against Sexual Harm
Community Works
ConXion to Community Center for Training & Careers INC
Crime Survivors for Safety and Justice
Cure Violence Global
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Essie Justice Group
Forever Found
Free to Thrive
Fresno Barrios Unidos
I-5 Freedom Network
Initiate Justice
John Burton Advocates for Youth
Journey House
Journey Out
Kern County Participatory Defense
Legal Services for Prisoners with Children
Los Angeles Center for Law and Justice
Los Angeles County Democratic Party
Los Angeles Lgbt Center
Mental Health Advocacy Services
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
North County Lifeline
Palms Empowerment Women's Network
Point Loma Nazarene University
Prison Yoga Project
Prisoner Advocacy Network
Public Law Center
Re:store Justice
Rights4girls
San Diego City Attorney's Office
San Diego Human Trafficking & Csec Advisory Council, Health Subcommittee
San Diego Workforce Partnership, INC.
San Diego Youth Services
San Francisco Public Defender
Shared Hope International

Showing Up for Racial Justice (SURJ) Bay Area
Sonoma County Black Coalition
Starting Over INC.
The Transformative In-prison Workgroup
The Unity Council
Time for Change Foundation
Transgender Advocacy Group (TAG)
Treasures
Uncommon Law
Underground Grit
Women's Foundation California

7 private individuals

Opposition

California District Attorneys Association
California Narcotic Officers' Association
California State Sheriffs' Association

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

Date of Hearing: April 20, 2021
Counsel: Matthew Fleming

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

AB 127 (Kamlager) – As Amended April 14, 2021

SUMMARY: Authorizes an employee of a public prosecutor's office to make a declaration of probable cause to arrest to a magistrate if the defendant is a peace officer.

EXISTING LAW:

1) States that an arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person. (Pen. Code, § 834.)

2) States that certain persons are peace officers, including any inspector or investigator employed in that capacity in the office of a district attorney. (Pen. Code, § 830.1.)

3) States that if a declaration of probable cause is made by a peace officer of this state, the magistrate shall issue a warrant of probable cause for the arrest of the defendant only if he or she is satisfied after reviewing the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense. (Pen. Code, § 817, subd. (a).)

4) Requires the declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing, and authorizes the declarant to transmit the proposed warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server, subject to specified conditions. (Pen. Code, § 817, subd. (b).)

5) Requires the following when the declarant transmits the proposed warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server:

   a) The declarant shall sign under penalty of perjury his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if email or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall be transmitted to the magistrate utilizing facsimile transmission equipment, email, or computer server; and

   b) The magistrate shall verify that all the pages sent have been received, that all the pages are legible, and that the declarant's signature, digital signature, or electronic signature is genuine. (Pen. Code, § 817, subd. (d).)

6) States that in lieu of the written declaration, the magistrate may accept an oral statement made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court. (Pen. Code, § 817, subd. (c).)

7) Requires a warrant of probable cause for arrest to specify the name of the defendant or, if it is unknown to the magistrate, judge, justice, or other issuing authority, the defendant may be designated therein by any name. It shall also state the time of issuing it, and the city or county where it is issued, and shall be signed by the magistrate, judge, justice, or other issuing authority issuing it with the title of his office and the name of the court or other issuing agency. (Pen. Code, §§ 817, subd. (e) and 815.)

8) Requires the warrant of probable cause to arrest to contain a bail amount, which is fixed by considering specified factors. (Pen. Code, §§ 817, subd. (e) and 815a.)

9) Authorizes the magistrate to examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration. (Pen. Code, § 817, subd. (g).)

10) Allows an arrest for the commission of a felony to be made on any day and at any time of the day or night. Prohibits an arrest for the commission of a misdemeanor or an infraction to be made between the hours of 10 o'clock p.m. of any day and 6 o'clock a.m. of the succeeding day, except in specified circumstances. (Pen. Code, § 840.)

11) Allows private persons to make an arrest:

    a) For a public offense committed or attempted in their presence;

    b) When the person arrested has committed a felony, although not in their presence; and,

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

12) States that when a complaint is filed with a magistrate charging a felony, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued. (Pen. Code, § 813, subd. (a).)

13) Defines "grand jury" and establishes procedures for empanelment of a grand jury, grand jury investigation, and indictment, as well as other procedures. (Pen. Code, § 888, *et seq.*)

14) Prohibits a prosecutor from requesting the issuance of a summons in lieu of an arrest warrant in specified situations, including when the offense charged involves violence or a firearm.

(Pen. Code, § 813, subd. (e).)

15) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

16) Provides that before issuing the search warrant, a magistrate may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them. (Pen. Code, § 1526.)

17) Provides that a magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense and that judges of all California Courts are magistrates. (Pen. Code, §§ 807 and 808.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 127 amends the California State Penal Code to permit persons other than peace officers to present a probable cause determination to a judge in seeking an arrest warrant in cases when the suspect is a peace officer. The aim is to reduce procedural barriers to police accountability and eliminate one of the barriers for district attorneys in initiating prosecutions against members of law enforcement."

2) **Arrest and Charging Procedures**: There are a variety of procedures by which a person suspected of a crime can be arrested and charged in California. One common method is that a peace officer writes out a statement of probable cause that a defendant committed a crime. A magistrate then reviews that statement and upon a finding that the offense was committed and that there is reasonable grounds to believe that the defendant was the one who committed it, the magistrate issues a warrant of arrest. Existing law requires a peace officer to sign the application for a warrant and makes no exceptions.

   Another way in which a person can be charged is by grand jury. In order to obtain an indictment by grand jury, a grand jury must be empaneled and an investigation must take place, and specific procedures must be followed to return an indictment. In certain cases, a summons can be issued rather than an arrest warrant, requiring the defendant to appear in court on their own volition. There are also situations in which a private person can make an arrest, commonly known as a "citizen's arrest."

   According to the proponents of this bill, its purpose is to make it easier for prosecutors to charge peace officers, where appropriate, following an officer-involved killing. They assert that existing procedures are inadequate for a variety of reasons. First, when it comes to an arrest warrant, they fear that requiring a peace officer to sign out a warrant against someone from their same organization, at times, is untenable. Peace officers may be reluctant to issue warrants for other officers that they serve with. Grand juries require significant resource and time to empanel and investigate. They have also been reluctant to indict peace officers under certain circumstances. (*E.g.* Peralta, "Ferguson Documents: How The Grand Jury Reached A Decision," NPR, Nov. 25, 2014, available at: https://www.npr.org/sections/thetwo-

way/2014/11/25/366507379/ferguson-docs-how-the-grand-jury-reached-a-decision, [as of April 15, 2021].) A request for a summons, by law, cannot be made when the offense involves violence or a firearm (Pen. Code, § 813, subd. (e).)

Citizens are understandably reluctant to arrest peace officers. A citizen arrest requires that "there must be established the fact that a felony has in fact been committed. Section 837 permits a citizen arrest when a felony has been in fact committed and the arresting person has reasonable cause to believe the person arrested committed the felony." (*People v. Mendez*, 2015 Cal. App. Unpub. LEXIS 1937, *12, *citing People v. Piorkowski* (1974) 41 Cal.App.3d 324, 328, 115 Cal. Rptr. 830.) Prosecutions of officer-involved shootings are often subject to debate about whether the shooting was justified by law. It is not always clear that "a felony has in fact been committed" at the time of arrest. Furthermore, an attempt by a civilian to arrest a peace officer for a crime is unadvisable given the possibility of such an encounter being highly confrontational.

Unlike arrest warrants, applications for search warrants are not required to be signed by a peace officer. The examination procedure and standards involved in obtaining a search warrant are similar to that of arrest warrants, but existing law allows applications for search warrants to be made by persons other than peace officers.

According to the author, nine other states already allow for persons other than peace officers to attest to warrants for probable cause to arrest, using various procedures. This bill would create a narrow exception which would allow for persons other than peace officers, specifically, employees of public prosecutor's office, to make applications for arrest warrants. The exception would only apply to cases in which the defendant is a peace officer.

3) **Argument in Support**: According to the bill's sponsor, the *San Francisco District Attorney*: "As the Elected District Attorney, and lead law enforcement official for the City and County of San Francisco, I am proud to sponsor AB 127(Kamlager), to amend the California State Penal Code to permit persons other than peace officers to present a probable cause determination to a judge in seeking an arrest warrant in cases when the suspect is a peace officer. The aim is to reduce procedural barriers to police accountability and eliminate one of the barriers for district attorneys in initiating prosecutions against members of law enforcement.

"As our nation grieves for Daunte Wright, George Floyd, Breonna Taylor and others, killed at the hands of police, public outrage has led to a demand for greater accountability for police violence. But even with this increased call for accountability, it remains rare for district attorneys to initiate prosecutions against police officers who violate the law while on duty.

"One obstacle to prosecution of police officers is the unwillingness of law enforcement officers to assist in the prosecution of one of their own. This can lead to law enforcement officers refusing to provide the necessary information to support an arrest warrant. Under current California law, only a peace officer can establish probable cause to support an arrest warrant, which is then presented to a judge to find probable cause to arrest and initiate a criminal case. AB 127 aims to expand who can present a judge with an arrest warrant, removing this barrier and creating greater accountability. AB 127 does not change the probable cause standard of proof, and judges would still retain the authority to issue an arrest warrant. This change simply creates parity with who can swear to an affidavit for a search

warrant, making the requirements the same for both arrest and search warrants."

4) **Related Legislation**: AB 931 (Villapudua) would require the Commission on Peace Officer Standards and Training (POST) to include specified elements in the training on duty to intercede where there is excessive use of force by another peace officer, including both classroom instruction and extensive simulator-based training or live scenario-based training. AB 931 is pending hearing in the Assembly Appropriations Committee.

5) **Prior Legislation**:

   a) AB 1069 (Rodriguez) of the 2019 – 2020 Legislative Session would have restricted the release of a video or audio recording made with a body-worn camera if it depicted specified circumstances, including the commission of a crime or an officer-involved shooting. AB 1069 did not receive a hearing in this committee.

   b) AB 2624 (Cooper) of the 2015 – 2016 Legislative Session would have required the Legislative Analyst's Office (LAO) in consultation with the Commission on Peace Officer Standards and Training (POST) to conduct a study of community policing and engagement programs, efforts, strategies, and policies in the state, and to report its findings to the Legislature. AB 2624 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
San Francisco District Attorney's Office (Sponsor)
California for Safety and Justice
Oakland Police Commission
PROSECUTORS ALLIANCE CALIFORNIA
San Francisco Public Defender
Unapologetically Hers
Young Women's Freedom Center

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Date of Hearing: April 20, 2021
Counsel: Matthew Fleming

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

AB 760 (Lackey) – As Introduced February 16, 2021

SUMMARY: Provides that a person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion, before the trial court that entered the judgment of conviction in their case, for performance of friction ridge processing and examination to develop, search, and compare friction ridge impressions. Specifically, **this bill**:

1) Requires the motion for friction ridge processing, examination, and database searching to be verified by the convicted person under penalty of perjury and include all of the following:

   a) A statement that they are innocent and not the perpetrator of the crime;

   b) An explanation why the identity of the perpetrator was, or should have been, a significant issue in the case;

   c) Every reasonable attempt to identify both the evidence that should be processed, examined, and searched and the specific type of friction ridge examination or database search sought;

   d) An explanation, in light of all the evidence, how the requested friction ridge processing, examination, and database searching would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of friction ridge processing, examination, and database searching had been available at the time of conviction;

   e) The results of any friction ridge processing, examination, and database searching that was conducted previously by either the prosecution or defense, if known; and,

   f) Whether any motion for friction ridge processing, examination, and database searching under this section previously has been filed and the results of that motion, if known.

2) Requires notice of the motion to be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or forensic service provider holding the evidence sought to be processed, examined, or searched. Responses, if any, shall be filed within 90 days of the date when the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause.

3) Allows an indigent convicted person to request appointment of counsel in order to prepare the motion by sending a written request to the court. The request shall include the indigent convicted person's statement that they were not the perpetrator of the crime and shall explain how the friction ridge processing and examination is relevant to their assertion of innocence.

The request shall also include the indigent convicted person's statement as to whether the indigent convicted person previously has had counsel appointed under this section. If any information is missing from the request, requires the court to return the request to the convicted person and advise them that the matter cannot be considered without the missing information.

4) Requires the court, upon finding that the defendant is indigent, to appoint counsel to investigate and, if appropriate, to file a motion for friction ridge processing, examination, and database searching under this section and to represent the indigent convicted person solely for the purpose of obtaining friction ridge processing, examination, and database searching under this section.

5) Allows the court, upon request of the convicted person or convicted person's counsel, to order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide, the following documents that are in their possession or control, if the documents exist:

   a) Copies of friction ridge examination reports, with underlying documentation, prepared in connection with the processing, examination, and database searching of evidence from the case;

   b) Copies of evidence logs, chain of custody logs and reports, including, but not limited to, documentation of current location of evidence, and evidence destruction logs and reports; and,

   c) If the evidence has been lost or destroyed, a custodian of record shall submit a report to the prosecutor and the convicted person or convicted person's counsel that sets forth the efforts that were made in an attempt to locate the evidence. If the last known or documented location of the evidence prior to its loss or destruction was in an area controlled by a law enforcement agency, the report shall include the results of a physical search of this area. If there is a record of confirmation of destruction of the evidence, the report shall include a copy of the record of confirmation of destruction in lieu of the results of a physical search of the area.

6) Requires that if the court finds evidence was subjected to friction ridge processing, examination, database searching, or other forensic testing previously by either the prosecution or defense, it shall order the party at whose request the friction ridge processing, examination, database searching, or testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, laboratory notes, and documentation prepared in connection with the friction ridge processing, examination, database searching, or other evidence testing.

7) Authorizes the court to order a hearing on the motion. Requires the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendere, to conduct the hearing unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion. Either party, upon request, may request an additional 60 days to brief issues.

8) Requires the court to grant the motion for friction ridge processing and examination to develop, search, and compare friction ridge impressions if it determines all of the following have been established:

   a) The evidence to be processed, examined, or searched is available and in a condition that would permit the friction ridge processing, examination, and searching requested in the motion;

   b) The evidence to be processed, examined, or searched has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;

   c) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;

   d) The convicted person has made a prima facie showing that the evidence sought to be processed, examined, and searched is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the friction ridge processing, examination, and search they seek would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish their innocence;

   e) The requested friction ridge processing, examination, and search results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of friction ridge processing, examination, and search had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a friction ridge processing, examination, and search result favorable to the convicted person, they are entitled to some form of ultimate relief;

   f) The evidence sought to be processed, examined, and searched meets either of the following conditions:

      i) The evidence was not processed, examined, or searched previously; or

      ii) The evidence was processed, examined, or searched previously, but the requested friction ridge processing, examination, or search would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

   g) The processing, examination, or searching requested employs a method generally accepted within the relevant scientific community; and,

   h) The motion is not made solely for the purpose of delay.

9) States that if the court grants the motion for friction ridge processing, examination, and database searching, the court order should identify the specific evidence to be processed, examined, or searched and the technology or method that may be used. The technology or method may allow for the chemical enhancement of friction ridge impressions.

10) Requires the processing, examination, and database searching to be conducted by an accredited forensic service provider that is mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion.

11) States that if the parties cannot agree, the court shall designate a forensic service provider accredited by an accrediting body which is recognized by the International Laboratory Accreditation Cooperation (ILAC) as an ILAC MRA Signatory and has programs in Forensic Testing (ISO/IEC 17025) and Inspection (ISO/IEC 17020).

12) States that if the accredited forensic service provider selected by the parties or designated by the court to conduct friction ridge processing, examination, and database searching does not participate in cross-jurisdictional Automated Fingerprint Identification System (AFIS) searches, the forensic service provider selected to perform friction ridge database searching shall not initiate searching for a specific case until documented approval has been obtained from an appropriate AFIS participating agency of acceptance of friction ridge data from the selected forensic service provider that may be entered into or searched in AFIS.

13) States that the forensic service provider may communicate with either party, upon request, during the friction ridge processing, examination, and database searching process, and that the result of any friction ridge processing, examination, and searching ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and documentation.

14) Provides that cost of friction ridge processing, examination, and database searching ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay.

15) Provides that friction ridge processing, examination, and database searching ordered by the court pursuant to this section shall be done as soon as practicable and that if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the friction ridge processing, examination, and database searching, a forensic service provider shall be required to give priority to the friction ridge processing, examination, and database searching ordered pursuant to this section over the forensic service provider's other pending casework.

16) Provides that notwithstanding any other law, the right to file a motion for postconviction friction ridge processing, examination, and database searching provided by this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

17) Provides that for the purposes of these provisions, friction ridge examination applies to latent prints that are retained as a latent print lift or as a high-resolution photograph of the latent

print.

18) Defines "friction ridge" and "friction ridge impression" as including, but not limited to, the skin and impressions thereof of fingers, palms, and soles.

EXISTING LAW:

1) Allows a person who was convicted of a felony, and is currently serving a term of imprisonment to make a written motion before the trial court that entered the judgment of conviction in his or her case for performance of forensic DNA testing, under specified circumstances. (Pen. Code, § 1405.)

2) Allows a person to request appointment of counsel in order to prepare a motion for performance of forensic DNA testing. (Pen. Code, § 1405, subd. (b).)

3) Requires a court to order that discovery materials be produced to a defendant who has been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, if the defendant has shown a good faith effort to obtain the materials from the criminal defense attorney who represented him or her at the time of the conviction. (Pen. Code, § 1054.9, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill will create a process under which an inmate who alleges he or she was wrongfully convicted can obtain fingerprint and other 'friction ridge' evidence testing in order to undermine the conviction and potentially be exonerated. Five other state already allow postconviction access to crime scene prints and law enforcement print databases. Nine individuals have been exonerated through this process, all of whom are African American. In 1995, four African American teenagers in Illinois, known as the Marquette Park Four, were arrested, coerced, and framed for a crime they did not commit. After serving more than twenty years in prison, they were finally exonerated of their charges after receiving post-conviction access to fingerprint databases. AB 760 is a bill that demonstrates our commitment to justice by ensuring we do not convict innocent people while letting the guilty remain free."

   The author also provided the following: "All 50 states and the federal government provide the right to post-conviction DNA testing in various capacities, but there is no such right to fingerprint matching in most states. Only Arkansas, Idaho, Illinois, Minnesota, and Virginia give defendants the right to have crime scene prints compared with prints in law enforcement fingerprint databases. Nine individuals have been exonerated through this process, all of whom are African American. Although DNA is much more effective than fingerprints in identifying suspects in databases, fingerprints are readily available and can be useful in the retrial/exoneration process, especially with improved fingerprint technology and database systems (AFIS, FBI's NGI). In other words, exonerating those who are wrongly convicted is just as important as the identification and conviction of offenders. Failing to provide post-conviction access to fingerprint databases also increases the likelihood that the guilty remain

free. Without a statutory change, most law enforcement agencies are under no legal obligation to perform those searches or to offer any reason at all for denying those requests."

2) **Background**: Prior to SB 1342 (Burton), Chapter 821, Statutes 2000 and the creation of Penal Code section 1405, there was no right to post-conviction discovery in California, nor any procedure for letting courts evaluate whether a defendant should have post-conviction testing of evidence. Before the enactment of SB 1342, a defendant would have to persuade the district attorney to allow DNA testing. SB 1342 established a new process that allowed defendant to make a written motion to the trial court that entered the judgment of conviction in his or her case for the performance of DNA testing.

   In 2014, the Legislature passed SB 980 (Lieu) Chapter 554, Statutes of 2014. Citing difficulties in interpreting and implementing SB 1342, SB 980 revised the procedure by which a person could be granted a motion for DNA testing. This bill would implement a similar procedure to SB 980, allowing defendants to file a motion for fingerprint testing after their trial and appeals have been exhausted. This proposal implements a number of requirements that a defendant would have to meet in order to be granted an opportunity re-examine and analyze fingerprint evidence. This bill would also allow an indigent defendant to be appointed counsel to assist them in filing a motion to examine the fingerprint evidence from their case. The kind of re-testing envisioned by this bill has already served to exonerate individuals in states where it has been allowed, and it has the potential to lead to additional positive outcomes in California.

3) **Argument in Support**: According to the bill's co-sponsor, the *California Innocence Coalition*: "The post-conviction processing, examination and matching of fingerprints can lead to the exoneration of many unjustly incarcerated individuals. Failing to provide post-conviction access to fingerprint databases also increases the likelihood that the guilty remain free. Currently, most law enforcement agencies are under no legal obligation to perform database searches.

   "In 1995, four Black men, Charles Johnson, Larod Styles, LaShawn Ezell and Troshawn McCoy, also known as the 'Marquette Park 4,' were teenagers when they were arrested, coerced and framed for a crime that they did not commit. After serving more than twenty years in prison, they were finally exonerated of their charges after a motion to authorize post-conviction access to fingerprint databases was approved.

   "AB 760 will authorize 'friction ridge processing, examination or database searching' pursuant to a court order if specified criteria are met. This bill will create a process under which an inmate who alleges they were wrongfully convicted can obtain fingerprint and other 'friction ridge' evidence testing in order to undermine the conviction and potentially be exonerated. We believe that this bill will ensure that factually innocent individuals do not serve any further time unjustly incarcerated and that the guilty are held accountable for their actions."

4) **Prior Legislation**:

   a) AB 1987 (Lackey) Chapter 482, Statutes of 2018, expanded the availability of a post-conviction motion for discovery materials to include cases where a defendant was

convicted of a serious or violent felony and sentenced to 15 years or more.

b) SB 980 (Lieu) Chapter 554, Statutes of 2014, revised the process for obtaining a court order authorizing post-conviction forensic deoxyribonucleic acid (DNA) testing.

c) SB 1391 (Burton) Chapter 1105, Statutes of 2002, created a process for attorneys in habeas corpus proceedings in death penalty or life imprisonment cases to obtain access to discovery materials, and created a separate process for convicted persons, whether or not in custody, to vacate a judgement based on fraud or the presentation of false evidence by the government.

d) SB 83 (Burton), Chapter 943, Statutes of 2001, established a procedure for the court to appoint counsel for an indigent person in order to investigate and file a motion for post-conviction DNA testing.

e) SB 1342 (Burton) Chapter 821, Statutes of 2000, required the court to order DNA testing on evidence relevant to conviction of a criminal defendant upon specified conditions, and requires the appropriate governmental entity to preserve any biological material secured in a criminal case as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent (Sponsor)
ACLU California Action
California Coalition for Women Prisoners
California District Attorneys Association
California Public Defenders Association (CPDA)
Ella Baker Center for Human Right
Prosecutors Alliance California
San Mateo County Participatory Defense

Opposition

None

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Date of Hearing: April 20, 2021
Counsel: David Billingsley

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

AB 1228 (Lee) – As Amended April 14, 2021

As Proposed to be Amended in Committee

SUMMARY: Specifies that persons released from custody prior to a probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. Specifically, **this bill**:

1) States that whenever a person is arrested for, or a petition is filed alleging, a violation of probation, the court shall consider the release of a supervised person from custody in accordance with the procedure described by this bill.

2) Specifies that all persons released prior to a probation violation hearing shall be released on their own recognizance unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

3) Requires the court to make an individualized determination of the factors that do or do not indicate that the person would be a danger to the public if released pending a formal revocation hearing. Any finding of danger to the public must be based on clear and convincing evidence.

4) States that the court shall not require the use of any algorithm-based risk assessment tool in setting conditions of release.

5) Requires the court to impose the least restrictive conditions of release to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

6) Specifies that reasonable conditions of release may include, but are not limited to, reporting telephonically to a pretrial services officer, protective orders, a GPS monitoring device or other electronic monitoring, or an alcohol use detection device.

7) States that the person shall not be required to bear the expense of any conditions of release ordered by the court.

8) States that bail shall not be imposed unless the court finds by clear and convincing evidence that other reasonable conditions of release are not adequate to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

9) Defines "Bail" for purposes of this bill as "cash bail" and specifies that a bail bond or property bond is not bail.

10) Provides that in determining the amount of bail, the court shall make an individualized determination based on the particular circumstances of the case, and it shall consider the person's ability to pay cash bail, not a bail bond or property bond.

11) Specifies that bail shall be set at a level the person can reasonably afford.

12) States that the court shall not deny release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing.

13) States that the court shall not deny release for a person on probation for felony conduct before the court holds a formal probation revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

14) Prohibits the court from imposing conditions of release for the purpose of preventive detention.

15) States that the court shall not presume the truth of any allegation of a probation violation when making any finding concerning the release of a person before a formal probation revocation hearing.

16) Specifies that every finding required by this bill is to be made by clear and convincing evidence shall be made in a writing which states the factual basis for the finding.

17) Deletes outdated language.

EXISTING LAW:

1) States that at any time during the period of supervision of a person (1) released on probation under the care of a probation officer, (2) released on court probation not under the care of a probation officer, (3) placed on mandatory supervision, (4) subject to revocation of postrelease community supervision, or (5) subject to revocation of parole supervision, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of the person's supervision, the officer may arrest the supervised person and bring them before the court or the court may, in its discretion, issue a warrant for their arrest. (Pen. Code, § 1203.2, subd. (a).)

2) Specifies unless the supervised person is otherwise serving a period of flash incarceration, a supervised person who is arrested for violating their supervision, the court may order the release of a supervised person from custody under any terms and conditions the court deems appropriate. (Pen. Code, § 1203.2, subd. (a).)

3) Provides that after conviction of an offense not punishable with death, a defendant who has made application for probation or who has appealed may be admitted to bail, as a matter of discretion in felony cases. (Pen. Code, § 1272.)

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

   a) Capital crimes;

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

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

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

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

7) Lists several factors that the court must consider in setting, reducing, or denying bail: the protection of the public; the seriousness of the charged offense; the defendant's prior criminal record; and, the probability of his or her appearing at trial or hearing of the case. Public safety is the primary consideration. (Pen. Code, § 1275, subd. (a).)

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

9) The defendant shall not be released from custody under an own recognizance until the defendant files with the clerk of the court or other person authorized to accept bail a signed release agreement which includes:

   a) The defendant's promise to appear at all times and places, as ordered by the court or magistrate and as ordered by any court in which, or any magistrate before whom the charge is subsequently pending;

   b) The defendant's promise to obey all reasonable conditions imposed by the court or magistrate;

   c) The defendant's promise not to depart this state without leave of the court;

d) Agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California; and,

e) The acknowledgment of the defendant that he or she has been informed of the consequences and penalties applicable to violation of the conditions of release. (Pen. Code, § 1318.)

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

11) States that a person on felony probation who is arrested for a new offense shall not be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge. (Pen. Code, § 1319.5.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Most individuals arrested and charged with a crime are entitled to some form of pretrial release. However, this is not the case when it comes to individuals arrested for a probation violation. Probation currently operates under a separate legal system – one where basic civil rights like the presumption of innocence, speedy detention hearings and burden of proof beyond a reasonable doubt are disregarded.

"Those accused of violating probation are often arrested on a no-bail warrant. When arrested on a no-bail warrant, a person is held in custody and cannot be released by jail authorities until disposition of the case, which can place an immense amount of pressure on limited jail resources costing taxpayers more than $1.8 billion in supervision violations.

"It is imperative we uphold the cornerstone of our criminal justice system – a presumption of innocence – and allow people who are accused of a wrongdoing to have the option to live their lives outside of detention until a court can appropriately determine whether a violation occurred and what, if any, additional probation terms are necessary."

2) **Probation Supervision:** Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "Informal" probation a defendant is not supervised by a probation officer but instead reports to the court. Sometimes a defendant on formal probation are moved to a "banked" caseload at the discretion of the probation officer if the probation officer concludes that the defendant presents a low risk. A defendant on a "banked" caseload has a lower level of contact with a probation officer than a defendant on regular supervision under formal probation. As a general proposition, the level of probation supervision will be linked to the level of risk the probationer presents to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court.

Courts have broad general discretion to fashion and impose additional probation conditions

that are particularized to the defendants. *People v. Smith* (2007) 152. Cal.App.4th 1245, 1249. Courts may impose any "reasonable" conditions necessary to secure justice and assist the rehabilitation of the probationer. Under existing law, a judge can impose a condition of probation that a defendant spend a certain amount of time in a residential mental health facility in conjunction with a jail sentence, or as an alternative to a jail sentence. In imposing probation conditions related to mental health, the court is not limited to ordering residential mental health treatment. The court can order outpatient mental health treatment, or other mental health directives the court finds appropriate. When a defendant is placed on probation the court retains jurisdiction over the case to ensure the defendant complies with probation. The court has the power to impose further punishment if the defendant violates the conditions of probation or commits further criminal acts

3) **Revocation of Probation:** Revocation of probation is a sanction against the supervised person for failing to comply with the terms and conditions of their grant of probation. In addition to violating specific terms of supervision, committing a new crime would also form a basis for revocation of supervision. Revocation of probation is usually initiated by an arrest or a petition to revoke the supervision filed by a prosecutor or probation officer. Generally, a court will preliminarily revoke probation upon a finding of probable cause, pending a more formal revocation hearing. If a court finds or the defendant admits, that a violation of probation has occurred, courts can restore probation, restore and modify probation with additional terms or imprisonment, or terminate the supervision and likely impose some term of imprisonment. Courts have discretion to release a defendant on probation on a felony. Defendants on misdemeanor probation likely have a right to bail. A defendant has a right to a formal probation hearing on the allegation forming the basis of the violation. Such a hearing requires a presentation of evidence. In order to find a probation violation a court must find that the evidence demonstrates the alleged violation by a preponderance of the evidence.

4) **Bail:** In California, bail is a constitutional right except when the defendant is charged with: (1) a capital crime; (2) a felony involving violence or sex and the court finds that the person's release would result in great bodily harm to another; or (3) when the defendant has threatened another and the court finds it likely that the defendant might carry out that threat. The constitution also allows for an arrestee to be released upon a written promise to appear, known as release on own recognizance. The constitution prohibits excessive bail. (Cal. Const. art. I, § 12.)

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

5) **Right to Bail or Release on Probation:** Defendants do not have a constitutional right to bail on violations of probation. The constitutional, as opposed to the statutory, right to bail has historically been interpreted as applying to the period prior to conviction. (*In re O'Driscoll* (1987), 191 Cal. App. 3d 1356, 1360.)

   Statutorily the Legislature has provided that the court may release a person facing a probation violation. The Legislature has not provided any further guidance to the courts as to procedure or criteria for release on a probation violation. Under existing law, the court can

and frequently does deny release while the formal hearing on the violation of supervised release is pending. However, a court does have discretion to set a bail in those cases or can release a defendant on their own recognizance. The court can also impose conditions on the release on bail or release on own recognizance. Conditions can be imposed to address concerns about a defendant's release into the community. The conditions can be wide ranging and include measures such as electronic monitoring, home detention, substance abuse testing, or counseling.

Existing law is not clear on whether or not a person facing a petition to revoke their misdemeanor probation has the right to bail. However, at least one case has held that a defendant has a right to bail on a misdemeanor probation violation. This holding is based on the fact that a defendant has a statutory right to bail on a misdemeanor case post conviction, but pending appeal.

This bill would direct a court, in most cases, to release from custody a person facing a probation violation. This bill would direct the court to consider the safety of the public and the likelihood of the person appearing in court in evaluating release. Under the provisions of this bill, the default would be to release a person on their own recognizance. This bill would allow the court to impose conditions on the release of the defendant if it is established by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. This bill specifies that those release conditions can include bail, but if bail is set, it must be set at a level the person can reasonably afford. This bill would allow a court to deny release for an alleged violation of felony probation if a court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. If the court imposes conditions of release on a violation of probation, this bill would prohibit the costs associated with the conditions from being born by the defendant.

6) ***Humphrey* Case on Bail:** In January, 2018, the California First District Court of Appeal found that California's money bail system violated due process and equal protection sections of the California Constitution. (*People v. Humphrey* (1st District, 2018), 19 Cal. App. 5th 1006.) The First District Appellate Court held that trial court judges must consider defendants' financial capacities and non-monetary options for release when determining bail. The appellate court's decision was appealed to the California Supreme Court.

In re Humphrey, 2021 Cal. LEXIS 2195 On March 25, 2021, the California Supreme Court upheld the decision and reasoning of the First District Court of Appeal and concluded that the California Constitution prohibits pretrial detention to combat an arrestee's risk of flight unless the court first finds, based upon clear and convincing evidence, that no condition or conditions of release can reasonably assure the arrestee's appearance in court. (*Id.* at 27-28.

The California Supreme Court stated that, "The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release—such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment—can in many cases protect public and victim safety as well as assure the arrestee's appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the

arrestee's ability to pay the stated amount of bail—and may not effectively detain the arrestee "solely because" the arrestee 'lacked the resources' to post bail." (*Id.* at 6-7.)

> "In unusual circumstances, the need to protect community safety may conflict with the arrestee's fundamental right to pretrial liberty—a right that also generally protects an arrestee from being subject to a monetary condition of release the arrestee can't satisfy—to such an extent that no option other than refusing pretrial release can reasonably vindicate the state's compelling interests. In order to detain an arrestee under those circumstances, a court must first find by clear and convincing evidence that no condition short of detention could suffice and then ensure the detention otherwise complies with statutory and constitutional requirements." (*Id.* at 7.)

The Supreme Court noted that a court when making any bail determination, must undertake an individualized consideration of the relevant factors. Among the relevant factors, the Supreme Court identified the protection of the public as well as the victim, the seriousness of the charged offense, the arrestee's previous criminal record and history of compliance with court orders, and the likelihood that the arrestee will appear at future court proceedings. The California Constitution requires courts to consider these factors in setting bail. (*Id.*at 25, Cal. Const., art. I, §§ 12, 28, subds. (b)(3), (f)(3).)

This bill establishes a procedure designed to release most individuals that only face a violation of probation. The considerations of release described in this bill are similar to those followed in *Humphrey:* public safety, ensuring appearance in court, and evaluation of financial status if bail is imposed. This bill states that condition of release can include bail if the court makes certain findings by clear and convincing evidence. This bill specifies that in determining the amount of bail on a probation violation, the court must set bail at a level the person can reasonably afford.

7) **Argument in Support**: According to the *California Public Defenders Associatio*n, "Probation operates under a separate legal system – one where basic rights, like the presumption of innocence, speedy detention hearings and burden of proof beyond a reasonable doubt, do not apply. With 4.4 million people on probation or parole in the United States, violations of community supervision have become overly burdensome and a driver of mass incarceration.

"Most individuals who are arrested and charged with a crime are entitled to some form of pretrial release, allowing them to get their affairs in order outside of jail. This is not the case when it comes to individuals arrested for a probation violation, as current law does not make clear a right to pretrial release, nor describes options for release. Those accused of violating probation are often arrested on a no-bail warrant. This can result in detention, with no means of release, of several weeks or months until the hearing is conducted. When arrested on a no-bail warrant, a person is held in custody and cannot be released by jail authorities until disposition of the case, which can place an immense amount of pressure on limited jail resources. This is such an issue that the Judicial Council's Pretrial Detention Reform Workgroup report recommends that California apply pretrial procedures to violation of community supervision.

"It is imperative we uphold the cornerstone of our criminal justice system – *a presumption of*

innocence – and allow people who are accused of a wrongdoing to have the option to live their lives outside of detention until a court can appropriately determine whether a violation occurred and what, if any, additional probation terms are necessary."

8) **Related Legislation**:

a) SB 262 (Hertzberg), is identical to this bill. SB 262 is set for hearing on March 23, 2021, in the Senate Public Safety Committee.

b) AB 38 (Cooper), would establish a statewide bail schedule. AB 38 is awaiting hearing in the Assembly Public Safety Committee.

9) **Prior Legislation**:

a) SB 10 (Hertzberg), Chapter 644, Statutes of 2018, revised the pretrial release system by limiting pretrial detention to specified persons, eliminating the use of bail schedules, and establishing pretrial services agencies tasked with conducting risk assessments on arrested person and preparing reports with recommendations for conditions of release. SB 10 was repealed by referendum November, 2020.

b) AB 42 (Bonta), was substantially similar to SB 10 (Hertzberg). AB 42 failed passage on the Assembly Floor.

c) AB 723 (Quirk), would have allowed a person on post-release community supervision who has a revocation petition filed against him or her to file an application for bail with the superior court. AB 723 was held in the Senate Appropriations Committee.

d) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his/her own recognizance.

e) SB 210 (Hancock), of the 2013-2014 Legislative Session, would have revised the criteria for determining eligibility for pretrial release from custody. SB 210 was ordered to the Assembly Inactive File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Sponsor)
ACLU California Action
California Public Defenders Association (CPDA)
Initiate Justice
Re:store Justice
San Francisco Public Defender's Office
Silicon Valley De-bug

Opposition

None

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

Amended Mock-up for 2021-2022 AB-1228 (Lee (A))

Mock-up based on Version Number 97 - Amended Assembly 4/14/21
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 1203.2 of the Penal Code is amended to read:

1203.2. (a) At any time during the period of supervision of a person (1) released on probation under the care of a probation officer pursuant to this chapter, (2) released on conditional sentence or summary probation not under the care of a probation officer, (3) placed on mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4) subject to revocation of postrelease community supervision pursuant to Section 3455, or (5) subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of the person's supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring them before the court or the court may, in its discretion, issue a warrant for their rearrest. ~~Notwithstanding Section 3056, and~~ ***U***~~u~~nless the ~~supervised person~~ ***person on probation*** is otherwise serving a period of flash incarceration, whenever a ~~supervised~~ person ***on probation*** who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court ~~may order~~ ***shall consider*** the release of a ~~supervised~~ person ***on probation*** from custody in accordance with Section 1203.25. ***Notwithstanding Section 3056, and unless the supervised person is otherwise serving a period of flash incarceration, whenever any supervised person who is subject to this section and who is not on probation is arrested, with or without a warrant or the filing of a petition for revocation as described in subdivision (b), the court may order the release of the supervised person from custody under any terms and conditions the court deems appropriate.*** Upon rearrest, or upon the issuance of a warrant for rearrest, the court may revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of their supervision, or has subsequently committed other offenses, regardless of whether the person has been prosecuted for those offenses. However, the court shall not terminate parole pursuant to this section. Supervision shall not be revoked solely for failure of a person to make restitution, or to pay fines, fees, or assessments, imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the running of the period of supervision.

(b) (1) Upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, the court may modify, revoke, or terminate supervision of the person pursuant to this subdivision, except that the court shall not terminate parole pursuant to this section. The court in the county in which the person is supervised has jurisdiction to hear the motion or petition, or for those on parole, either the court in the county of supervision or the court in the county in which the alleged violation of supervision occurred. A person supervised on parole or postrelease community supervision pursuant to Section 3455 may not petition the court pursuant to this section for early release from supervision, and a petition under this section shall not be filed solely for the purpose of modifying parole. This section does not prohibit the court in the county in which the person is supervised or in which the alleged violation of supervision occurred from modifying a person's parole when acting on the court's own motion or a petition to revoke parole. The court shall give notice of its motion, and the probation or parole officer or the district attorney shall give notice of their petition to the supervised person, the supervised person's attorney of record, and the district attorney or the probation or parole officer, as the case may be. The supervised person shall give notice of their petition to the probation or parole officer and notice of any motion or petition shall be given to the district attorney in all cases. The court shall refer its motion or the petition to the probation or parole officer. After the receipt of a written report from the probation or parole officer, the court shall read and consider the report and either its motion or the petition and may modify, revoke, or terminate the supervision of the supervised person upon the grounds set forth in subdivision (a) if the interests of justice so require.

(2) The notice required by this subdivision may be given to the supervised person upon their first court appearance in the proceeding. Upon the agreement by the supervised person in writing to the specific terms of a modification or termination of a specific term of supervision, any requirement that the supervised person make a personal appearance in court for the purpose of a modification or termination shall be waived. Prior to the modification or termination and waiver of appearance, the supervised person shall be informed of their right to consult with counsel, and if indigent the right to secure court-appointed counsel. If the supervised person waives their right to counsel a written waiver shall be required. If the supervised person consults with counsel and thereafter agrees to a modification, revocation, or termination of the term of supervision and waiver of personal appearance, the agreement shall be signed by counsel showing approval for the modification or termination and waiver.

(c) Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. In either case, the person shall be delivered over to the proper officer to serve their sentence, less any credits herein provided for.

(d) In any case of revocation and termination of probation, including, but not limited to, cases in which the judgment has been pronounced and the execution thereof has been suspended, upon the revocation and termination, the court may, in lieu of any other sentence, commit the person to the

Department of Corrections and Rehabilitation, Division of Juvenile Facilities if the person is otherwise eligible for that commitment.

(e) If probation has been revoked before the judgment has been pronounced, the order revoking probation may be set aside for good cause upon motion made before pronouncement of judgment. If probation has been revoked after the judgment has been pronounced, the judgment and the order which revoked the probation may be set aside for good cause within 30 days after the court has notice that the execution of the sentence has commenced. If an order setting aside the judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for that period and with those terms and conditions as it could have done immediately following conviction.

(f) As used in this section, the following definitions shall apply:

(1) "Court" means a judge, magistrate, or revocation hearing officer described in Section 71622.5 of the Government Code.

(2) "Probation officer" means a probation officer as described in Section 1203 or an officer of the agency designated by the board of supervisors of a county to implement postrelease community supervision pursuant to Section 3451.

(3) "Supervised person" means a person who satisfies any of the following:

(A) The person is released on probation subject to the supervision of a probation officer.

(B) The person is released on conditional sentence or summary probation not under the care of a probation officer.

(C) The person is subject to mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170.

(D) The person is subject to revocation of postrelease community supervision pursuant to Section 3455.

(E) The person is subject to revocation of parole pursuant to Section 3000.08.

(g) This section does not affect the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole pursuant to Section 3000.8 or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3.

SEC. 2. Section 1203.25 is added to the Penal Code, to read:

1203.25. (a) All persons released prior to a probation violation hearing pursuant to subdivision (a) of Section 1203.2 shall be released on their own recognizance unless the court finds, by clear and

convincing evidence, that the particular circumstances of the case require the imposition of an order to provide reasonable protection to the public and reasonable assurance of the person's future appearance in court.

(1) The court shall make an individualized determination of the factors that do or do not indicate that the person would be a danger to the public if released pending a formal revocation hearing. Any finding of danger to the public must be based on clear and convincing evidence.

(2) The court shall not require the use of any algorithm-based risk assessment tool in setting conditions of release.

(3) The court shall impose the least restrictive conditions of release necessary to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(b) Reasonable conditions of release may include, but are not limited to, reporting telephonically to a pretrial services officer, protective orders, a global positioning system (GPS) monitoring device or other electronic monitoring, or an alcohol use detection device. The person shall not be required to bear the expense of any conditions of release ordered by the court.

(c) (1) Bail shall not be imposed unless the court finds by clear and convincing evidence that other reasonable conditions of release are not adequate to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(2) "Bail" as used in this section is defined as cash bail. A bail bond or property bond is not bail. In determining the amount of bail, the court shall make an individualized determination based on the particular circumstances of the case, and it shall consider the person's ability to pay cash bail, not a bail bond or property bond. Bail shall be set at a level the person can reasonably afford.

(d) The court shall not deny release for a person on probation for misdemeanor conduct before the court holds a formal probation revocation hearing.

(e) The court shall not deny release for a person on probation for felony conduct before the court holds a formal probation revocation hearing unless the court finds by clear and convincing evidence that there are no means reasonably available to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court.

(f) The court shall not impose conditions of release for the purpose of preventive detention.

(g) The court shall not presume the truth of any allegation of a probation violation when making any finding concerning the release of a person before a formal probation revocation hearing.

(h) All findings required to be made by clear and convincing evidence under this section shall be made in writing and shall state the factual basis for the finding.

Date of Hearing: April 20, 2021
Counsel: Nikki Moore

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

AB 1224 (Levine) – As Introduced February 19, 2021

SUMMARY: Permits a judge, sua sponte or upon the application of either party, and in furtherance of justice, to order the dismissal of a special circumstance finding or admission. Specifically, **this bill**:

1) Permits the dismissal of a special circumstance finding or admission at any time, including after having been admitted by a plea of guilty or nolo contendere or having been found true by a jury or court.

2) Provides that the provision shall retroactively permit a judge to order the dismissal of a special circumstance finding or admission after a judgment has become final and the sentence has been executed or the imposition of sentence has been suspended, including all cases in which the sentence previously pronounced was life imprisonment without the possibility of parole or the death penalty.

3) States that a court, in exercising its discretion whether to dismiss a special circumstance finding after judgment has been pronounced, shall consider all relevant circumstances, regardless of whether those circumstances were previously presented at any time during the previous proceedings, and shall place great weight on the following factors:

   a) The defendant's behavior and performance since the pronouncement of judgment, including defendant's conduct while incarcerated;

   b) The defendant's age at the time the offense was committed;

   c) The defendant's present age;

   d) The present state of the defendant's mental and physical health, including reasonable prognoses for the defendant's future health and longevity;

   e) The growth and maturity of the defendant since the commitment offense. In evaluating this factor, the court may consider psychological evaluations and risk assessment instruments, if they are administered by licensed psychologists, as well as the opinions of family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the defendant before the crime or the defendant's growth and maturity since the time of the crime;

   f) The diminished culpability of youthful offenders as compared to that of older adults, the hallmark features of youth, and any subsequent growth and increased maturity of the

individual;

g) Whether the defendant was a victim of intimate partner violence, commercial sex trafficking, commercial sexual exploitation, or human trafficking, including the impact those experiences may have had on the defendant;

h) Whether the defendant served in a branch of the United States military, including the circumstances of the defendant's service and any impact that service may have had on the defendant; and,

i) Whether, and to what extent, dismissal of the special circumstance will affect public safety.

4) Provides that if the offense was committed 20 years or more before the date of the application or motion to dismiss the special circumstance finding, and the defendant has not committed or attempted an act of violence against any other individual since the pronouncement of judgment, it shall be presumed that the special circumstance finding will be dismissed, and the special circumstance shall be dismissed unless the prosecution demonstrates beyond a reasonable doubt that the defendant would commit a future violent offense.

5) Requires the reasons for the dismissal or denial of dismissal of a special circumstance finding or admission pursuant to this section to be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or when the proceedings are not being recorded electronically or reported by a court reporter.

EXISTING LAW:

1) Provides that a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive. (Pen. Code, § 1385.1.)

2) Provides that a special circumstances finding shall be imposed when (Penal § Code 190.2.):

a) The murder was intentional and carried out for financial gain;

b) The defendant was convicted previously of first- or second-degree murder;

c) The defendant, in the present proceeding, has been convicted of more than one offense of first- or second-degree murder;

d) The murder was committed by means of a destructive device planted, hidden or concealed in any place, area, dwelling, building or structure;

e) The murder was committed to avoid arrest or make an escape;

f) The murder was committed by means of a destructive device that the defendant mailed or delivered, or attempted to mail or deliver;

g) The victim was a peace officer who was intentionally killed while performing his/her duties and the defendant knew or should have known that; or the peace officer/former peace officer was intentionally killed in retaliation for performing his/her duties;

h) The victim was a federal law enforcement officer who was intentionally killed;

i) The victim was a firefighter who was intentionally killed while performing his/her duties;

j) The victim was a witness to a crime and was intentionally killed to prevent his/her testimony, or killed in retaliation for testifying;

k) The victim was a local, state or federal prosecutor murdered in retaliation for, or to prevent the performance of, official duties;

l) The victim was a local, state, or federal judge murdered in retaliation for, or to prevent the performance of, official duties;

m) The victim was an elected or appointed official of local, state or federal government murdered in retaliation for, or to prevent the performance of, official duties;

n) The murder was especially heinous, atrocious, or cruel, "manifesting exceptional depravity." "Manifesting exceptional depravity" is defined as "a conscienceless or pitiless crime that is unnecessarily torturous";

o) The defendant intentionally killed the victim while lying in wait;

p) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin;

q) The murder was committed while the defendant was engaged in, or was an accomplice to, the commission of, attempted commission of, or immediate flight after, committing or attempting to commit the following crimes: robbery; kidnapping; rape; sodomy; lewd or lascivious act on a child under the age of 14; oral copulation; burglary; arson; train wrecking; mayhem; rape by instrument; carjacking; torture; poison; the victim was a local, state or federal juror murdered in retaliation for, or to prevent the performance of his/her official duties; and, the murder was perpetrated by discharging a firearm from a vehicle;

r) The murder was intentional and involved the infliction of torture;

s) The defendant intentionally killed the victim by the administration of poison;

t) The victim was a juror and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's duties as a juror;

u) The murder was intentional and committed by discharging a firearm from a motor vehicle; and,

v) The defendant intentionally killed the victim while actively participating in a criminal street gang and the murder was carried out to further the activities of the gang.

3) Provides that a case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows: (Pen. Code, § 190.1.)

a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree;

b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance; and,

c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.

4) Provides that the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant. (Pen. Code, § 190.5.)

5) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life. (Pen. Code, § 190.5.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "An estimated 706 people currently serve on California's Death Row, the largest Death Row in the United States. In spite of Governor Gavin Newsom's 2019 moratorium on administering the death penalty, ten additional people have been sentenced to death and 14 condemned people have died on Death Row just this past year from COVID-19. The death penalty is a broken relic of a broken justice system that has not made Californians safer and has cost taxpayers in excess of $5 billion.

"When there has been a finding of a special circumstance, those not sentenced to death must

be sentenced to life imprisonment without the possibility of parole (LWOP), itself a death sentence. There are no exceptions and under current law the court has no power to dismiss this finding once made, not even for youthful offenders who committed the crimes between the age of 18 and 25 years old, nor for a person who is suffering a terminal illness. The finding of a special circumstance has been fraught with racial bias and has been disproportionately used against Black and Latino defendants. In California, 67 percent of people on Death Row are Black or Latino and 72 percent of people serving life or a sentence of 50 years or more are Black or Latino. Once a special circumstance allegation has been admitted or found true by a judge or jury, no court can dismiss the finding.

"Further, in death penalty cases California law does not permit a court to take into account any circumstances that arise after the person is convicted of the crime or were not presented to the court before their conviction, such as their growth and maturity or decades of nonviolence since the conviction, and reassess whether the sentence is still appropriate. Nor does it permit a court to consider whether they served in the military and what impact their service had on them, or if they were the victim of intimate partner violence or sexual exploitation and how it affected them, if these issues were not initially raised to the jury during the trial. And in cases where the prosecution seeks to require the defendant to die in prison under a sentence of life imprisonment without the possibility of parole, California law does not allow these factors to be considered at any time; a court is not permitted to dismiss a special circumstance and sentence a person to life with the possibility of parole based on consideration of any circumstances concerning the individual, be they mental illness, intellectual disability, military service, having suffered a lifetime of physical, emotional, psychological or sexual abuse, or any other circumstance whatsoever that would reasonably be viewed as mitigating.

"AB 1224 recognizes the fundamental flaws and racial bias in the criminal justice system that have caused people of color to be disproportionately sentenced to death or LWOP. The bill creates a process for reconsideration of these sentences where relevant factors can be considered. The bill allows a court to consider relevant circumstances including public safety; the individual's behavior, maturity and growth during the years or decades since their conviction; the individual's conduct since conviction; their age at the time of the offense and their present age; the diminished culpability of youthful offenders; their present state of mental and physical health, including consideration of reasonable prognoses for their future health and longevity; if they served in the military and the impact their military service had on them; and whether they were the victim of intimate partner violence or sexual exploitation, and how it affected them. In addition, the bill establishes a presumption that the special circumstance finding should be dismissed where a person has served more than 20 years since the crime without committing or attempting to commit an act of violence against any other person.

"Until the death penalty is eliminated, AB 1224 will give courts discretion to reduce the number of people on death row, saving taxpayers billions and addressing systemic racial bias that has harmed the integrity of the criminal justice system for generations. And with respect to sentences to life imprisonment without the possibility of parole, AB 1224 will allow courts to consider whether an individual's performance, behavior, growth, maturity and other factors arising after their conviction of special circumstance murder demonstrates that they are not hopelessly incorrigible and they should be evaluated by the Board of Parole Hearings

concerning their potential suitability for parole."

2) **Murder Generally and Special Circumstances**: First-degree murder is the killing of a person with "malice," which can either be express—i.e. there is an intent to kill—or implied, i.e. the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was committed deliberately with the knowledge that of the danger to human life, and with a conscious disregard for that life.

There are three categories of first-degree murder in California: 1) When the killing is willful, deliberate, and premeditated. 2) When the murder was committed: through use of a destructive or explosive device, with ammunition designed to penetrate armor, poison, by lying in wait, or by inflicting torture. 3)With the felony-murder rule (when a person commits a a specifically enumerated felony that turns any death committed during the course of that felony into first-degree murder, if the person was the actual killer, had the intent to kill, or was a major participant in the underlying felony and acted with reckless indifference to human life).

In California "special circumstances" are used to determine when a conviction of first-degree murder will result in the most serious sentences—LWOP or the death penalty. It is entirely within a prosecutor's discretion to charge a special circumstance, and imposing a special circumstance requires a jury finding that the "special circumstance" exists beyond a reasonable doubt. Otherwise, first-degree murder is punished by a state prison term of 25 years to life.

There are cases where an intent to kill is not required for the imposition of special circumstances. For instance, the accidental death of a person in the commission of a dangerous felony can result in a death sentence or LWOP. Special circumstances explicitly provide for the imposition of a death sentence of LWOP when a person is found guilty of first-degree murder, whether they intended to kill or not, if they were in the process of committing an enumerated dangerous felony. ["[E]very person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated….".]

In 2018, California significantly reformed the felony-murder doctrine in California in the context of murder in the second degree. SB 1437 (Skinner) reformed the felony murder rule in California by clarifying that malice cannot be imputed to a person based solely on their participation in a specified crime. This effectively eliminated second-degree felony murder as a basis for murder liability.

The first-degree felony murder rule applies when a death occurs during the commission of one of a list of enumerated felonies: arson, robbery, any burglary, carjacking, train wrecking, kidnapping, mayhem, rape, torture, and a list of sexual crimes (including rape, sodomy, oral copulation, forcible penetration, or lewd acts with a minor). (Pen. Code, § 189.) SB 1437 limited the application of the first-degree felony murder rule to cases where 1) the person was the actual killer; 2) the person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree; and, 3) where the person was a major participant in the underlying felony and acted with reckless indifference to human life, as

specified. Thus, special circumstances may still be charged in these cases, providing for LWOP or the death penalty for a person who acts without the intent to kill.

3) **Proposition 115**: In 1990, voters approved Proposition 115, the "Crime Victims Justice Reform Act." In opposing this bill, the *Police Officers' Research Association of California* writes, "Current law provides for various specified special circumstances, including the murder of a peace officer, firefighter, or witness, which, if found true as specified, require a defendant found guilty of murder in the first degree to be sentenced to death or imprisonment for life without the possibility of parole. Current law, added by Proposition 115 of the June 5, 1990, statewide primary election, prohibits a judge from striking or dismissing any special circumstance admitted by plea or found true by a jury or court, as specified.

   This bill would amend Proposition 115 by repealing the provision prohibiting a judge from striking a special circumstance and by, instead, authorizing a judge, on the judge's own motion or upon the application of either party, and in the furtherance of justice, to order the dismissal of a special circumstance finding or admission. Existing law provides for amendment of these provisions by a 2/3 vote of each house of the Legislature.

   Public sentiment regarding criminal justice has radically evolved since 1990. It is now widely accepted that the death penalty and excessive sentences do not deter crime. (D. Nagin and J. Pepper, "Deterrence and the Death Penalty," Committee on Law and Justice at the National Research Council, April 2012; D. Vergano, "NRC: Death penalty effect research 'fundamentally flawed'," USA Today, April 18, 2012.) Moreover, as the sponsors of the bill note, "[D]espite the terrible crime the individual committed decades ago, frequently they are not the same person 20, 30, 40 or 50 years later. Requiring an individual to die in prison, by execution or simply old age, is a unique punishment that calls for consideration of the entirety of the individual's life, not just those portions that were known by the judge and jury at the time of sentencing." This bill is consistent with the principles that support elderly parole, relief for youthful offenders, and clemency based on a person's evolution.

   As noted, the Legislature has the power to overturn Prop. 115 with a two-thirds vote.

4) **Resentencing**: Under this bill, a defendant previously sentenced to LWOP or the death penalty would be able to seek the striking of a special circumstance. If granted, the defendant would be resentenced to 25 years to life on the first-degree murder charge; the defendant would still be required to serve time for any additional charges for which they were convicted and sentenced. The remedy afforded by this bill is not an automatic release from prison. This bill would permit a person previously convicted of a special circumstance to have it stricken, and the possibility of going before the parole board when circumstances permit.

5) **Argument in Support**: According to the *California Public Defenders Association*, "With the enactment of Penal Code Section 190.2 in 1977, California became one of, if not the first state in the country, to provide for a 'special circumstance murder' law, requiring a punishment of life imprisonment without the possibility of parole or the death penalty, in other words, to die in prison. In 1991, by voter initiative, Penal Code Section 1385.1 prohibited dismissal of a special circumstance finding, even if the court is made aware of facts that were previously unknown or events that occurred after trial.

"Consequently, even if a judge and prosecutor agree that conduct by the individual or other events that occurred after the individual was transferred to state prison warrant dismissal of the special circumstance, existing law prohibits the court and prosecutor from merely proposing such action because the court does not have the power to act after the initial finding of the special circumstance. A court cannot dismiss a special circumstance even if the individual was barely 18 years old at the time of his crime and has since matured and rehabilitated into a much different person. It doesn't matter if the individual has now served decades in prison as a model inmate without committing or attempting to commit a single act of violence. It doesn't matter if the individual has come to the assistance of correctional authorities or others. It doesn't matter if the trial jurors, prosecutors who obtained or affirmed the conviction, trial judge, or members of the victim's family no longer believe the individual should be executed or be sentenced to life imprisonment without the possibility of parole

"Further, Youthful Offenders who were sentenced to life without the possibility of parole or the death penalty for crimes committed when they were 18 to 25 years old are automatically disqualified from consideration for Youthful Offender Parole (YOP), even if they never killed anyone and never intended for anyone to be killed. The special circumstance finding precludes their consideration for YOP, and Penal Code Section 1385.1 prohibits a court from dismissing that finding under any circumstances.

"The decades since the enactment of Penal Code Sections 190.2 and 1385.1 have provided countless examples of individuals whose conduct—after they were doomed to die in prison under a special circumstance finding—has demonstrated rehabilitation, growth, maturity, and positive contributions to society both inside and outside of prison. Courts should be able to consider whether such exemplary conduct establishes that the individual should be considered for potential parole suitability by the Board of Parole Hearings. The simple truth is that, despite the terrible crime the individual committed decades ago, frequently they are not the same person 20, 30, 40 or 50 years later. Requiring an individual to die in prison, by execution or simply old age, is a unique punishment that calls for consideration of the entirety of the individual's life, not just those portions that were known by the judge and jury at the time of sentencing.

"AB 1224 does not require the release of anyone. AB 1224 never requires a court to grant a motion to dismiss a special circumstance. Rather, the decision would be left to the sound discretion of the court, and mandates that the court must consider public safety in reaching its decision. Even if a court should grant a motion to dismiss a special circumstance finding under AB 1224, the individual is not released. Instead, they would ultimately go before the parole board for consideration of their suitability for release on parole. And even if the parole board should find the individual suitable for parole, the California Constitution invests the Governor with the authority to override the decision of the parole board. AB 1224 will hone the pursuit of justice by permitting a court to consider all of the relevant facts before executing an individual or otherwise imposing their death in prison."

6) **Argument in Opposition**: According to the *California District Attorneys Association*, "This bill repeals Penal Code Section 1385.1, which prohibits judges from dismissing special circumstance findings found true at trial or admitted by the defendant. This section was enacted by voters in 1990 (Proposition 115) as a direct response to a California Supreme Court decision which gave judges such authority. In passing Proposition 115, the voters issued a mandate that verdicts finding a defendant guilty of first degree murder with one or

more special circumstances should be respected, enforced, and not disturbed absent legal deficiencies in the verdict.

"Aside from restoring a judge's ability to dismiss special circumstance findings, this bill is fully retroactive, and permits every defendant imprisoned with a special circumstance, to return to a trial court and attempt to persuade a judge to dismiss the special circumstance findings. It matters not whether the conviction and special circumstance finding has already been affirmed by the California Supreme Court, or the United States Supreme Court. This bill disregards the importance of finality of judgments – a core principle that families of murdered loved ones care deeply about.

"Under this bill, every defendant sentenced to death or life without parole will be transported to a trial court, where judges, prosecutors, and defense attorneys, will be forced to re-litigate issues that were litigated before – often decades before. The bill contains a litany of factors that a judge must consider in deciding whether to dismiss the special circumstance finding. But for defendants sentenced to death, these factors were already fully considered by the trial jurors. In a capital trial, the defense is permitted to present evidence about any and all mitigating factors (Penal Code Section 190.3(k)). Moreover, the trial judge is required to reweigh the aggravating and mitigating circumstances and must reject a death penalty verdict if it is not warranted by the evidence (Penal Code Section 190.4).

"This bill contains an extraordinary provision that essentially commands a judge to dismiss a special circumstance finding unless the prosecution performs an impossible task. The bill provides that a judge shall dismiss a special circumstance finding if 20 years have passed, a defendant has not committed or attempted 'an act of violence' against another person since being sentenced, unless the prosecution 'demonstrates beyond a reasonable doubt that the defendant would commit a future violent offense.'

"As an initial matter, the bill does not define 'act of violence,' does not provide for which party must prove the defendant committed an 'act of violence,' what standard of proof applies, or what evidence may be used. Nor does the bill define 'violent offense.'

"More importantly, the bill ensures that hundreds (maybe thousands) of defendants, including those sentenced to death, will have special circumstances mandatorily dismissed under this provision. Consider, for example, the multitude of defendants convicted of child molest/murder. Such defendants may very well refrain from any acts of violence while imprisoned. After all, in the controlled environment of prison, they have no opportunity to molest and murder children. Such defendants will have their special circumstance findings and death sentences dismissed, unless the prosecution can do something that no other law requires them to do – prove beyond a reasonable doubt that the defendant would commit a future violent offense. This is an insurmountable task. Even in the context of committing Sexually Violent Predators, the prosecution need only prove beyond a reasonable doubt that there is a 'serious and well founded risk' that the offender is 'likely' to engage in sexually violent criminal behavior if released from custody. People v. Roberge (2003) 29 Cal.4th 979, 988.

"Under this bill, many of California's most notorious killers would have their death or life without parole sentences wiped away, would seek early 'elder' parole, would face parole boards, and would petition to have any denial of parole declared unlawful.

"The voters have determined that the most heinous killers, i.e., those that commit first degree murder under special circumstances, should receive a punishment of death or life imprisonment without possibility of parole. The voters did not condition this punishment on a certainty that such defendants will kill again."

7) **Related Legislation**: SB 300 (Cortese), would repeal the provision of law requiring punishment by death or imprisonment for life without the possibility of parole (LWOP) for a person convicted of murder in the first degree who is not the actual killer, but acted with reckless indifference for human life as a major participant in specified dangerous felonies. SB 300 is currently pending before the Senate Appropriations Committee.

8) **Prior Legislation**:

   a) AB 1437 (Skinner), Chapter 1015, Statutes of 2018, limited liability for individuals based on a theory of first-degree or second-degree felony murder.

   b) SB 971 (Nguyen), of the 2017-2018 Legislative Session, would have added to the list of special circumstances that a victim was intentionally killed because of their sexual orientation or gender. SB 971 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA) (Sponsor)
8th Amendment Project
ACLU California Action
Asian Americans Advancing Justice - California
California Attorneys for Criminal Justice
California United for A Responsible Budget (CURB)
Courage California
Cure California
Drug Policy Alliance
Ella Baker Center for Human Rights
Families United to End Life Without Parole
Felony Murder Elimination Project
Friends Committee on Legislation of California
Human Rights Watch
Initiate Justice
Pillars of The Community
Re:store Justice
San Francisco Public Defender's Office
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice North County
Smart Justice California
The American Constitution Society Chapter for Santa Clara University School of Law
We the People - San Diego

Opposition

California District Attorneys Association
Peace Officers Research Association of California (PORAC)
San Diego County District Attorney's Office

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744

Date of Hearing: April 20, 2021
Counsel: David Billingsley

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

AB 1191 (McCarty) – As Amended April 8, 2021

SUMMARY: Requires Department of Justice (DOJ), to analyze information reported by law enforcement agencies regarding the history of a recovered firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime. Specifically, **this bill**:

1) Requires DOJ to analyze the data law enforcement agencies are required to report to DOJ regarding information necessary to identify and trace the history of all recovered firearms for trends relating to the sources and origins of firearms used in crimes if the firearms:

   a) Are illegally possessed;

   b) Have been used in a crime; or,

   c) Are suspected of having been used in a crime.

2) Specifies that DOJ shall, by no later than January 1, 2023, and annually thereafter, prepare and submit a report to the Legislature summarizing the analysis, as specified.

3) Specifies that DOJ shall make the report described in this subdivision available to the public.

4) Makes Legislative findings and declarations.

EXISTING LAW:

1) Provides that every person who knows or reasonably should have known that their firearm was stolen or lost, must report that information to a local law enforcement agency. (Pen. Code, § 25250.)

2) Mandates every person reporting a lost or stolen firearm to report the make, model, and serial number of the firearm. (Pen. Code, § 25270.)

3) Requires a law enforcement agency, as specified, to report to DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime, within seven calendar days of obtaining the information. (Pen. Code, § 11108.3, subd. (a).)

4) Specifies that when DOJ receives the information described above from a law enforcement agency, it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to the extent practicable. (Pen.

Code, § 11108.3, subd. (b).)

5) Specifies that the information collected shall be maintained by DOJ for a period of not less than 10 years, and shall be available, under guidelines set forth by the Attorney General, for academic and policy research purposes. (Pen. Code, § 11108.3, subd. (d).)

6) Requires a law enforcement agency to enter into the DOJ Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, within seven calendar days after being notified of the precipitating event. (Pen. Code, § 11108.2, subd. (a).)

7) States that information about a firearm entered into the automated system for firearms shall remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error. (Pen. Code, § 11108.2, subd. (b).)

8) Requires DOJ to provide a yearly report to the Legislature on the specific types of firearms used in the commission of crimes based upon information obtained from state and local crime laboratories. (Pen. Code, § 34200.)

9) Requires the report to include all of the following information regarding crimes in which firearms were used:

   a) A description of the relative occurrence of firearms most frequently used in the commission of violent crimes, distinguishing whether the firearms used were handguns, rifles, shotguns, assault weapons, or other related types of weapons;

   b) A description of specific types of firearms that are used in homicides or street gang and drug trafficking crimes;

   c) The frequency with which stolen firearms were used in the commission of the crimes;

   d) The frequency with which fully automatic firearms were used in the commission of the crimes; and,

   e) Any trends of importance such as those involving specialized ammunition or firearms modifications, such as conversion to a fully automatic weapon, removal of serial number, shortening of barrel, or use of a suppressor. (Pen. Code, § 34200.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "If we are to reduce gun violence in California, our main focus must be on the upstream source of crime guns from irresponsible dealers who profit off of the sales of firearms that infiltrate communities across the state, and in particular, impacted communities of color.

   "Most gun dealers in California sell guns responsibly, with every effort to comply with

federal, state, and local law; however, a small minority of gun dealers supply the criminal market: about 5% of gun dealers are responsible for about 90% of recovered crime guns nationwide.

"In California, the effect of access to these trafficked firearms in communities of color cannot be understated: black men make up less than 4% of the state's population, yet they represent over 30% of the gun homicide victims; black men between the ages of 18 and 24 are more than 18 times as likely as while men of the same age to be murdered with a gun; and black children and teens are seven times as likely as white children to die by a gun.

"AB 1191 will address the gap in crime gun tracing by requiring the CA DOJ to analyze the crime gun data it already has to determine trends and patterns related to how crime guns are sold and trafficked. By providing analyses on how crime guns are being diverted from the legal market and identifying irresponsible or negligent firearms dealers that prioritize profit over public safety, the Legislature can properly address a root cause of gun violence."

2) **Automated Firearms System (AFS):** California has the DOJ's Automated Firearms System (AFS). The California DOJ's AFS contains records of all assault weapons registered in California since 1989. It contains records of all handguns purchased in California since 1993, and it contains the records of all long-guns purchased in California since 2014. AFS also contains other firearm related acquisition information, some dating back to 1917.

   The Automated Firearms System is a repository of firearm records maintained by DOJ. The Automated Firearms System is populated by way of firearm purchases or transfers at a California licensed firearm dealer, registration of assault weapons (during specified registration periods), an individual's report of firearm ownership to DOJ, Carry Concealed Weapons Permit records, or records entered by law enforcement agencies.

   Individuals have the ability to electronically update one or more Automated Firearms System records through the California Firearms Application Reporting System (CFARS) to match his or her current name, date of birth, address, and California Driver License, California Identification Card, or Military Identification Number.

3) **National Firearms Tracing Laws**: Federally, the ATF has been delegated as the sole agency authorized to trace firearms, which it administers through its National Tracing Center. (ATF. (2016). *Fact Sheet – National Tracing Center*. (https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center) At the federal level, there is no requirement for private citizens or law enforcement agencies to report lost or stolen firearms. (US Bureau of Alcohol, Tobacco, Firearms and Explosives. (2013). *2012 Summary: Firearms Reported Lost and Stolen*. (https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download) Conversely, all federal firearms licensees (FFLs) are required to report a theft or loss within 48 hours of discovery. (27 C.F.R. § 478.39a (a) (1).)

   The ATF has cited private citizen reporting requirements as an impairment to its ability to effectively trace guns, stating:

   "Reporting by law enforcement is voluntary, not mandatory, and thus the statistics in this report likely reveal only a fraction of the problem. Additionally, even where state and local

law enforcement are consistently reporting statistics, many states do not require private citizens to report the loss or theft of a firearm to local law enforcement in the first place. As such, many lost and stolen firearms go entirely unreported. Moreover, even if a firearm is reported as lost or stolen, individuals often are unable to report the serial number to law enforcement because they are not required to record the serial number or maintain other records of the firearms they own for identification purposes. As a result, many lost and stolen firearms enter secondary and illicit markets with their status undocumented and undetectable."

Regarding the more stringent reporting requirements for FFLs, the ATF strikes a different tone, stating:

"ATF's accounting of firearms lost or stolen from FFLs is more accurate. In 1994, Congress enacted requirements that FFLs report the theft or loss of any firearm from their inventories to both ATF and local police within 48 hours of discovery. This mandatory reporting requirement accounts for lost inventory and allows law enforcement to respond expeditiously to thefts from FFLs. Most often, these reports provide law enforcement with serial numbers and reliable descriptions. This information is closely managed to ensure that whenever law enforcement recovers a firearm lost by or stolen from a federally-licensed dealer, the recovery data is promptly provided to ATF and local authorities. In the case of theft, this information assists in the identification, apprehension, and prosecution of the thieves." (ATF. (2011). *Firearms Tracing Guide:Tracing Firearms to Reduce Violent Crime.* https://www.atf.gov/file/58631/download)

4) **California's Firearm Tracing Laws**: California law closely resembles the federal provisions for FFLs. California law is more comprehensive in that it requires all private citizens to report lost or stolen firearms to the local law enforcement agency in the jurisdiction. (Pen. Code, § 25250.) California law requires sheriffs and police chief executives to forward such information to the state DOJ's Automated Firearms System. (Pen. Code, § 11108.)

   Current law also requires California law enforcement agencies shall report to the DOJ all available information necessary to identify and trace the history of all recovered firearms that were illegally possessed, used in a crime, or are suspected of having been used in a crime. The DOJ, upon receiving such information, must promptly forward it to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives to the extent practicable. (Pen. Code, § 11108.3.) This bill would require DOJ to analyze the data regarding information to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime and, by no later than January 1, 2022, and annually thereafter, submit a report to the Legislature summarizing this analysis.

5) **Significance of Trace Data for Lost or Stolen Firearms**: According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Lost and stolen firearms pose a substantial threat to public safety and to law enforcement. Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun… Lost firearms pose a similar threat. Like stolen firearms, they are most often bought and sold in an unregulated secondary market where law

enforcement is unable to trace transactions." (US Bureau of Alcohol, Tobacco, Firearms and Explosives, (2013). *2012 Summary: Firearms Reported Lost and Stolen.* (https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download)

Such lost or stolen firearms may become "crime guns" which are defined as, "any firearm used in a crime or suspected to have been used in a crime. This may include firearms abandoned or otherwise taken into law enforcement custody that are either suspected to have been used in a crime or whose proper disposition can be facilitated through a firearms trace." Upon recovery of a crime gun, law enforcement officers "trace" it, which involves systematically tracking the movement of a recovered firearm back to its importation into, or manufacture in, the United States through the distribution chain and to the point of its first retail sale. (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*. https://www.atf.gov/file/58631/download.)

From a general perspective, tracing a crime gun back to its origins can help law enforcement identify patterns in the supply of gun trafficking by locating, and investigating, the circumstances surrounding a gun that leaves the legal marketplace and enters the illicit secondary market. (Brady Campaign to Prevent Gun Violence. *The Sources of Crime Guns: How City Officials Can Reduce Gun Deaths & Injuries in Their Communities*.) For individual cases, tracing can help develop potential witnesses, prove ownership, and can generate investigative leads. (*Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*, https://www.atf.gov/file/58631/download.)

6) **Argument in Support**: According to the *Sandiegans for Gun Violence Prevention*, "If we are to reduce gun violence in California, a main focus must be on the upstream source of crime guns from irresponsible dealers who profit off of the sales of firearms that infiltrate com-munities across the state, and in particular, impacted communities of color. Most gun dealers in California sell guns responsibly, with every effort to comply with federal, state and local law; however, a small minority of gun dealers supply the criminal market: about 5% of gun dealers are responsible for about 90% of recovered crime guns nationwide. These gun dealers, most of whom sit outside of communities they affect the most, profit off of irresponsible or illegal sales, including knowingly selling to straw purchasers or gun traffickers, that drive guns into impacted communities.

"The California DOJ's Automated Firearms System (AFS) contains records of all assault weapons registered in California since 1989, all handguns purchased in California since 1996, all long-guns purchased in the state since 2014, and some other firearm related acquisition information dating back to 1917. The AFS also contains a database with information on all crime guns recovered in California. Because of California's unique firearms databases and systems, California can easily establish its own crime gun tracing program, independent and outside the restrictions set by federal law, allowing California to take meaningful and immediate action in reducing the effects of crime guns in its communities. However, there is currently no coordinated analysis on this available state level data, leaving an abundance of invaluable information unavailable and unanalyzed."

7) **Related Legislation**:

a) AB 311 (Ward), would prohibit a vendor at a gun show or event from possessing, displaying, offering to sell, selling, or transferring any firearm precursor parts. AB 311 is

awaiting hearing in the Assembly Appropriations Committee.

b) AB 876 (Gabriel), would require all handguns used by any state, county, city, or other law enforcement officer while on duty to be entered into AFS within 90 days of acquisition. AB 876 is awaiting hearing in the Assembly Public Safety Committee.

8) **Prior Legislation**:

a) AB 2714 (Gloria), of the 2019-2020 Legislative Session, would have required DOJ to analyze specified law enforcement data regarding the history of recovered firearms that are connected to illegal use for trends relating to the sources and origins of firearms used in crimes.

b) AB 1501 (Low), of the 2018-2019 Legislative Session, would have required law enforcement agencies to obtain ballistic images from firearms, cartridge cases, and bullets obtained by the agencies in connection with criminal investigations, as specified, and submit those images to the National Integrated Ballistic Identification Network (NIBIN). AB 1501 was held on the Senate Appropriations Suspense File.

c) AB 2222 (Quirk), Chapter 864, Statutes of 2018, required all law enforcement agencies to report to DOJ information about each firearm reported lost, stolen, or recovered, and requires the DOJ to submit a report to the Legislature outlining law enforcement agency compliance with the new reporting requirement.

d) AB 1060 (Liu), Chapter 715, Statutes of 2005, required every sheriff or police chief executive to enter information about certain firearms into the Automated Firearms System and required such information to remain in the system until the reported firearm was found, recovered, no longer under observation, or was determined to be entered.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign (Sponsor)
Brady Campaign California (Sponsor)
Alameda County District Attorney's Office
Friends Committee on Legislation of California
San Diegans for Gun Violence Prevention
Women Against Gun Violence
Youth Alive!

Opposition

None

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

Date of Hearing: April 20, 2021
Chief Counsel: Gregory Pagan

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

AB 557 (Muratsuchi) – As Amended March 25, 2021

SUMMARY: Requires the Attorney General (AG) to establish, maintain, and publicize a toll free public hotline telephone number, as specified. Specifically, **this bill**:

1) Requires the Attorney General to establish, maintain, and publicize a toll free public hotline telephone number for the following purposes:

   a) Reporting hate crimes and connecting with local law enforcement agencies;

   b) Connecting people who experienced or witnessed a hate crime or hate incident to other appropriate local resources;

   c) The Attorney General may establish a list of community based organizations from which to provide referrals; and,

   d) Disseminating information about the characteristics of hate crimes, and hate incidents, classes of individuals protected under California hate crimes law, civil remedies that may be available for victims of hate crimes, and reporting options.

2) Provides that the hotline shall be accessible to people with disabilities, and people who do not speak English.

3) Requires the hotline to operate Monday to Friday, inclusive, from 9 a.m. to 5 p.m., except for federal and state holidays, or as otherwise posted on the Attorney General's Internet website. The hotline when not in operation, shall provide a recorded message directing callers to dial 9-1-1 in case of an emergency or otherwise to call their local police nonemergency dispatch number. This information shall also be posted on the Attorney General's Internet website.

4) States that callers to the website should be advised that the filing of a false police report is punishable as a misdemeanor, as specified. This information shall be posted on the Attorney General's Internet website.

5) Requires the Attorney General to post, maintain, and publicize a reporting form for hate crimes and hate incidents on their Internet website that can be completed and submitted online.

6) The Attorney General's Internet website shall provide the public with same resources and information as provided by the hate crimes toll free public hotline.

EXISTING LAW:

1) Defines "hate crime" as a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

2) Requires all state and local agencies to use the above definition when using the term "hate crime." (Pen. Code, § 422.9.)

3) States that, in regard to hate crimes, the following definitions shall apply:

   a) "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime," as specified;

   b) "Disability" includes mental disability and physical disability as specified;

   c) "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth;

   d) "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.[1]

   e) "Nationality" includes citizenship, country of origin, and national origin;

   f) "Race or ethnicity" includes ancestry, color, and ethnic background; "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism;

   g) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality; and,

   h) "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense. (Pen. Code, § 422.56).

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[1] This subdivision does not constitute a change in, but is declaratory of, existing law under *In re M.S.* (1995) 10 Cal.4th 698 and *People v. Superior Court* (Aishman) (1995) 10 Cal.4th 735;

4) Provides that, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes. (Pen. Code, § 13023.)

5) Specifies that "hate crime" includes a violation of statute prohibiting interference with a person's exercise of civil rights because of actual or perceived characteristics, as listed above. (Pen. Code, § 422.55, subd. (b).)

6) Requires the Commission on Peace Officer Standards and Training to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The 2001 final report of the California Civil Rights Commission on Hate Crimes recommended that the California DOJ 'should establish and publicize a toll-free hotline number for reporting hate incidents and hate crimes, and should post an incident reporting form on its Web site, which can be completed on-line.' The Commission believes that these reporting methods 'will help overcome the hesitancy of victims and witnesses who distrust or harbor fears of local school and local law enforcement officials."

2) **Impact of Hotlines on Addressing Hate Crime**: California, as well as the nation as a whole, has seen a recent increase in hate crime activity. Due to the nature of the communities being targeted, such as immigrant communities, many incidents go unreported for fear of interactions with local law enforcement authorities. These communities therefore remain especially vulnerable and often feel as though they lack recourse for being targeted by hate crimes.[2] In an attempt to solve this problem, several California cities and counties, as well as other states, have implemented hate crime hotlines. States that have implemented hotlines, such as New York, Massachusetts, and Maryland, are seeing significant benefits. For example, both the New York and Massachusetts systems have led to increased substantive reports of hate crimes, which validates the fact that these crimes often go unreported and provides valuable data to law enforcement agencies. In addition, residents have reported that they found value in the ability to contact a sympathetic resource and have their experiences documented, even when the perpetrator remains unidentified and the incident is unresolved. The offices of the Alameda and San Francisco District Attorneys have implemented similar hate crime hotlines expecting similar benefits.[3]

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[2] <http://www.lahumanrelations.org/hatecrime/reports/2013_hateCrimeReport.pdf> (as of March 29, 2017)
[3] <http://www.npr.org/2017/02/18/515209900/massachusetts-hotline-tracks-post-election-hate?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=20170218> (as of April 3, 2017.); <http://sanfrancisco.cbslocal.com/2016/11/18/san-francisco-hate-crime-hotline-donald-trump-election/>; <http://www.alcoda.org/newsroom/2016/nov/hate_crimes_hotline> (as of April 3, 2017.)

AB 800 would provide valuable resources for vulnerable communities by establishing a hotline to report hate crimes. The hotline, by providing anonymity, will help to address the underreporting of hate crimes by assuaging the fears of targeted communities. In addition, the hotline will be able to direct victims to other resources, such as legal consultation and support services, so that victims are better equipped to address the impacts of being targeted by these crimes.

3) **Prior Legislation**: AB 800 (Chiu), of the 2017 Legislative Session, required the AG to establish, maintain and publicize a toll-free public hotline telephone number for the reporting of hate crimes. AB 800 was held on the Appropriations Committee suspense file.

4) **Argument in Support**: According to the *Santa Barbara Women's Political Committee,* "AB 557 requires the California Department of Justice to establish a toll-free hotline in addition to an online reporting system for hate crimes will allow victims and witnesses to report a hate incident against any group in a safe, anonymous manner, particularly those who may face language or cultural barriers or are undocumented. This reflects the SBWPC Mission statement to 'take social action against discrimination based on gender, race and ethnicity' as well as our position on Anti-Racism 'to identify, confront and eliminate racism in all its forms – systemic, individual, interpersonal, institutional and structural – to achieve racial and equity and justice."

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-defamation League (Sponsor)
California Charter Schools Association
California Strategies & Advocacy, LLC
County of Santa Clara
Hadassah, the Women's Zionist of America, INC.
Japanese American Citizens League National
Santa Barbara Women's Political Committee
Sustainable Food Policy Alliance
The Arc and United Cerebral Palsy California Collaboration

Opposition

None

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

Date of Hearing: April 20, 2021
Chief Counsel: Gregory Pagan

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

AB 1057 (Petrie-Norris) – As Amended April 12, 2021

SUMMARY: Defines as a firearm, for the purpose of surrender or seizure under provisions of a Gun Violence Restraining Order (GVRO), a frame or receiver of a firearm, or a firearm precursor part, as defined.

EXISTING LAW:

1) Defines a "GVRO" as an order in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, § 18100.)

2) Defines a "firearm precursor part" to mean a component of a firearm that is necessary to build or assemble a firearm, and is either an unfinished receiver, as specified, or an unfinished handgun frame. (Pen, Code, § 16531, subd. (a)(1), (2).)

3) Requires, upon issuance of a GVRO, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)

4) Allows an immediate family member of a person or a law enforcement officer to file a petition requesting that the court issue an ex parte GVRO, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. (Pen. Code, §§ 18150 and 18155, subd. (c).)

5) States that the court, before issuing an ex parte GVRO, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Pen. Code, § 18155, subd. (a).)

6) Requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or to another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors, and that less restrictive alternatives have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Pen. Code, § 18150, subd. (b).)

7) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

   a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

   b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;

   c) A violation of an emergency protective order that is in effect at the time the court is considering the petition;

   d) A recent violation of an unexpired protective order;

   e) A conviction for any specified offense resulting in firearm possession restrictions; or,

   f) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1).)

8) States that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Pen. Code, § 18160, subd. (b).)

9) Requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Pen. Code, § 18160, subd. (c).)

10) Allows the following persons to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one to five years:

   a) An immediate family member of the subject of the petition;

   b) An employer of the subject of the petition;

   c) A coworker of the subject of the petition if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;

   d) An employee or teacher of a secondary or postsecondary school that the subject of the petition has attended in the last six months if the employee or teacher has obtained the approval of a school administrator or school administration staff member with a

supervisorial role; and,

e) A law enforcement officer. (Pen. Code, § 18190, subd. (a)(1)(A)-(E).)

11) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and,

b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)

12) Provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175, subd. (c)(1) & (2)

13) Requires the court to inform the restrained person that he or she is entitled to one hearing to request a termination of the gun violence restraining order and provide the restrained person with a form to request a hearing. (Pen. Code, § 18180, subd. (b).)

14) States that it is a misdemeanor offense for every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing knowing the information in the petition to be false or with the intent to harass. (Pen. Code, § 18200.)

15) Provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1057 will close a loophole for emergency Gun Violence Restraining Orders (GVRO's) by including ghost guns in the definition of items subject to seizure when a person is deemed by the court to be a threat to

themselves or others. This bill ensures that these readily available weapons which look and act like any other firearm are treated appropriately. AB 1057 will protect individuals and the public from harm's way."

2) **Argument in Support**: According to *Brady,* "Under existing law, ghost gun kits or parts, i.e. precursor parts, cannot be seized when a judge issues an emergency GVRO. Law enforcement officers or close family members can request a GVRO when an individual is deemed to be an extreme risk to themselves or others. Law enforcement is currently only able to seize traditional firearms. The definition does not cover the frame or receiver of a firearm, nor the unfinished frame or receiver of a weapon that can readily be converted to the functional condition of a finished frame or receiver and assembled into a ghost gun. This loophole in current California Code dangerously leaves out ghost guns parts and thereby does not give courts the ability to seize these weapons that may be of harm to the individual or others. Moreover, these precursor parts, often packaged in kits, are currently available for purchase by anyone without a background check or waiting period in the state of California."

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Public Interest Law (Sponsor)
Brady Campaign
Brady Campaign California
Children's Advocacy Institute
Giffords
Women for American Values and Ethics Action Fund

Opposition

None

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

Date of Hearing: April 20, 2021
Counsel: Cheryl Anderson

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

AB 1193 (Blanca Rubio) – As Introduced February 18, 2021

SUMMARY: Increases the penalty for misdemeanor solicitation of a minor, making it alternatively punishable as a felony by 16 months, two, or three years in the state prison regardless of whether the defendant knew or should have known the person was a minor. Specifically, **this bill**:

1) Removes the requirement that the person soliciting for prostitution knew or should have known that the person being solicited was a minor at the time of the offense.

2) Makes this offense a wobbler with a penalty of two days to one year in the county jail and/or by a fine of $10,000 or by 16 months, two, or three years in state prison and/or by a fine of $10,000.

EXISTING LAW:

1) Makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. (Pen. Code, § 647, subd. (b)(1).)

2) Makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647, subd. (b)(2).)

3) Makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with a minor in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code, § 647, subd. (b)(3).)

4) Provides that a manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of these provisions unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. (Pen. Code, § 647, subd. (b)(4).)

5) Defines "prostitution" to include any lewd act between persons for money or other consideration. (Pen. Code, § 647, subd. (b)(4).)

6) States that these offenses do not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, constitute one of these offenses. (Pen. Code, § 647, subd. (b)(5).)

7) Provides that unless otherwise specified, a misdemeanor is punishable in the county jail for up to six months, a fine up to $1,000, or both. (Pen. Code, § 19.)

8) Provides that if the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in the county jail for not less than two days and not more than one year and/or by a fine not exceeding $10,000. The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days imprisonment. (Pen. Code, § 647, subd. (l).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "While California laws regarding human trafficking and the protection of juveniles have come a long way, there continues to be minimal penalties on the 'demand' side of the human trafficking equation. In California, not enough attention has been paid to those who are paying for sex, potentially with a trafficking victim.

   "More can be done to address those who encourage and facilitate acts that promote human trafficking. Current law must be strengthened to make it an alternate felony/misdemeanor for a person to solicit a minor under the age of 18 for prostitution. Furthermore, the 'mistake of age' language should be deleted so it's not used as a viable defense to the felony charge."

2) **Solicitation of a Minor:** Existing law provides that the penalty for solicitation of a minor, who the person knew or should have known was a minor, is two days to one year in jail and/or a fine of not more than $10,000. Existing law also provides that the court may, in unusual circumstance eliminate the mandatory two days in jail. (Pen. Code, § 647, subd. (l).) Where there is no showing that the defendant knew or should have known the person was a minor, the offense is punishable by up to six months in the county jail and/or a fine up to $1,000. (Pen. Code, §§ 19, 647, subd. (b)(3).)

   This bill would instead make all solicitation of a minor a wobbler offense with a penalty of one year in the county jail (misdemeanor), or 16 months, two, or three years in state prison (felony), and/or a fine not exceeding $10,000, irrespective of whether or not the defendant knew or should have known the person was a minor. In doing so, this bill lowers the bar as to what must be proven to obtain a criminal conviction while at the same time increasing potential punishment under the statute to a state prison felony.

   A number of other crimes, including crimes with felony penalties, already exist relating to solicitation of a minor. Soliciting (arranging a meeting with) a minor for lewd purposes is punishable as a misdemeanor, or as a state prison felony under some circumstances (if the defendant goes to the arranged meeting or is required to register as a sex offender). (Pen.

Code, § 288.4.) To be guilty of this offense the defendant must believe the person is a minor. (*Ibid.*) Contacting a minor with the intent to commit a specified sex offense is punishable in state prison. (Pen. Code, § 288.3.) To be guilty of this offense, the defendant must have known or should have known the person is a minor. (*Ibid.*) "Sexting" a minor is a wobbler punishable as a misdemeanor or state prison felony. (Pen. Code, § 288.2.) To be guilty of this offense, the defendant must have known, or should have known, or believed that the person is a minor. (*Ibid.*) Luring or attempting to lure a minor under the age of 14 is punishable as an infraction or misdemeanor. (Pen. Code, § 272, subd. (b)(1).) To be guilty of this offense, the defendant must have known or reasonably should have known that the minor is under 14 years of age. (*Ibid.*) Statutory rape is punishable as a misdemeanor or a county jail felony depending on the difference in age between the defendant and the victim. (Pen. Code, § 261.5.) Lewd acts with a minor is punishable as a misdemeanor in some circumstances or a state prison felony. (Pen. Code, § 288.) Inducing a minor to engage in a commercial sex act is punishable as a state prison felony, and mistake of fact regarding the minor's age is no defense. (Pen. Code, § 236.1, subds. (c) & (f).) An attempt to induce a minor is subject to the same penalty. (*People v. Moses* (2020) 10 Cal.5th 893.) "Commercial sex act" is defined as sexual conduct on account of which anything of value is given or received by a person. (Pen. Code, § 236.1, subds. (h)(2).)

3) **Prison Overcrowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

   CDCR's February 2021 monthly report on the prison population notes that the state prison population is 105.4% of design capacity. (https://www.cdcr.ca.gov/3-judge-court-update/ [as of April 14, 2021].)

   Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

   Moreover, while there has been a significant decrease in the prison population, the overcrowding still poses a health risk to incarcerated persons. The Covid-19 pandemic has underscored this. (https://www.ppic.org/blog/californias-prison-population-drops-sharply-but-overcrowding-still-threatens-prisoner-health/ [as of April 10, 2021].)

Creating a new state prison felony is inconsistent with the goal of finding a durable solution to prison overcrowding.

4) **Practical Considerations**: AB 1193 would remove any distinction between the offense of soliciting a minor under Penal Code section 647, subdivision (b)(3) and subdivision (l). Should these subdivisions be merged? If not, both subdivisions would remain with one defining solicitation of a minor as a misdemeanor (Pen. Code, § 647, subd. (b)) and the other as a wobbler (Pen. Code, 647, subd. (l)).

5) **Argument in Support**: According to the *California State Sheriffs' Association*, the sponsor of this bill, "While California laws regarding human trafficking and the protection of juveniles have come a long way, there continues to be minimal penalties on the 'demand' side of the human trafficking equation. In California, not enough attention has been paid to those who are paying for sex, potentially with a trafficking victim. Currently, soliciting a person known to be a minor for prostitution only carries a one-year maximum jail term and/or a fine, which does not match the seriousness of the crime. This misdemeanor penalty has allowed for predators to receive minimal punishment.

"Current law must be strengthened to make it an alternate felony/misdemeanor for a person to solicit a minor under the age of 18 for prostitution. Furthermore, the 'mistake of age' language should be deleted so it is not used as a viable defense to the felony charge.

"For these reasons, CSSA is pleased to sponsor AB 1193, which would combat child prostitution by ensuring that buyers of sex are no longer overlooked and the penalty for soliciting sex from a minor is proportionate to the destructive nature of the crime."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 1193 would make solicitation of a minor a wobbler punishable by up to three years in prison and remove the reasonable person knowledge standard from solicitation of a minor making it a strict liability offense.

"Although the goal of stopping human trafficking of minors is laudable, this bill will not do anything to advance that goal. In fact, it is unnecessary, counterproductive, and unfair.

"First, sex trafficking of minors and actual sexual acts with minors are covered by a multitude of statutes providing for severe penalties. For example, as detailed in the Senate Public Safety Committee analysis for SB 303 (2017) at length:

- Penal Code Section 236.1(b) provides that a person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified offenses relating to pimping, pandering or obscene matter is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14 or 20 years and a fine of not more than $5,000 (plus approximately 310% in penalty assessments).

- Penal Code Section 236.1(c) provides that a person who caused, induces or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of the commission of the offense to engage in a commercial sex act with the intent to

effect or maintain a violation of specified pimping, pandering or obscene matter related offenses is guilty of human trafficking punishable as follows:

- Five, 8 or 12 years and a fine of not more than $500,000 (plus approximately 310% in penalty assessments).

- Fifteen years to life and a fine of not more than $500,000 (plus approximately 310% in penalty assessments) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.

"Under existing law, a person who is soliciting a minor may also be charged with any number of offenses, or attempted offenses, relating to child abuse thus misdemeanors and felonies are already available for the offense.... (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB303)

"AB 1193 is bad public policy and represents a return to the era of mass incarceration. Sending more people to prison destroys California communities and diverts scarce resources that could be better spent on helping the minor victims of human trafficking. Many of the victims are runaways from abusive homes or homeless. Providing housing, education, employment and health care for the victims is more likely to end sex trafficking of teenagers.

"Second, deleting the knowledge requirement thus making it a strict liability offense regardless of whether the individual knew or should have known is wrong headed. Usually, our criminal law requires some form of depraved intent for enhanced penalties. Strict liability is normally reserved for regulatory offenses or civil law.

"Penal Code Section 647(b)(3) already states that it is irrelevant whether an individual is actually solicited by a minor sex worker, if the individual agrees they can still be convicted.

"AB 1193 would lead to absurd and unfair results. An individual could be convicted of a felony after being solicited by a minor sex worker in a bar where the individual had just watched the doorman check everyone's ID to make sure that they were 21 years old."

7) **Related Legislation**: AB 892 (Choi), would require a person convicted of misdemeanor solicitation of a minor for prostitution to register as a sex offender if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense. AB 892 failed passage in this committee.

8) **Prior Legislation**:

a) AB 2862 (B. Rubio), of the 2019-2020 Legislative Session, was substantially similar to this bill. AB 2862 was not heard in this committee.

b) AB 663 (Cunningham), of the 2019-2020 Legislative Session, would have made the solicitation of, agreement to engage in, or engagement in, an act of prostitution with a minor in exchange for the individual providing compensation, money, or anything of value to the minor, except when the defendant knew or should have known that the person solicited was a minor at the time of the offense, punishable by incarceration in the

county jail for up to 6 months, a base fine of up to $2,000, or both the incarceration and fine. AB 663 was held on the Senate Appropriations Committee suspense file.

c) SB 303 (Morrell), of the 2017-2018 Legislative Session, would have made the penalty for solicitation of a minor a wobbler with a penalty of six months to one year in the county jail and/or by a fine not exceeding $15,000, or by imprisonment in the county fail for 2, 3 or 4 years. SB 303 was not heard in the Senate Public Safety Committee at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
California District Attorneys Association
San Bernardino County Sheriff's Department

Opposition

ACLU California Action
California Public Defenders Association (CPDA)
San Francisco Public Defender

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

Date of Hearing: April 20, 2021
Counsel: David Billingsley

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

AB 1210 (Ting) – As Amended March 10, 2021

SUMMARY: Requires 10 of the 17 commissioners for the Board of Parole Hearings (BPH) to have specified experience or expertise. Adds sexual orientation and gender identity to the requirement that the selection on commissioners for BPH reflect as nearly as possible a cross-section of the racial, economic, geographic features of the population of the state. Specifically, **this bill**:

1) States that commencing July 1, 2022, at least four of the commissioners of BPH shall meet at least one of the following criteria:

   a) A medical doctor with experience working with geriatric patients;

   b) A psychologist or psychiatrist who has experience working in childhood trauma;

   c) A social worker who has worked with individuals who have been incarcerated or with individuals whose family members have been incarcerated;

   d) A drug treatment counselor;

   e) A person who has worked for a nonprofit organization that provides community-based reentry services or handles community-based risk assessment issues;

   f) An attorney who has represented individuals facing deportation by the federal immigration authorities;

   g) A peer counselor who has extensive experience working with individuals who are either transgender or gender nonconforming; or,

   h) A person who has been released from a life sentence in prison following a parole hearing.

2) States that commencing July 1, 2024, at least 10 of the commissioners shall meet at least one of the criteria specified above.

3) Adds sexual orientation and gender identity to the requirement that the selection on Commissioners for the Board of Parole Hearings (BPH) reflect as nearly as possible a cross-section of the racial, economic, geographic features of the population of the state.

4) Makes technical changes.

EXISTING LAW:

1) Requires the Governor to appoint 17 commissioners, subject to Senate confirmation, to the BPH. (Pen. Code, § 5075, subd. (b)(1).)

2) States that the commissioners shall hold office for terms of three years, each term to commence on the expiration date of the predecessor. An appointment to a vacancy that occurs for any reason other than expiration of the term shall be for the remainder of the unexpired term. Commissioners are eligible for reappointment. (Pen. Code, § 5075, subd. (b)(1).)

3) Specifies that the terms of the commissioners shall expire as follows:

   a) Five shall expire on July 1, 2020;

   b) Six shall expire on July 1, 2021; and,

   c) Six shall expire on July 1, 2022. (Pen. Code, § 5075, subd. (b)(2).)

4) Requires the selection of persons and their appointment by the Governor and confirmation by the Senate to reflect as nearly as possible a cross section of the racial, sexual, economic, and geographic features of the population of the state. (Pen. Code, § 5075, subd. (b)(4).)

5) States that the chair of BPH shall be designated by the Governor periodically. The Governor may appoint an executive officer of the board, subject to Senate confirmation, who shall hold office at the pleasure of the Governor. (Pen. Code, § 5075, subd. (c).)

6) Specifies that each commissioner shall participate in hearings on each workday, except if it is necessary for a commissioner to attend training, en banc hearings or full board meetings, or other administrative business requiring the participation of the commissioner. For purposes of this subdivision, these hearings include parole consideration hearings and parole rescission hearings. (Pen. Code, § 5075, subd. (d).)

7) Requires commissioners and deputy commissioners hearing parole matters to have a broad background in criminal justice and an ability for appraisal of adult offenders, the crimes for which those persons are committed, and the evaluation of an individual's progress toward reformation. (Pen. Code, § 5075.6, subd. (a).)

8) States that insofar as practicable, commissioners and deputy commissioners shall have a varied interest in adult correction work, public safety, and shall have experience or education in the fields of corrections, sociology, law, law enforcement, medicine, mental health, or education. (Pen. Code, § 5075.6, subd. (a).)

9) Requires all commissioners and deputy commissioners who conduct hearings for the purpose of considering the parole suitability of inmates, the setting of a parole release date for inmates, or the revocation of parole for adult parolees, shall, within 60 days of appointment and annually thereafter undergo a minimum of 40 hours of training in the following areas:

a) Treatment and training programs provided to inmates at Department of Corrections and Rehabilitation institutions, including, but not limited to, educational, vocational, mental health, medical, substance abuse, psychotherapeutic counseling, and sex offender treatment programs;

b) Parole services;

c) Commissioner duties and responsibilities; and,

d) Knowledge of laws and regulations applicable to conducting parole hearings, including the rights of victims, witnesses, and inmates. (Pen. Code, § 5075.6, subd. (b)(1)-(4).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Commissioners who serve on the California Board of Parole Hearings make public safety decisions based on circumstances that they may not understand and for incidents that, in some cases, have occurred more than 20 years ago. The state does not require any professional expertise despite the fact that these commissioners are making critical decisions that impact the well-being of thousands of Californians and their families. AB 1210 would require a broad range of professional expertise for commissioners serving on the Board of Parole Hearings so that the Board can make more insightful decisions for individuals who are eligible for parole."

2) **Board of Parole Hearings:** The Board of Parole Hearings conducts parole suitability hearings and nonviolent offender parole reviews for adult inmates under the jurisdiction of the California Department of Corrections and Rehabilitation. The duties of the Board also include:

   a) Conducting medical parole hearings;

   b) Reviewing and conducting hearings for Offenders with a Mental Health Disorder (Formerly known as Mentally Disordered Offenders);

   c) Review of sexually violent predators;

   d) Investigating requests for pardons, reprieves, and commutations of sentence; and,

   e) Processing foreign prisoner transfer requests.

   The Board's workforce includes 17 commissioners, appointed by the Governor and subject to senate confirmation, deputy commissioners, forensic clinical psychologists, investigators, and administrative and legal staff. (https://www.cdcr.ca.gov/bph/)

   Existing law states that insofar a practical, the commission and deputy commissioners shall have experience or education in the fields of corrections, sociology, law, law enforcement, medicine, mental health, or education. (Pen. Code, § 5075.6, subd. (a).) Commissioners and deputy commissioners are also required to undergo yearly training which include a review of

the treatment and training programs provided to inmates at CDCR institutions, including, but not limited to, educational, vocational, mental health, medical, substance abuse, psychotherapeutic counseling, and sex offender treatment programs; and parole services.

3) **Qualifications for Members Board of Parole Hearings:** The Robina Institute of Criminal Law and Criminal Justice is located at the University of Minnesota Law School. The focus of the Robina Institute is on sentencing guidelines, prison release, and community supervision. In 2018, the Robina Institute published guidance for states' parole systems based on evidence based practice. The publication included recommendations on appointments to a state's parole board.

   The Robina Institute noted that quality parole decisions begin with an appropriate institutional structure, including how the board members (and chairs) are appointed and what qualifications they must possess. The adoption and continuity of releasing authority policies and decision-making practices is affected, sometimes dramatically, by the board members' terms of appointment, reappointment, and conditions for removal. (robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/parole_ebp_report.pdf)

   The Robina Institute recommended that parole board members should be required to possess a college degree in criminology, social work, a related social science, or a juris doctor or other advanced degree in a relevant field and have at least five years of work experience in a related field such as corrections, community corrections, criminal law, or behavioral health. The Robina Institute also recommended that appointments should balance the relevant competencies of board members, and statutory standards should specify the inclusion of members with expertise in victim awareness, the prison experience, and behavioral health, as well as demographic and geographic diversity, including a tribal perspective in some states. (Id.)

   The Robina survey revealed that 20 of 45 respondent jurisdictions had no statutory qualifications. Even in states with qualifications, a majority specify only vague educational requirements or relevant work experience. They noted that is was unusual to see statutes calling for specialized knowledge or professional expertise that bridges corrections, criminology, behavioral health, and the growing literature on evidence-based practices. (Id.)

   This bill would require some of the commissioners on the 17 member parole board to meet at least one of a variety of criteria which involve experience and expertise in areas pertinent to parole decisions and community reentry. This bill will require four of the commissioners to meet the criteria of this bill by July 1, 2022, and 10 commissioners by July 1, 2024. The criteria is more specific and covers additional background experience than that demanded by existing law. Presumably that would lead to more diversity in the backgrounds of individuals serving on BPH.

   One danger of requiring individuals to meet very specific experience and expertise is that you limit the pool of potentially qualified individuals. This bill would require that these criteria to apply to 10 of the 17 members at any given time, so 7 members could continue to be selected under the criteria defined by existing law.

4) **Argument in Support**: According to the *Californians for Safety and Justice*, "BPH will make decisions that impact the freedom of more than half of the individuals in the custody of

the California Department of Corrections and Rehabilitation (CDCR). This is the second largest prison population in the country and the greatest number of individuals with longterm sentences for both men and women. This comes with a major price tag; California now spends more than $16 billion on state prisons each year. Although Penal Code Section 3041(a)(2) directs BPH to "normally" grant release, only 16 percent of scheduled parole hearings have resulted in parole grants over the past forty years.

"The BPH has 17 full-time commissioners that are appointed by the Governor. Although BPH commissioners are not required to have any professional expertise, existing law states that these commissioners should reflect the cross section of racial, sexual, economic, and geographic features of the population of California, and to the extent possible, have experience in fields that include sociology, medicine, and mental health. Current appointees to the BPH overwhelmingly come from law enforcement backgrounds and make public safety decisions based on circumstances they may not understand.

"AB 1210 would strengthen current laws by requiring that 10 parole commissioners have specific professional backgrounds that would diversify the BPH as a collective body. Since community members like social workers, doctors, and peer counselors have a strong stake in protecting public safety, this bill will allow the BPH to provide a more comprehensive consideration of a parole applicant's readiness for release."

5) **Related Legislation**: AB 960 (Bonta), would establish a medical parole panel at each prison. AB 960 is set for hearing in the Assembly Public Safety Committee on April 20, 2021.

6) **Prior Legislation**:

   a) AB 3234 (Ting), Chapter 334, Statutes of 2020, expanded the elderly parole program so that individuals who are aged 50 years and older and have experienced at least 20 years of continuous incarceration will be eligible for relief.

   b) AB 1308 (Stone), Chapter 675, Statutes of 2017, expanded the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 23 years of age, to include those who committed their crimes when they were 25 years of age or younger.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Alliance for Boys and Men of Color
California for Safety and Justice
California Public Defenders Association (CPDA)
Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice
San Francisco Public Defender's Office
Smart Justice California

Uncommon Law
We the People - San Diego
Young Women's Freedom Center

Opposition

None

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

Date of Hearing: April 20, 2021
Counsel: Matthew Fleming

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

AB 1225 (Waldron) – As Amended April 14, 2021

SUMMARY: Enacts the Dignity for Incarcerated Women Act, which would expand the services and treatment of incarcerated women and incarcerated pregnant persons within California Department of Corrections and Rehabilitation (CDCR) facilities. Specifically, **this bill**:

1) Requires that every woman that is committed to a CDCR institution be given trauma-informed care.

2) Prohibits an incarcerated woman from being placed in solitary confinement for purposes of medical observation.

3) Requires domestic violence counseling and parenting and lifestyle classes to be part of prenatal care visits for pregnant, incarcerated women; specifies, that these counseling sessions and classes may be accomplished via video conferencing.

4) Requires, upon delivery of a newborn by an incarcerated woman, that the mother and the newborn child shall be provided with a bonding period of 18 months during which time the newborn child shall reside at the same facility as the incarcerated mother.

5) Requires that at the conclusion of the bonding period, the child shall be placed with the person the mother has designated.

6) Requires the incarcerated mother to be provided with visitation time, in addition to what they are already entitled to, including weekends and overnights, for the purpose of visiting with the child.

7) Requires an incarcerated woman, upon return to prison after having given birth, to be offered screening or appropriately screened for postpartum depression and, if necessary, receive appropriate care.

8) Requires that a person incarcerated in state prison who menstruates or experiences uterine or vaginal bleeding be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons, at no cost to the incarcerated person, instead of allowing access to such items only upon a request by the person.

EXISTING LAW:

1) Requires that any incarcerated person have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. The warden may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate this determination. (Pen. Code, § 3406, subd. (a).)

2) States that if the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of these services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. Any expenses occasioned by the services of a physician, nurse practitioner, certified nurse midwife, or physician assistant whose services are not provided by the institution shall be borne by the incarcerated person. (Pen. Code, § 3406, subd. (b).)

3) Requires a physician, a nurse practitioner, a nurse midwife, or a physician assistant providing services to an incarcerated person as stated above to possess a current, valid, and unrevoked certificate to engage in the practice of medicine, as specified. (Pen. Code, § 3406, subd. (c).)

4) Provides the following protections for pregnant inmates:

   a) An inmate known to be pregnant or in recovery after delivery shall not be restrained by the use of leg irons, waist chains, or handcuffs behind the body;

   b) A pregnant inmate in labor, during delivery, or in recovery after delivery, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public;

   c) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of restraints is medically necessary;

   d) This section shall not be interpreted to require restraints in a case where restraints are not required pursuant to a statute, regulation, or correctional facility policy; and,

   e) Upon confirmation of an inmate's pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates, including, but not limited to, the provisions of this chapter, the relevant regulations, and the correctional facility policies. (Pen. Code, § 3407.)

5) States that a person incarcerated in the state prison who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a test upon intake or by request. Pregnancy tests shall be voluntary and not mandatory, and may only be administered by medical or nursing personnel. An incarcerated person who declines a pregnancy test shall be asked to sign an "Informed Refusal of Pregnancy Test" form that shall become part of their medical file. (Pen. Code, § 3408, subd. (a).)

6) States that an incarcerated person with a positive pregnancy test result shall be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. This counseling shall be furnished by a licensed health care provider or counselor who has been provided with training in reproductive health care and shall be nondirective, unbiased, and noncoercive. Prison staff shall not urge, force, or otherwise influence a pregnant person's decision. (Pen. Code, § 3408, subd. (b).)

7) States that a prison shall not confer authority or discretion to nonmedical prison staff to decide if a pregnant person is eligible for an abortion. If a pregnant person decides to have an abortion, that person shall be offered, but not forced to accept, all due medical care and accommodations until they are no longer pregnant. (Pen. Code, § 3408, subd. (c).)

8) States that a person incarcerated in prison who is confirmed to be pregnant shall, within seven days of arriving at the prison, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse midwife, or physician assistant. The examination shall include all of the following:

   a) A determination of the gestational age of the pregnancy and the estimated due date;

   b) A plan of care, including referrals for specialty and other services to evaluate for the presence of chronic medical conditions or infectious diseases, and to use health and social status of the incarcerated person to improve quality of care, isolation practices, level of activities, and bed assignments, and to inform appropriate specialists in relationship to gestational age and social and clinical needs, and to guide use of personal protective equipment and additional counseling for prevention and control of infectious diseases, if needed; and,

   c) The ordering of prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions. (Pen. Code, § 3408, subd. (d).)

9) States that incarcerated pregnant persons shall be scheduled for prenatal care visits as follows, unless otherwise indicated by the physician, nurse practitioner, certified nurse midwife, or physician assistant:

   a) Every four weeks in the first trimester up to 24 to 28 weeks;

   b) Every two weeks thereafter up to 36 weeks gestation; and,

   c) Every one week thereafter until birth. (Pen. Code, § 3408, subd. (e).)

10) Incarcerated pregnant persons shall be provided access to both of the following:

   a) Prenatal vitamins, to be taken on a daily basis, in accordance with medical standards of care; and,

   b) Newborn care that includes access to appropriate assessment, diagnosis, care, and treatment for infectious diseases that may be transmitted from a birthing person to the birthing person's infant, such as HIV or syphilis. (Pen. Code, § 3408, subd. (f).)

11) States that incarcerated pregnant persons who have used opioids prior to incarceration, either by admission or written documentation by a probation officer, or who are currently receiving methadone treatment, shall be offered medication assisted treatment with methadone or buprenorphine. (Pen. Code, § 3408, subd. (i).)

12) Requires an eligible incarcerated pregnant person or person who gives birth after incarceration in the prison to be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. At a minimum, the notice shall contain guidelines for qualification, the timeframe for application, and the process for appealing a denial of admittance to those programs, and if a community-based program is denied access to the prison, the reason for the denial shall be provided in writing to the incarcerated person within 15 working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. (Pen. Code, § 3408, subd. (j).)

13) Requires each incarcerated pregnant person to be referred to a social worker who shall do all of the following:

    a) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;

    b) Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,

    c) Oversee the placement of the newborn child. (Pen. Code, § 3408, subd. (k).)

14) Requires an incarcerated pregnant person to be temporarily taken to a hospital outside the prison for the purpose of giving childbirth and shall be transported in the least restrictive way possible, as specified. An incarcerated pregnant person shall not be shackled to anyone else during transport. An incarcerated pregnant person in labor or presumed to be in labor shall be treated as an emergency and shall be transported to the outside facility, accompanied by prison staff. (Pen. Code, § 3408, subd. (l).)

15) Allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. The support person may be an approved visitor or the prison's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. The approval for the support person shall be made by the administrator of the prison or that person's designee. If an incarcerated pregnant person's request for an elected support person is denied, reason for the denial shall be provided in writing to the incarcerated person within 15 working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person. (Pen. Code, § 3408, subd. (m).)

16) States that all pregnant and postpartum incarcerated persons shall receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. (Pen. Code, § 3408, subd. (n).)

17) States that an incarcerated pregnant person in labor and delivery shall be given the maximum level of privacy possible during the labor and delivery process. If a guard is present, they shall be stationed outside the room rather than in the room, absent extraordinary circumstances. If a guard must be present in the room, the guard shall stand in a place that grants as much privacy as possible during labor and delivery. A guard shall be removed from the room if a professional who is currently responsible for the medical care of a pregnant incarcerated person during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of the guard is medically necessary. (Pen. Code, § 3408, subd. (o).)

18) States that upon return to prison, the physician, nurse practitioner, certified nurse midwife, or physician assistant shall provide a postpartum examination within one week from childbirth and as needed for up to 12 weeks postpartum, and shall determine whether the incarcerated person may be cleared for full duty or if medical restrictions are warranted. Postpartum individuals shall be given at least 12 weeks of recovery after any childbirth before they are required to resume normal activity. (Pen. Code, § 3408, subd. (p).)

19) State that the rights provided for incarcerated persons by this section shall be posted in at least one conspicuous place to which all incarcerated persons have access. (Pen. Code, § 3408, subd. (q).)

20) States a person incarcerated in state prison who menstruates or experiences uterine or vaginal bleeding shall, upon request, have access to, and be allowed to use, materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons, at no cost to the incarcerated person. Any person incarcerated in state prison who is capable of becoming pregnant shall, upon request, have access to, and be allowed to obtain, contraceptive counseling and their choice of birth control methods, subject to the provisions of subdivision (b), unless medically contraindicated. (Pen. Code, § 3409, subd. (a).)

21) States that all birth control methods and emergency contraception approved by the United States Food and Drug Administration (FDA) shall be made available to incarcerated persons who are capable of becoming pregnant, with the exception of sterilizing procedures, as specified. (Pen. Code, § 3409, subd. (b)(1).)

22) States any incarcerated person who is capable of becoming pregnant shall be furnished by the facility with information and education regarding the availability of family planning services and their right to receive nondirective, unbiased, and noncoercive contraceptive counseling and services. (Pen. Code, § 3409, subd. (d).)

23) Requires CDCR to establish and implement a community treatment program under which women inmates sentenced to state prison, as specified, who have one or more children under the age of six years, shall be eligible to participate. The community treatment program shall provide for the release of the mother and child or children to a public or private facility in the community suitable to the needs of the mother and child or children, and which will provide the best possible care for the mother and child. In establishing and operating such program, the department shall have as a prime concern the establishment of a safe and wholesome environment for the participating children. (Pen. Code, § 3411.)

24) Requires CDCR to provide pediatric care in community treatment programs consistent with medical standards and, to the extent feasible, shall be guided by the need to provide the following:

   a) A stable, caregiving, stimulating environment for the children as developed and supervised by professional guidance in the area of child development;

   b) Programs geared to assure the stability of the parent–child relationship during and after participation in the program, to be developed and supervised by appropriate professional guidance. These programs shall, at a minimum, be geared to accomplish the following:

      i) The mother's mental stability;

      ii) The mother's familiarity with good parenting and housekeeping skills; and,

      iii) The mother's ability to function in the community, upon parole or release, as a viable member.

   c) The securing of adequate housing arrangements after participation in the program;

   d) The securing of adequate child care arrangements after participation in the program; and,

   e) Utilization of the least restrictive alternative to incarceration and restraint possible to achieve the objectives of correction and of this chapter consistent with public safety and justice. (Pen. Code, § 3412, subd. (a).)

25) Establishes criteria for admission and denial of placement in the community treatment program. (Pen. Code, § 3417.)

26) Establishes a State institution for the punishment, treatment, supervision, custody and care of females convicted of felonies to be known as "The California Institution for Women" (CIW) with the purpose of providing custody, care, protection, industrial, vocational, and other training, and reformatory help, for women confined therein. (Pen. Code, § 3200.)

27) States that upon the commitment or transfer of any woman to the institution it shall be the duty of the officer having custody of her or required to take custody of her, to deliver her to said institution, receiving therefor the fees payable for the transportation of prisoners to the state prisons and requires every woman so committed or transferred under this act shall be accompanied by a woman attendant from the place of commitment or transfer until delivered to said institution. (Pen. Code § 3400.)

28) Requires CDCR to provide pediatric care consistent with medical standards and, to the extent feasible, shall be guided by the need to provide the following:

29) States that at CIW, a record of the history and progress of every woman confined therein during the period of her confinement, and so far as practically possible, prior and subsequent thereto, and all judges, courts, officials and employees, district attorneys, sheriffs, chiefs of police and peace officers, shall furnish said institution with all data in their possession or knowledge relative to any inmate that said institution may request. If upon the arrest of any

woman it be discovered that she was theretofore an inmate of said institution, the institution shall be promptly notified of her arrest. (Pen. Code, § 3402.)

30) Requires that every woman committed to CIW be examined mentally and physically, and shall be given the care, treatment and training adapted to her particular condition. Such care, treatment and training shall be along the lines best suited to develop her mentality, character and industrial capacity; provided, however, no inmate shall be confined longer than the term of her commitment. (Pen. Code, § 3403.)

31) Prohibits a condition or restriction from being imposed upon the obtaining of an abortion by an incarcerated person, as specified. Impermissible restrictions include, but are not limited to, imposing gestational limits inconsistent with state law, unreasonably delaying access to the procedure, or requiring court-ordered transport. Incarcerated persons found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to state and federal law, and if determined to be eligible, shall be permitted to obtain an abortion after giving informed consent. (Pen, Code, § 3405, subd. (a).)

32) Requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities. BSCC shall review those standards biennially and make any appropriate revisions. The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and, personnel training. The standards include specific ones for pregnant inmates at the California Department of Corrections and Rehabilitation (CDCR) and in local adult and juvenile facilities. (Penal Code § 6030.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The Dignity for Incarcerated Women Act starts to change our approach regarding women in prison by ensuring that they are treated with dignity and equipping them with the tools, resources, and services they need to successfully return to their families and communities. AB 1225 recognizes that the very real and harmful impact of incarceration on women and families has been well documented. Preventing women who are incarcerated from meeting their most basic health needs is not only dehumanizing, humiliating, and inequitable, it's also dangerous.

   "Women are still the fastest growing population behind bars. The reprehensible experiences of women behind bars receive far less attention, even as the number of incarcerated women between 1980 and 2016 increased seven-fold. Women who are incarcerated often have very high rates of past traumatic experiences. 86% of women in jails and prisons reported being survivors of past sexual violence and 77% reported being survivors of domestic violence.

   "Over 60% of imprisoned women are mothers of children under age 18 and prior to their incarceration, most of those women are sole caregivers of their children. Criminal justice involvement and imprisonment has devastating impacts on the maternal-child bond with long-lasting implications. Incarcerated mothers often lose contact with their children due to far distances and the high expense of having family members visit them.

"In 2018, Dr. Weber worked on restoring dignity for incarcerated women with AB 2550. AB 1225 is a bill to build upon what Dr. Weber started. We need to do more in reducing trauma for incarcerated women."

2) **Incarcerated Women and Pregnant Persons**: CDCR provides several services for women and pregnant persons. Female Offender Programs and Services (FOPS) aims to provide safe and secure housing for female offenders with opportunities such as vocational and academic programs, substance abuse treatment, self-help programs, Career Technical Education, pre-release guidance and community betterment projects. CDCR established the office of FOPS/Special Housing (FOPS/SH) in July 2005, within the Division of Adult Institutions. This office manages and provides oversight to all female programs, in addition to five designated male and female institutions, fire camps and community programs. (https://www.cdcr.ca.gov/adult-operations/fops/.)

In addition, the Community Prisoner Mother Program (CPMP) is a community substance abuse treatment program where non-serious, nonviolent female offenders may serve a sentence up to six years. The CPMP has been in existence since 1985 and is mandated by Penal Code (PC) Section 3410. Women are placed in the program from any of the female institutions. Pursuant to PC 3410, program eligibility requires that the female offender have up to two children less than six years of age, have no active felony holds, nor any prior escapes. The female offender must sign a voluntary placement agreement to enter the program, followed by three years of parole. The CPMP facilities are not the property of CDCR, and a private contractor provides program services at our Pomona facility. The treatment program addresses substance issues, emotional functioning, self-esteem, parenting skills, and employment skills. (https://www.cdcr.ca.gov/adult-operations/community-prisoner-mother-program/.)

According to CDCR, the basic components of the CPMP are the following:

- Pregnant and/or parenting mothers and their children under six years of age are provided programs and support services to assist in developing the skills necessary to become a functioning, self-sufficient family that positively contributes to society.

- Individual Treatment Plans are developed for both the mother and child to foster development and personal growth. Program services focus on trauma-informed substance abuse prevention, parenting and educational skills.

- The program provides a safe, stable, and stimulating environment for both the mother and the child, utilizing the least restrictive alternative to incarceration consistent with the needs for public safety.

- Program goals facilitate the mother/child bond, reunite the family, enhance community reintegration, foster successful independent living, and enhance self-reliance and self-esteem. The resultant mission is to break the inter-generational chain of crime and social services dependency. (*Id.*)

This bill would establish several new provisions of law that would apply regardless of whether a female offender was housed within one of the secure housing units of the FOPS

program or enrolled in the CPMP program. First, it would prohibit an incarcerated woman from being placed in solitary confinement for purposes of medical observation. It would further require domestic violence counseling and parenting and lifestyle classes to be part of prenatal care visits for pregnant, incarcerated persons. In addition, it would strengthen the requirement in existing law that allows access to personal hygiene to address menstruation or uterine or vaginal bleeding upon an inmate's request. It would instead require CDCR to provide such items, even in the absence of such a request.

In regards to the prohibition on solitary confinement for medical observation, it may be worth considering whether it is necessary to make an absolute prohibition on solitary confinement. That measure may be necessary in some situations such as quarantine or mental health observation. It also may be the case that certain inmates would prefer to be isolated for a number of reasons. It may be worth clarifying that involuntary solitary confinement is prohibited, with appropriate exceptions.

This bill would add an additional service for postpartum mothers who are serving a sentence at a CDCR facility. It would require that CDCR place a newborn infant with a mother who has been discharged from a hospital following a successful delivery for a period of 18 months. It would require the newborn to reside with the mother at the facility in which the mother is serving the sentence for a period of 18 months. The bill would also require mother-infant visitation time, in addition to what may already be available, including weekends and overnights, for the purpose of visiting with the child. It is not clear that all female institutions are equipped to house newborns and infants. This bill may therefore require CDCR to construct new facilities or convert certain areas to be appropriate for housing such a population.

3) **Trauma-Informed Care**: Trauma-Informed Care (TIC) is an approach in the human service field that assumes that an individual is more likely than not to have a history of trauma. Trauma-Informed Care recognizes the presence of trauma symptoms and acknowledges the role trauma may play in an individual's life- including service staff. A trauma-informed approach to care acknowledges that health care organizations and care teams need to have a complete picture of a patient's life situation — past and present — in order to provide effective health care services with a healing orientation. Adopting trauma-informed practices can potentially improve patient engagement, treatment adherence, and health outcomes, as well as provider and staff wellness. It can also help reduce avoidable care and excess costs for both the health care and social service sectors. This bill would require that the care, treatment, and training that a woman who is recently admitted to a CDCR facility receives, is a TIC approach.

4) **Argument in Support**: According to the *California Legislative Women's Caucus*: "AB 1225 recognizes the different needs of incarcerated women. This bill would provide better trauma-informed care and health care services for women in prison, facilitate and strengthen communication with their families and children, and help them reintegrate into their communities once released. The goal of this bill is to help guarantee the safety and wellbeing of females in incarcerated settings.

"Women are still the fastest growing population behind bars. The reprehensible experiences of women behind bars receive far less attention, even as the number of incarcerated women between 1980 and 2016 increased seven-fold. Women who are incarcerated often have very

high rates of past traumatic experiences. 86% of women in jails and prisons reported being survivors of past sexual violence and 77% reported being survivors of domestic violence. We need to do more in reducing trauma for incarcerated women."

5) **Prior Legislation**:

a) AB 732 (Bonta), Chapter 321, Statutes of 2020, required specified medical treatment and services for county jail and state prison inmates who are pregnant, and requires that incarcerated persons be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

b) AB 2550 (Weber), Chapter 174, Statutes of 2018, prohibited male correctional officers from conducting pat-down searches on female inmates and from entering areas of the institution where female inmates may be in a state of undress.

c) SB 1433 (Mitchell), Chapter 311, Statutes of 2016, required that any person incarcerated in state prison who menstruates shall, upon request, have access to and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system.

d) SB 617 (Speier), of the 2005-2006 Legislative Session, would have required CDCR to house pregnant female prison inmates separately from other female inmates and be given appropriate health care and nutrition.

e) AB 2316 (Mazzoni), Chapter 965, Statutes of 2000, required that the California Research Bureau, in the California State Library, design and conduct a study of the children of the parents who are incarcerated in state prisons.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition (Co-Sponsor)
American College of Obstetricians and Gynecologists District Ix
California Legislative Women's Caucus
California Public Defenders Association (CPDA)

Opposition

None

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Date of Hearing: April 20, 2021
Counsel: Cheryl Anderson

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

AB 266 (Cooper) – As Introduced January 15, 2021

Motion to Reconsider

SUMMARY: Adds felony hate crimes to the list of violent felonies. Specifically, **this bill**:

1) Adds felony hate crimes to the list of violent felonies.

2) Finds and declares that violent offenses, as specified, merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

EXISTING LAW:

1) Defines a "violent felony" as any of the following:

   a) Murder or voluntary manslaughter;

   b) Mayhem;

   c) Rape or spousal rape accomplished by means of force or threats of retaliation;

   d) Sodomy by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;

   e) Oral copulation by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;;

   f) Lewd acts on a child under the age of 14 years, as defined;

   g) Any felony punishable by death or imprisonment in the state prison for life;

   h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

   i) Any robbery;

   j) Arson of a structure, forest land, or property that causes great bodily injury or that causes an inhabited structure or property to burn;

   k) Arson that causes an inhabited structure or property to burn;

l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person or of a child under the age of 14 years, as specified;

m) Attempted murder;

n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

p) Explosion of a destructive device which causes death or great bodily injury;

q) Kidnapping;

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

s) Continuous sexual abuse of a child;

t) Carjacking, as defined;

u) Rape, spousal rape, or sexual penetration, in concert;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes; and,

z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5, subd. (c).)

3) Provides that where one of the new offenses is one of the specified violent felonies, in addition and consecutive to any other prison terms, the court must impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the specified violent felonies. However, no additional term shall be imposed for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction. (Pen. Code, § 667.5, subd. (a).)

4) Provides that where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under realignment is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense, as defined, provided that no additional term shall be imposed under this subdivision for any prison term served

prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under realignment or any felony sentence that is not suspended. (Pen. Code, § 667.5, subd. (b).)

5) Defines "hate crime" as any criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

   e) Religion;

   f) Sexual orientation; and,

   g) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

2) Provides that it is a hate crime to violate or interfere with the exercise of civil rights, or knowingly deface, destroy, or damage property because of actual or perceived characteristics of the victim that fit the hate crime definition. (Pen. Code, § 422.6, subds. (a) and (b).)

3) Provides that a conviction for violating or interfering with the civil rights of another on the basis of actual or perceived characteristics of the victim that fit the hate crime definition shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. (Pen. Code, § 422.6, subd. (c).)

4) Makes any other hate crime that is not punishable by imprisonment in the state prison a wobbler, misdemeanor or county jail felony, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

   a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury;

   b) The crime against property causes damage in excess of nine hundred fifty dollars ($950); or,

c) The person charged with a crime under this section has been convicted previously of a hate crime or conspiracy to commit a hate crime, as specified. (Pen. Code, § 422.7)

5) Provides that the term for an offense, otherwise punishable as a county jail felony, must be served in state prison if the offense is on the violent felony list. (Pen. Code, § 1170, subd. (h)(3).)

6) Provides that a person who commits a felony that is a hate crime by virtue of the fact it was committed in whole or in part because of actual or perceived characteristics that fit the hate crime definition, or attempts to do so, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (a).)

7) Provides that a person who commits a felony that is a hate crime by virtue of the fact it was committed in whole or in part because of actual or perceived characteristics that fit the hate crime definition, or attempts to do so, except as specified, and who voluntarily acted in concert with another person in the commission of the crime shall receive an additional term of two, three, or four years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (b).)

~~8) Provides that a person who commits first degree murder that is a hate crime shall be punished by imprisonment in the state prison for life without the possibility of parole. (Pen. Code, § 190.03, subd. (a).)~~

~~9) States that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. (Cal. Const., Art. I, § 32.)~~

~~10) Specifies that the California Department of Corrections (CDCR) shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., Art. I, § 32.)~~

~~11) Limits the award of presentence conduct and post sentence worktime credits to 15 percent of actual confinement time on a violent felony prison term. (Pen. Code, § 2933.1.)~~

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I[n] California's most densely populated areas violent acts of hate are at their highest rates since 2008. These increases are more prominent against those in the Jewish, Asians, Middle Eastern and Transgender communities.

"The ideology of hate can take years of indoctrination to build up driving an individual to commit acts of violence based on intolerance. Conversely, it could take years through proper rehabilitation to rid an individual of their hatred. In the worse cases of violence, the perpetrator needs more time for rehabilitation, not less."

2) **Hate Crime Laws:** Hate crimes, referred to in some jurisdictions as "bias crimes," are generally defined as crimes that are "committed not out of animosity toward the victim as an

individual, but out of hostility toward the group to which the victim belongs." (Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act* (1994) 17 Harv. Women's L.J. 157, 159.) Looking at a more specific definition, a hate crime is defined as "a crime in which the defendant intentionally selects a victim because of the *actual or perceived* race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." (Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 Section 280003 (1994) emphasis added (codified in part at 28 U.S.C. Section 994 (1994).)

According to Los Angeles County's 2019 Hate Crime Report, hate crimes have been rising incrementally in the last several years. (https://www.nbclosangeles.com/news/local/la-county-report-hate-crimes-increase/2448765/ [as of March 31, 2021].) In 2019, the county had 524 reported hate crimes, compared to 523 in 2018. "This is the largest number reported since 2009. For the past 6 years, hate crimes have been trending upwards and since 2013 there has been a 36% rise." (https://hrc.lacounty.gov/wp-content/uploads/2020/10/2019-Hate-Crime-Report.pdf [as of March 31, 2021] at p. 8.)

3) **Three Strikes Implications**: In general, violent felonies as specified in Penal Code 667.5 are considered "strikes" for purposes of California's Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012 specifies that only the crimes that were included in the "violent felonies" list prior to November 7, 2016 shall be treated as strikes for purposes of the Three Strikes law.

> "Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012." (Pen. Code, § 667.1.)

This bill would not make felony hate crimes a "strike" under California law because the bill would not amend the date which defines the list of strikes to include the provisions of this bill.

4) **Credit Limitations for Violent Felonies with State Prison Sentences**: Penal Code section 2933.1, subdivision (c) provides, "Notwithstanding Section 4019 [which authorizes presentence conduct credit] or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a)." Penal Code section 2933.1, subdivision (a) provides, "Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933 [which authorizes post-sentence worktime credit.

Proposition 57 also gave incarcerated persons in state prison the ability to earn additional credits for good behavior and for approved rehabilitative or educational achievements. A violent felony limits those credits to 20 percent of the incarceration time. (See https://www.cdcr.ca.gov/blog/proposition-57-credit-earning-for-inmates-frequently-asked-questions-faq/ [as of April 7, 2021].)

Though this bill would not make felony hate crimes strikes, it would add them to the list of violent felonies in Penal Code section 667.5, subdivision (c). This would make all felony hate crimes punishable in state prison, even those that would have otherwise been punishable as county jail felonies. (Pen. Code, § 1170, subd. (h)(3) [provides that the term for an offense, otherwise punishable as a county jail felony, must be served in state prison if the offense is on the violent felony list].) As such, they would be subject to violent felony credit limitations. This would be so even if the felony hate crime involved no actual physical violence or injury. (See e.g., Pen. Code, § 422.7, subd. (b) [property damage in excess of $950].)

5) **Proposition 57**: Former Governor Brown "developed Proposition 57, which "increased parole chances for felons convicted of nonviolent crimes, as defined in state law, and gave them more opportunities to earn sentence-reduction credits for good behavior." (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020) [as of March 31, 2011].) The Proposition received overwhelming support from California voters. (*Ibid.*; https://www.cdcr.ca.gov/proposition57/ [as of March 31, 2021].)

As explained by the California Department of Corrections and Rehabilitation (CDCR):

> Under Proposition 57, CDCR incentivizes inmates to take responsibility for their own rehabilitation with credit-earning opportunities for sustained good behavior, as well as in-prison program and activities participation. Proposition 57 also moves up parole consideration of nonviolent offenders who have served the full-term of the sentence for their primary offense and who demonstrate that their release to the community would not pose an unreasonable risk of violence to the community. These changes will lead to improved inmate behavior and a safer prison environment for inmates and staff alike, and give inmates skills and tools to be more productive members of society once they complete their incarceration and transition to supervision.

(https://www.cdcr.ca.gov/proposition57/, *supra*.) For purposes of nonviolent parole consideration under Proposition 57, violent offenses are those specified in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, §§ 3490, subd. (c) & 3495, subd. (c) [for purposes of Proposition 57, a "['v]iolent felony' is a crime or enhancement as defined in subdivision (c) of section 667.5"]; see also § 667.5, subd. (c).)

This bill would make all felony hate crimes violent offenses under Penal Code section 667.5, subdivision (c) and subject to a state prison term, including offenses otherwise punishable as a county jail felony. (Pen. Code, § 1170, subd. (h)(3).) Accordingly, all felony hate crimes would be excluded from CDCR's nonviolent parole consideration process. This would be so even if the felony hate crime involved no actual physical violence or injury. (See e.g., Pen. Code, § 422.7, subd. (b) [property damage in excess of $950].) As discussed *post*, it would also limit the sentence-reduction credits that an incarcerated person could earn.

6) **Credit Limitations for Violent Felonies with State Prison Sentences**: Penal Code section 2933.1, subdivision (c) provides, "Notwithstanding Section 4019 [which authorizes presentence conduct credit] or any other provision of law, the maximum credit that may be

earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a)." Penal Code section 2933.1, subdivision (a) provides, "Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933 [which authorizes post-sentence worktime credit.

Proposition 57, as referenced *ante*, also gave incarcerated persons in state prison the ability to earn additional credits for good behavior and for approved rehabilitative or educational achievements. But a violent felony limits those credits to 20 percent of the total incarceration time. (See https://www.cdcr.ca.gov/blog/proposition-57-credit-earning-for-inmates-frequently-asked-questions-faq/ [as of April 7, 2021].)

Though this bill would not make felony hate crimes strikes, it would add them to the list of violent felonies in Penal Code section 667.5, subdivision (c). This would make all felony hate crimes punishable in state prison, even those that would have otherwise been punishable as county jail felonies. (Pen. Code, § 1170, subd. (h)(3) [provides that the term for an offense, otherwise punishable as a county jail felony, must be served in state prison if the offense is on the violent felony list].) As such, they would be subject to violent felony credit limitations. Again, this would be so even if the felony hate crime involved no actual physical violence or injury. (See e.g., Pen. Code, § 422.7, subd. (b) [property damage in excess of $950].)

7) **Proposition 20**: Proposition 20 was a ballot initiative which, among other things, would have defined 51 crimes and sentence enhancements as violent in order to exclude them from Proposition 57's nonviolent offender parole program. Hate crimes were on this list. Californians voters overwhelming rejected Proposition 20, by almost 62 percent. (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020), *supra.*)

8) **Prison Overcrowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

CDCR's February 2021 monthly report on the prison population notes that the state prison population is 105.4% of design capacity. (https://www.cdcr.ca.gov/3-judge-court-update/ [as of March 31, 2021].)

Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

Notably, Proposition 57, as discussed *ante*, was a response to federal court orders requiring California to implement measures to reduce its prison population. (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) argument in favor of Prop. 57, p. 58.)

Creating new violent felonies, which will then be excluded from Proposition 57's nonviolent parole process and impose credit limitations, is inconsistent with the goal of maintaining a durable solution to prison overcrowding.

9) **Argument in Support**: According to the Office of the San Diego County District Attorney: "The District Attorney's Office recognizes the distinctive fear and stress typically suffered by victims of hate crimes, the potential for reprisal and escalation of violence, and the far-reaching negative consequences that hate crimes have on our community. Our Office considers hate crimes to be very serious, and is committed to prosecuting hate crimes aggressively through vertical prosecution by the Hate Crimes Unit within the Special Operations Division.

"In 2019 and 2018, the District Attorney's Office filed hate crimes charges against 30 people. The number represents a continued increase from cases filed in previous years. Historically, race-based hate crimes make up between 50- and 60-percent of all hate crimes in the County. Earlier this year, our Office set up a new online form and hotline where the public can report suspected hate crimes they've witnessed. The tool is partly in response to reports of hate-related incidents aimed at the Asian community across the nation in the wake of COVID-19 pandemic, as well as the arrest of a 66-year-old man in San Diego, who physically attacked a man he perceived to be Chinese-American."

10) **Argument in Opposition**: According to the California Public Defenders Association, "While CPDA stands in solidarity with communities of color and immigrants who bear the brunt of hate crimes, increasing punishment is not a solution to this societal problem. In fact, increasing punishment is counterproductive. We have already witnessed how the failed policy of mass incarceration has made our communities less safe and diverted scarce resources from schools, health care, mental health treatment and housing to instead building and filling more prisons.

"AB 266 would make all hate crimes violent. But many hate crimes are not, in themselves, violent. The most obvious examples is vandalism by writing racial slurs that results in 'property … damage in excess of nine hundred fifty dollars.' This is a hate crime but it is not violent.

"AB 266 is not necessary. Under the existing Penal Code sections '422' series of statutes, hate crimes do get extra punishment. Pursuant to Section 422.7, they are generally considered aggravating factors for punishment, and pursuant to Section 422.75 they generally get

enhanced punishment. For example, great bodily injuries are already punishable under Penal Code section 667.5, subdivision (b)(8).

"Other obvious examples are found by considering the breadth of Penal Code section 422.75, subdivision (a), which says that (except for crimes listed in Penal Code section 422.7), 'a person who commits [or attempts to commit] a felony that is a hate crime shall receive an additional term of one, two, or three years in the state prison.'"

11) **Related Legislation**:

a) AB 600 (Arambula), would clarify that "immigration status" is included in the scope of a "hate crime" based on "nationality," and provides that this is declarative of existing law. AB 600 is pending before the Assembly Committee on Appropriations.

b) AB 292 (Stone), would direct the California Department of Corrections and Rehabilitation (CDCR) to use its constitutional authority to award custody credits to specified inmates serving a sentence for a violent felony or a nonviolent second- or third-strike felony at a rate of a one day credit for every day in custody (50% credit). AB 292 is pending before the Assembly Committee on Appropriations.

c) AB 28 (Chau), would expand the definition of hate crime, making a criminal act committed, in whole or in part, because of actual or perceived characteristics of a person other than the victim a hate crime. AB 28 is pending in this committee.

d) AB 1356 (Bauer-Kahan), would elevate the penalty for a hate crime, making it an alternate county jail felony or misdemeanor, among other things. AB 1356 is scheduled to be heard in this committee on April 13, 2021.

e) AB 1440 (Bauer-Kahan), would increase the penalty for a hate crime, making it an alternate county jail felony or misdemeanor. AB 1440 is pending in this committee.

12) **Prior Legislation**:

a) AB 786 (Kiley), of the 2019-2020 Legislative Session, would have added the crime of human trafficking, as specified, to the list of violent felonies and made it a "strike" under California's Three Strikes Law. AB 786 failed passage in this committee.

b) AB 197 (Kiley), of the 2017-2018 Legislative Session, would have added several offenses to the list of violent felonies and specifies that they are "strikes" under California's Three-Strikes Law. AB 197 was never heard in this committee.

c) AB 67 (Rodriguez), of the 2017-2018 Legislative Session, would have added human sex trafficking and specified sexual assault offenses to the list of violent. AB 67 was held on Suspense File in the Assembly Appropriations Committee.

d) AB 27 (Melendez), of the 2017-2018 Legislative Session, would have added specified sexual assault offenses to the list of violent felonies codified in the Penal Code. AB 27 was held on Suspense File in the Assembly Appropriations Committee.

e) SB 75 (Bates), of the 2017-2018 Legislative Session, would have added vehicular manslaughter, human trafficking involving a minor, assault with a deadly weapon, solicitation of murder, rape under various specified circumstances, and grand theft of a firearm as violent felonies for purposes of imposing specified sentence enhancements. SB 75 was held in the Senate Public Safety Committee.

f) SB 652 (Nielsen), of the 2017-2018 Legislative Session, would have defined the unlawful possession of a firearm by a person previously convicted of a violent felony. SB 652 was held in the Senate Public Safety Committee.

g) SB 770 (Glazier), of the 2017-2018 Legislative Session, would have added human trafficking, elder and dependent adult abuse, assault with a deadly weapon, rape under specified circumstances, discharge of a firearm at an occupied building, and specified crimes against peace officers and witnesses, as violent felonies. SB 770 was held in the Senate Public Safety Committee.

h) SB 1269 (Galgiani), of the 2015-2016 Legislative Session, would have included human trafficking in the list of violent felonies, for which Three Strike sentencing, sentencing credit limits, enhancements for prior violent felony prison terms and other consequences apply. SB 1269 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California State Sheriffs' Association
Los Angeles School Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California Public Defenders Association (CPDA)
San Francisco Public Defender

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