California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, April 27, 2021
1:30 p.m. -- State Capitol, Room 4202

Part II

AB 958 (Gipson) – AB 1540 (Ting)

Date of Hearing: April 27, 2021
Counsel: Matthew Fleming

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

AB 958 (Gipson) – As Amended March 25, 2021

As Proposed to be Amended in Committee

SUMMARY: Requires all law enforcements agencies to maintain a policy that prohibits participation in a law enforcement "clique" and makes a violation of that policy grounds for termination. Specifically, **this bill**:

1) Defines "law enforcement agency" to mean any department or agency of the state or any local government, special district, or other political subdivision thereof, that employs any peace officer, as specified, that provides uniformed police services to the public.

2) Defines "law enforcement clique" means a group of peace officers within a law enforcement agency that engage in a pattern of rogue on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating evidence, destruction of evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

3) States that each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement clique.

4) States that the policy shall provide that it is grounds for termination for a peace officer to participate in a law enforcement clique and willfully promote, further, or assist the clique in any illicit activity with knowledge that its members engage in, or have engaged in, a pattern of activity described above.

5) States that except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement clique to another law enforcement agency conducting a pre-employment background investigation of that former peace officer.

6) States that any person who has been previously terminated from employment as a peace officer for participation in a law enforcement clique is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer.

EXISTING LAW:

1) States that the following persons are disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county, or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:

   a) Any person who has been convicted of a felony;

   b) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state;

   c) Any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law;

   d) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent, as specified;

   e) Any person who has been found not guilty by reason of insanity of any felony;

   f) Any person who has been determined to be a mentally disordered sex offender, as specified; and,

   g) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution, as specified.

2) Requires each class of public officers or employees declared by law to be peace officers shall meet minimum standards, including that they be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer. (Gov. Code, § 1031, subd. (f).)

3) Establishes the Commission on Peace Officer Standards and Training (POST) to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites. (Pen. Code, §§ 830-832.10 and 13500 et seq.)

4) Establishes the Peace Officer Bill of Rights (POBOR). (Gov, Code, § 3300.)

5) States that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance

procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination. (Gov, Code, § 3304 subd. (a).)

6) Provides no punitive action nor denial of promotion on grounds other than merit shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal. (Gov, Code, § 3304 subd. (b).)

7) States no chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police. (Gov, Code, § 3304 subd. (c).)

8) Except as specified, no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

   a) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

   b) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

   c) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

   d) If the investigation involves more than one employee and requires a reasonable extension.

   e) If the investigation involves an employee who is incapacitated or otherwise unavailable.

   f) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil

action is pending.

g) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

h) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer. (Gov, Code, § 3304 subd. (d).)

9) Provides where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter. (Gov, Code, § 3304 subd. (e).)

10) States if, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline. (Gov, Code, § 3304 subd. (f).)

11) Specifies, notwithstanding the one-year time period specified, an investigation may be reopened against a public safety officer if both of the following circumstances exist;

a) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

b) One of the following conditions exist:

i) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

ii) The evidence resulted from the public safety officer's pre-disciplinary response or procedure. (Gov, Code, § 3304 subd. (g).)

12) States that the Legislature hereby finds and declares that the rights and protections provided to peace officers under this the POBAR constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California. (Gov, Code, § 3301.)

13) States that when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,

written reprimand, or transfer for purposes of punishment:

a) Specifies that the interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

b) States that the public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

c) Provides that the public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

d) States that the interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

e) Provides that the public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

f) Specifies that no statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

    i) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including specified disciplinary actions.

    ii) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

    iii) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of

the officer.

iv) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

g) States that the complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

h) Provides that if prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

i) States that upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. Specifies that this section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

j) Provides that no public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances. (Gov, Code, § 3303.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "At the very basic level, every single law enforcement department should prohibit the participation of any of their officers from being in a gang – outside or inside of the workplace. This bill is about proactively rooting out "bad apples" including those who participate, formally or informally, in a type of unacceptable behavior that is damaging to not only our community members, but to the reputation of law enforcement as a whole. Allowing this activity creates an impediment to building and preserving trust between California communities and law enforcement. AB 958 will ensure

that law enforcement agencies have policies in place to terminate any officer who they find out to be a participant in a police gang."

2) **Law Enforcement Gangs and Cliques:** According to the author, only one law enforcement department in California – the Los Angeles County Sheriff's Office, the sponsor of this bill – has a policy against officer participation in an inner departmental "clique" or gang. Reports about gangs within the LA county sheriff have been widely reported:

- "Los Angeles Deputy Says Colleagues are Part of Violent Gang" Dazio, NBC, August ,4 2020, available at: https://www.nbclosangeles.com/news/local/gang-los-angeles-county-sheriffs-deputies-executioners-compton/2407924/, [as of April 21, 2021].)

- "In L.A. County, Gangs Wear Badges" Cheney-Rice, New York Magazine, September 4, 2020, https://nymag.com/intelligencer/2020/09/l-a-county-sheriffs-department-has-a-gang-problem.html, [as of April 21, 2021].)

- "Los Angeles Sheriff's deputies say gangs targeting 'young Latinos' operate within department," CBS News This Morning, February 2021, available at: https://www.cbsnews.com/news/los-angeles-sheriffs-deputies-gangs-young-latinos/, [as of April 21, 2021].)

- "A New Lawsuit Describes a Violent Gang in LA County. Its Members Are Deputy Sheriffs." P.R. Lockhart, Vox Media, October 11, 2019, available at: vox.com/identities/2019/10/11/20910315/banditos-los-angeles-sheriff-department-lawsuit-gangs, [as of April 21, 2021].)

Allegations of malicious behavior by gangs formed within law enforcement agencies has not been strictly limited to the Los Angeles County Sheriff, (*see e.g.* "Vallejo Police Launch Independent Probe Into 'Badge Bending' Allegations," NBC Bay Area, July 31, 2020, available at: https://www.nbcbayarea.com/news/local/north-bay/vallejo-police-launch-independent-probe-into-badge-bending-allegations/2336588/, [as of April 21, 2021]. However, it does appear to be the agency with the most prolific problem. Recently, the Center for Juvenile Law & Policy at Loyola Law School in Los Angeles released a detailed, comprehensive report about the "fifty year history" how sheriff deputy gangs have negatively impacted policing in Los Angeles and infected the fairness of legal proceedings in Los Angeles Superior Court. ("Fifty Years of 'Deputy Gangs' in the Los Angeles County Sheriff's Department: Identifying Root Causes and Effects to Advocate for Meaningful Reforms," Center for Juvenile Law & Policy LMU Loyola Law School, January 2021, available at: https://lmu.app.box.com/s/ho3rp9qdbmn9aip8fy8dmmukjjgw5yyc, [as of April 21, 2021].) The report made a variety of policy recommendations for the Los Angeles Sheriff Department to deal with the problem of law enforcement gangs and their unlawful behavior, the first of which was to enforce a policy prohibiting deputies from participating in subgroups that violate the rights of others or have violated the rights of others in the past. This bill would require all law enforcement agencies in the state to adopt a policy prohibiting participation in law enforcement "cliques," and would provide that it is grounds for termination for a peace officer to participate in a clique and willfully promote, further, or assist the clique in any illicit activity.

3) **Committee Amendments**: As introduced this bill would have more broadly defined the behavior that can constitute a law enforcement clique. It also would have stated that mere participation in a law enforcement clique would be ground for termination even if the participation did not involve engaging in any illegal activity. The amendments proposed by the committee clarify the conduct that can be considered as falling within the purview of a law enforcement clique and require active participation in the clique as well as some kind of behavior that promotes, further, or assists the clique in illicit activity in order to be subject to termination.

4) **Argument in Support**: According to the *California Public Defenders Association*: "AB 958 would define a law enforcement clique, a group of law enforcement officers within an agency that engages in a pattern of specified unlawful or unethical on-duty behavior, and would require law enforcement agencies, as specified, to have a policy prohibiting law enforcement cliques and making participation in a law enforcement clique grounds for termination. The bill would require an agency to disclose an officer's termination for involvement in a law enforcement clique to another law enforcement agency conducting a preemployment background investigation of that officer, as specified. The bill would also make a person who has been terminated from employment as a peace officer for involvement with a law enforcement clique ineligible to be a peace officer.

"Law enforcement gangs or cliques have long been a problem for law enforcement and for the communities they police. As far back the 1980s members of the Los Angeles Sheriff's Department were identified as members of the Viking gang. In 1988, one year after joining the Vikings, deputy Paul Tanaka was named in a wrongful death suit that the LASD settled for almost $1 million; the case involved Tanaka's shooting of a young Korean man. A Sheriff's Deputy told the Los Angeles Times that invitation to join the Vikings was considered prestigious, but also meant "you keep your mouth shut and obey the code of silence" about illegal activity by other deputies. Despite alleged efforts by top officials, gang membership still pervades many law enforcement agencies.

"As recently as this past year, there was an investigation into a gang within the Los Angeles Sheriff's Department known as the Banditos who were involved in an off-duty shooting. A second gang, the Executioners has been responsible for high-profile shootings and out-of-policy beatings.

"These law enforcement gangs are dangerous and violent. No law enforcement officer who is a member of a gang or clique should be permitted to carry a badge and serve the communities of this state. These gang members disparage law enforcement and destroy any prospect of building bridges with community members."

5) **Related Legislation**:

a) AB 60 (Salas), would require a peace officer's certificate to be suspended, revoked, or canceled when the person is ineligible to be a peace officer or when the person has been subject to a sustained termination for serious misconduct, as defined, on or after January 1, 2022. AB 60 is pending in the Assembly Public Safety Committee.

b) AB 655 (Kalra), would require public agencies employing peace officers to investigate current and prospective peace officers regarding engagement in hate groups, participation

in hate group activities, or public expressions of hate, as specified, and provides that certain findings of those investigations would constitute grounds for denial or termination of employment as a peace officer. AB 655 is pending in the Assembly Appropriations Committee.

c) SB 2 (Bradford), would grant new powers to the Commission on Peace Officer Standards and Training (POST) to investigate and determine peace officer fitness and to decertify officers who engage in "serious misconduct" and would make changes to the Bane Civil Rights Act to limit immunity as specified. SB 2 is set for hearing on April 27 in the Senate Judiciary Committee.

6) **Prior Legislation**:

a) SB 731 (Bradford), of the 2019-2020 Legislative Session, would have increased peace officer accountability and created a means of decertifying officers who engage in serious misconduct. SB 731 died without a hearing on the Assembly floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Department (sponsor)
California Public Defenders Association (CPDA)

Opposition

None

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

Amended Mock-up for 2021-2022 AB-958 (Gipson (A))

Mock-up based on Version Number 98 - Amended Assembly 3/25/21
Submitted by: Matthew Fleming, Assembly Committee on Public Safety

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Law enforcement cliques have been identified within California law enforcement agencies, undermining California's movement to enhance professional standards of policing throughout the state. Law enforcement cliques have been recognized by the Los Angeles Sheriff's Department as damaging to the trust and reputation of law enforcement throughout California.

(b) A law enforcement clique is a group of law enforcement officers within an agency that engage in a pattern of rogue on-duty behavior that violates the law or fundamental principles of professional policing.

(c) Building and preserving trust between California communities and law enforcement agencies, and protecting the integrity of law enforcement as an institution will require agencies to proactively root out "bad apples" including those who participate, formally or informally, in this type of behavior.

(d) Law enforcement agencies must support and promote peer intervention in instances of officer misconduct, including reporting officers suspected of involvement in law enforcement cliques, and must hold those officers accountable through proportionate disciplinary measures when misconduct is proven.

(e) Trust between our communities and law enforcement is dependent on an institutional reconciliation of the historical traumas perpetrated by law enforcement cliques.

SEC. 2. Section 1029 of the Government Code is amended to read:

1029. (a) Except as provided in subdivision (b), (c), or (d), each of the following persons is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city

and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:

(1) Any person who has been convicted of a felony.

(2) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state.

(3) Any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law.

(4) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.

(5) Any person who has been found not guilty by reason of insanity of any felony.

(6) Any person who has been determined to be a mentally disordered sex offender pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(7) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution as provided in Section 3051 of the Welfare and Institutions Code.

(8) Any person who has been previously terminated from employment as a peace officer for participation in a law enforcement clique, pursuant to Section 13670 of the Penal Code.

(b) (1) A plea of guilty to a felony pursuant to a deferred entry of judgment program as set forth in Sections 1000 to 1000.4, inclusive, of the Penal Code shall not alone disqualify a person from being a peace officer unless a judgment of guilty is entered pursuant to Section 1000.3 of the Penal Code.

(2) A person who pleads guilty or nolo contendere to, or who is found guilty by a trier of fact of, an alternate felony-misdemeanor drug possession offense and successfully completes a program of probation pursuant to Section 1210.1 of the Penal Code shall not be disqualified from being a peace officer solely on the basis of the plea or finding if the court deems the offense to be a misdemeanor or reduces the offense to a misdemeanor.

(c) Any person who has been convicted of a felony, other than a felony punishable by death, in this state or any other state, or who has been convicted of any offense in any other state which would have been a felony, other than a felony punishable by death, if committed in this state, and who demonstrates the ability to assist persons in programs of rehabilitation may hold office and

be employed as a parole officer of the Department of Corrections or the Department of the Youth Authority, or as a probation officer in a county probation department, if that person has been granted a full and unconditional pardon for the felony or offense of which they were convicted. Notwithstanding any other provision of law, the Department of Corrections or the Department of the Youth Authority, or a county probation department, may refuse to employ that person regardless of their qualifications.

(d) Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense.

(e) Nothing in this section shall be construed to prohibit any person from holding office or being employed as a superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, if at the time of the person's hire a prior conviction of a felony was known to the person's employer, and the class of office for which the person was hired was not declared by law to be a class prohibited to persons convicted of a felony, but as a result of a change in classification, as provided by law, the new classification would prohibit employment of a person convicted of a felony.

SEC. 3. Section 13670 is added to the Penal Code, to read:

13670. (a) For purposes of this section:

(1) "Law enforcement agency" means any department or agency of the state or any local government, special district, or other political subdivision thereof, that employs any peace officer, as described in Section 830~~, that provides uniformed police services to the public~~.

(2) "Law enforcement clique" means a group of peace officers within a law enforcement agency that engage in a pattern of rogue on-duty behavior that **intentionally** violates the law or fundamental principles of professional policing, including, but not limited to, **the persistent practice of** unlawful detention~~,~~ **or** use of excessive force **in circumstances where it is known to be unjustified**, falsifying police reports, fabricating evidence, **destruction of evidence,** targeting persons for enforcement based solely on protected characteristics of those persons, theft, **unauthorized** use of alcohol or drugs on duty, **unlawful or unauthorized** protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

(b) Each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement clique~~, and which makes a violation of that~~ **The** policy **shall provide that it is** grounds for termination **for a peace officer to participate in a law enforcement clique and willfully promote, further, or assist the clique in any illicit activity with knowledge that its members engage in, or have engaged in, a pattern of activity described above.**

(c) Except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement clique to another law enforcement agency conducting a preemployment background investigation of that former peace officer.

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

Date of Hearing: April 27, 2021
Counsel: David Billingsley

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

AB 1165 (Gipson) – As Introduced February 18, 2021

SUMMARY: Prohibits the use of pepper spray and other chemical agents in juvenile detention facilities. Specifically, **this bill**:

1) Specifies that a chemical agent shall not be used or stored inside, or on the grounds of, a juvenile facility.

2) Prohibits an entity that manages, operates, or owns a juvenile facility from purchasing, renting, acquiring, owning, or storing a chemical agent.

3) States that an entity that manages, operates, or owns a juvenile facility shall dispose of all chemical agents in its possession on or before December 21, 2022, and shall notify the Board of State and Community Corrections (BSCC) when all chemical agents in its possession have been disposed.

4) Defines the following terms for purposes of this bill:

   a) "Chemical agent" means a chemical-based agent designed to debilitate or incapacitate a person, including, but not limited to, any of the following:

      i) Phenacyl chloride or chloroacetophenone gas, commonly known as CN gas, tear gas, or mace;

      ii) 2-chlorobenzalmalononitrile or orthochlorobenzalmalononitrile gas, commonly known as CS gas;

      iii) Dibenzoxazepine, commonly known as CR gas or DBO;

      iv) Oleoresin capsicum spray, commonly known as OC spray, capsaicin spray, capsicum spray, or pepper spray; or

      v) Any lachrymatory agent or lachrymator that causes irritation, a temporary burning sensation, bronchoconstriction, nausea, vomiting, inflammation of mucous membranes, blepharospasm, inflammation of eyes, or other systemic effects including dizziness, disorientation, panic, or loss of control of motor activity.

   b) "Juvenile facility" means any of the following:

      i) A juvenile hall, as described in Section 850;

ii) A juvenile camp or ranch;

iii) A facility of the Department of Corrections and Rehabilitation, Division of Juvenile Justice;

iv) A regional youth educational facility;

v) A youth correctional center;

vi) A juvenile regional facility; or

vii) Any other local or state facility used for the confinement of minors or wards.

EXISTING LAW:

1) States that minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public. (Welf. & Inst. Code, § 202, subd. (c).)

2) Specifies that minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. (Welf. & Inst. Code, § 202, subd. (c).)

3) States that when the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community. (Welf. & Inst. Code, § 202, subd. (c).)

4) Provides that the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment. (Welf. & Inst. Code, § 851.)

5) In order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that those wards may be kept under direct supervision of the court, and in order to more advantageously apply the salutary effect of a safe and supportive home and family environment upon them, and also in order to secure a better classification and segregation of those wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self–discipline in those wards, juvenile ranches or camps may be established, as provided in this article. (Welf. & Inst. Code, § 880.)

6) States that the juvenile facility administrator, in cooperation with the responsible physician, shall develop and implement written policies and procedures for the use of force, which may include chemical agents. Force shall never be applied as punishment, discipline or treatment. (Code of Regulations, Title 15, § 1357.)

7) Requires juvenile facilities that authorize chemical agents as a force option to include policies and procedures that:

   a) Identify who is approved to carry and/or utilize chemical agents in the facility and the type, size and the approved method of deployment for those chemical agents;

   b) Mandate that chemical agents only be used when there is an imminent threat to the youth's safety or the safety of others and only when de-escalation efforts have been unsuccessful or are not reasonably possible;

   c) Outline the facility's approved methods and timelines for decontamination from chemical agents. This shall include that youth who have been exposed to chemical agents shall not be left unattended until that youth is fully decontaminated or is no longer suffering the effects of the chemical agent;

   d) Define the role, notification, and follow-up procedures required after use of force incidents involving chemical agents for medical, mental health staff and parents or legal guardians; and,

   e) Provide for the documentation of each incident of use of chemical agents, including the reasons for which it was used, efforts to de-escalate prior to use, youth and staff involved, the date, time and location of use, decontamination procedures applied and identification of any injuries sustained as a result of such use. (Code of Regulations, Title 15, § 1357, subd. (b)(1)-(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Many youth in facilities have come from underserved communities that have experienced intergenerational trauma while facing poverty and violence, and they enter a system where they are met with more brutality. In settings meant to be rehabilitative, staff should already be equipped with positive behavioral management and de-escalation techniques that don't rely on a tool that creates undeniable rifts in relationships between staff and youth. AB 1165 will simply bring California up to speed with reforms already made in the majority of states across the U.S., to put the well-being and health of youth in facilities first."

2) **Pepper Spray**: Pepper spray, or oleoresin capsicum (OC) spray, is a type of chemical restraint that contains capsaicinoids extracted from the resin of hot peppers. According to a report published by the National Institute of Justice, pepper spray, "incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes…and temporarily restricting breathing to short, shallow breaths. (http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf)

   In *U.S. v. Neill* (1999), 166 F.3rd 943, the 9th Circuit Court of Appeal held that, "Pepper spray qualifies as a 'dangerous weapon' because it may cause 'serious injury,' namely 'extreme physical pain or the protracted impairment of a function of a bodily member, organ

or mental faculty'...."

3) **Purpose of California's Juvenile Justice System:** The juvenile justice system in California is intended to promote rehabilitation and seeks to further the best interest of the minor.

"Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (Welf. & Inst. Code, § 202, subd. (c).)

California law also emphasizes the distinction between juvenile halls and adult penal facilities.

". . ., the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment." (Welf. and Inst. Code, § 851.)

4) **Use of Pepper Spray in Juvenile Facilities:** While pepper spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use is not common in juvenile correctional agencies. There is concern about the health hazards of pepper spray and concern about the negative impact on staff-youth relationships, the key to successful juvenile rehabilitative programming. Very few states authorize its use and in the states that allow its use in policy, most prohibit the use except as a last resort and with many conditions and few facilities put it into practice. The chemical is banned for use in juvenile facilities in 35 states.

The Council of Juvenile Corrective Administrators (Council) explored the use of pepper spray in juvenile facilities in an issue brief published in 2011. The Council concluded that overreliance on restraints, whether they are chemical, physical, mechanical or other, compromised relationships between staff and youths, one of the critical features of safe facilities. (http://cjca.net/wp-content/uploads/2018/02/CJCA.Issue_.Brief_.OCSpray.pdf) The issue brief examined the policies of states regarding use of pepper spray in juvenile facilities and reviewed studies on the use of pepper spray. The Council noted that while few academic studies have focused specifically on pepper spray use in juvenile settings, recent research on other types of restraint use (physical and mechanical) in juvenile confinement settings shows that applying restraints disrupts correctional climates by creating anger and feelings of unfair use of authority, in addition to negatively impacting staff. One recent study found that restraints are often applied as punishment rather than in response to immediate threats of violence. Youth in juvenile facilities have described incidents of restraint as causing physical and emotional pain. Another study found that facilities with high numbers of restraint incidents are more likely to have higher rates of safety problems, including youth and staff injury, suicidal behavior, youths injured by staff and fear among youths. (*Id.*)

Within California, several counties have already eliminated chemical agents in juvenile facilities. On February 12, 2019, the Los Angeles Board of Supervisors voted to phase out the use of pepper spray in juvenile facilities. On June 15, 2020, Attorney General Xavier Becerra issued a statement indicating support for legislation that forbids "the use of pepper

spray against children in juvenile detention. (https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts)

5) **Potential Concerns About Prohibiting the Use of Chemical Restraints in Juvenile Facilities:** The following are potential concerns related to prohibiting the use of chemical restraints in juvenile facilities:

   a) Eliminating the use of pepper spray will increase reliance on physical force, as opposed to de-escalation techniques;

   b) De-escalation might not be effective in situations where pepper spray might provide control of the situation; and,

   c) Elimination of pepper spray might raise the chance that a situation could result in harm to a juvenile or a staff member, because physical force would be needed.

   Jurisdictions that do not use chemical agents emphasize that the best safety tool is a positive relationship between youth and staff. A positive relationship between youth and staff can foster an atmosphere which makes it less likely for there to be conflicts within the juvenile facility. De-escalation is stressed as an alternative to chemical agents. If there is a physical confrontation, youth are physically separated.

   If de-escalation is not emphasized or not effective, then it is likely that probation officers will rely on other uses of physical force or physical restraints. Other methods of force or restraint can be equally damaging to youth as pepper spray, and also damage the relationship between staff and youth. To meet the goals of this bill, juvenile facilities that are currently relying on chemical restraints would need to ensure that they don't simply switch to other forms of physical restraints.

6) **California is in the Process of Phasing Out its State Juvenile Facilities:** State juvenile facilities were part of the Division of Juvenile Justice (DJJ). DJJ only houses juveniles who have been charged and found responsible for more serious and violent crimes. SB 823 (Committee Budget and Fiscal Review), Chapter 337, Statutes of 2020, prohibits further commitment of juveniles to the DJJ, as of July 21, 2021, except as specified. SB 823 also established the Juvenile Justice Realignment Block Grant program to provide county-based custody, care, and supervision of youth who are realigned from the Division of Juvenile Justice or who would have otherwise been eligible for commitment to DJJ.

   The offenders that previously were housed in DJJ will now be the responsibilities of counties. Those individuals could be housed in existing juvenile hall. Counties could also establish separate facilities for those individuals. To the extent that some juveniles will still be held in state facilities, this bill would prohibit the use of chemical agents in state, as well as county juvenile facilities.

7) **Argument in Support**: According to the *Asian Americans Advancing Justice* "The harmful nature of chemical agents makes their use counterproductive to the rehabilitative goals of the juvenile justice system. Use of chemical agents on youth is inconsistent with the requirement that juvenile halls not be operated as penal institutions and instead "shall be a safe and supportive homelike environment." Permitting juvenile facility staff to carry and use

destructive chemical agents creates a punitive, fear-inducing environment, which impedes the development of trusting, healthy relationships between staff and youth that are essential to facility safety and facilitating successful reentry.

"Thirty-five other states and several California counties (Marin, Sacramento, San Francisco, Santa Clara, Santa Cruz, Solano, Sonoma, and pending in Los Angeles) recognize that chemical agents are not needed to safely operate a facility. Operated by the City and County of San Francisco, the Youth Guidance Center juvenile facility "does not use these potentially dangerous interventions on youth, and should be a model for other juvenile facilities in this regard." A national survey by the Council of Juvenile Correctional Administrators observed that facilities that use pepper spray tend to be systems that adopt an overall more punitive and adult-correctional approach. This is consistent with experiences of youth at California juvenile facilities.

"Investigations into conditions in juvenile facilities in Kern, San Diego, Fresno, and San Francisco counties found that chemical agents are often directed disproportionately against youth with mental health, behavioral learning, and/or developmental disabilities—including many who are survivors of significant trauma—and constitutes abuse and neglect of these young people. Probation staff have been found to use chemical agents 'on youth in response to non-violent acts such as verbal defiance and 'peer friction,' for symptoms of mental health needs such as self-injury and threats of self-harm, and in a punitive manner after youth had been restrained.' Staff routinely punish these youth—including with isolation, restraint, and chemical force—for behavior related to their disabilities. Excessive use of chemical agents in turn creates significant liability for counties.

"Eliminating chemical agents from juvenile facilities is also a matter of racial justice. As compared to white youth, African-American youth are 7.5 times more likely to be ordered to institutional placement, and Latinx youth are 2.5 times more likely. The harms of chemical agents in juvenile facilities thus disproportionately impact youth of color, particularly Black, Latinx, and Indigenous youth."

8) **Argument in Opposition:** According to the *San Joaquin County Probation Officers Association*, "We recognize that OC pepper spray should be used in juvenile facilities only under limited circumstances, but AB 1165 would ban its use altogether. Unfortunately, there are circumstances that arise in juvenile facilities that cannot be de-escalated through verbal intervention. For instance, if there is an altercation between two or more juveniles, the supervising officers have two choices: physically engage, putting the health of the juveniles and staff alike at risk; or, be prepared to use OC pepper spray. In many instances, the mere mention of OC pepper spray deters further physical conflict for the juveniles, thereby avoiding its use.

"As a result, if passed AB 1165 will endanger both the minors in our custody and our probation peace officers responsible for their care. The only tool officers will have left to protect juveniles and staff from violent attacks will be the use of significant physical force.

Juvenile facilities now typically house individuals that have committed serious and violent offenses. It is not uncommon for juvenile facilities to be occupied by offenders convicted of crimes such as murder, rape, assault with a deadly weapon, carjacking, home invasion and terrorist threats, to name just a few of the serious and violent offenses committed by juvenile

offenders. Regrettably, a high percentage of these offenders are gang members and dangerous.

"Last year, SB 823 was passed and signed into law. Under SB 823, local county probation's juvenile detention facilities are now responsible for housing every individual sentenced to confinement in a juvenile court. Starting in June 2021, the States DJJ facilities will no longer accept new intakes and County Probation's Juvenile Detention Facilities will be responsible for housing and supervising 18–25-year-old adults in our juvenile facilities. Under AB 1165, sworn probation staff supervising this new sophisticated and dangerous adult population will not be allowed to carry and/or use OC pepper spray to protect themselves or the adult and juvenile offenders."

9) **Related Legislation**: AB 48 (Gonzales), would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement to disperse a protest, or demonstration, except in compliance with specified standards. AB 48 is awaiting hearing in the Assembly Appropriations Committee.

10) **Prior Legislation**:

a) AB 696 (Lackey), of the 2019-2020 Legislative Session, would have required the Board of State and Community Corrections (BSCC) to contract with a research entity to conduct a study on the efficacy and impacts of the use of pepper spray in juvenile halls. AB 696 was held in the Assembly Appropriations Committee.

b) AB 1321 (Gipson), of the 2019-2020 Legislative Session, would have required the BSCC to contract with a research entity to conduct a study on the efficacy and impacts of the use of pepper spray in juvenile halls. AB 1321 was gut and amended.

c) AB 2010 (Chau), of the 2017-2018 Legislative Session, would have eliminated the use of pepper spray in juvenile facilities with some exceptions. AB 2010 was held in the Assembly Public Safety Committee.

d) AB 1042 (Parra), of the 2003-2004 Legislative Session, would have required the Department of Mental Health (DMH) to issue pepper spray to medical technical assistants working in DMH facilities while on duty. AB 1042 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Defense Fund - CA (Co-Sponsor)
Disability Rights California (Co-Sponsor)
Glide (Co-Sponsor)
Youth Law Center (Co-Sponsor)
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Asian Americans Advancing Justice - California
California Alliance for Youth and Community Justice

California Association of Social Rehabilitation Agencies
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
Causa Justa::just CAUSE
Center for Community Action and Environmental Justice
Center on Juvenile and Criminal Justice
Ceres Policy Research
Children Now
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Fresh Lifelines for Youth
Fresno Barrios Unidos
John Burton Advocates for Youth
Lawyers' Committee for Civil Rights
Mid-city Community Advocacy Network
Milpa (motivating Individual Leadership for Public Advancement)
Monarch Services of Santa Cruz County
National Association of Social Workers, California Chapter
National Center for Youth Law
Pacific Juvenile Defender Center
Public Counsel
San Francisco Public Defender's Office
Showing Up for Racial Justice San Francisco
Sierra Club
Silicon Valley De-bug
The Art of Yoga Project
Underground Grit
Woman INC
Young Women's Freedom Center
Youth Alliance

Oppose

Afscme, Afl-cio
Association of Orange County Deputy Sheriff's
California Correctional Peace Officers Association
Fresno County Deputy Probation Officer's Association
Los Angeles County Probation Officers Union, Afscme Local 685
N. California Probation Lodge 19, California Fraternal Order of Police
Professional Managers Association, Local 1967
Riverside Sheriffs' Association
Sacramento County Probation Association
San Joaquin County Probation Officers Association
San Luis Obispo County Probation Peace Officers Association
San Mateo Probation and Detention Association
Santa Clara County Probation Peace Officer's Union, Afscme Local 1587

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

Date of Hearing: April 27, 2021
Chief Counsel: Gregory Pagan

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

AB 506 (Lorena Gonzalez) – As Amended April 7, 2021

As Proposed to be Amended in Committee

SUMMARY: Makes an adult volunteer at a public or private youth center, youth recreation program, or youth organization a mandated reporter of child abuse or neglect for the purpose of the Child Abuse and Neglect Reporting Law (CANRA). Specifically, **this bill**:

1) Makes a volunteer over 18 years of age who volunteers more than 16 hours per month or 32 hours per year with a public or private youth center, youth recreation program, youth organization and whose duties involve direct contact with, or supervision of, children a mandated reporter for the purpose of CANRA.

2) Requires an administrator, employee, or volunteer of a youth service organization who is a mandated reporter of child abuse and neglect shall complete the online mandated reporter training provided by the Office of Child Abuse or Prevention in the State Department of Social Services.

3) Requires that an administrator, employee, or volunteer of a youth service organization over 18 years of age undergo a background screening to identify and exclude any persons with a history of child abuse.

4) States that a volunteer who volunteers fewer than 16 hours per month or 32 hours per year with the service organization shall not be required to undergo a background screening.

5) Requires a youth service to develop to implement child abuse prevention policies and procedures, including but not limited to, both of the following:

   a) Policies to ensure the reporting of suspected incidents of child abuse to persons or entities outside of the organizations, including reports to specified law enforcement agencies; and

   b) Policies requiring to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising children.

6) States that before writing liability insurance for a youth service organization in this state, an insurer may request information demonstrating compliance with this section from the youth service organization as a part of the insurer's lost control program.

7) Defines "youth service organization" means that an organization that employs or utilizes the services of persons who, due to their relationship with the organization are mandated reporters under existing law.

EXISTING LAW:

1) Establishes the CANRA and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Pen. Code, § 11164.)

2) Defines "mandated reporter" under CANRA as any of the following: a teacher; an instructional aide; a teacher's aide or teacher's assistant employed by any public or private school; a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensing worker or licensing evaluator employed by a licensing agency as defined; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed to represent a minor; a peace officer, as defined, who is not otherwise described in this section; a firefighter, except for volunteer firefighters; a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed as a health care professional as specified; any emergency medical technician I or II, paramedic, or other person certified to provide emergency medical services; a registered psychological assistant; a marriage and family therapist trainee, as defined; a registered unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor, as defined; a child visitation monitor, as defined; an animal control officer or humane society officer, as defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriff's department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7 subd. (a).)

3) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has

failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)

4) Provides that volunteers of public or private organizations, except a volunteer of a Court Appointed Special Advocate program, whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to a specified agency. (Pen. Code, § 11165.7, subd. (b).)

5) Strongly encourages employers to provide their employees who are mandated reporters with training in the duties imposed by CANRA. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with a statement that informs the employee that he or she is a mandated reporter and informs the employee of his or her reporting obligations and of his or her confidentiality rights. (Pen. Code, § 11165.7, subd. (c).)

6) Encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect. (Pen. Code, § 11165.7, subd. (f).)

7) Requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)

8) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

9) Defines "child" under CANRA to mean a person under the age of 18 years. (Pen. Code, § 11165.)

10) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting

within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Over the past few years, horrific stories of abuses against children that went unreported for decades have finally come to light with the help of movements like #TimesUp, #MeToo, legislation, and news investigations. However, it is not enough to hold abusers accountable after the fact. This is especially true in spaces like youth organizations, which are intended to provide a safe environment for our children to grow, explore, and develop. AB 506 would institute new requirements for youth organizations and insurers to help prevent child abuse and neglect, and lower the risk of related losses to insurers."

2) **Argument in Support**: According to the *California Insurance Commissioner*, "In recent years, ongoing efforts across the country to investigate and raise awareness of childhood sexual abuse have shed light on abuse which has occurred in schools, churches, sports teams, and youth organizations.

"In the case of the Boy Scouts of America (BSA), over 90,000 claims of abuse spanning several decades across the country have been filed. Evidence from litigation in Oregon showed internal BSA files tracking the identities and crimes of hundreds of perpetrators, but the suspected abuse was often not reported to police. Similarly, over 200 claims of childhood sexual abuse were filed against the Boys and Girls Club, which in some cases failed to report abuse to law enforcement or to run background checks on the staff accused of abuse.

"Filings in the BSA bankruptcy case also reveal details of the organization's ongoing legal disputes with their liability insurance companies. Insurers have been and continue to drop BSA from liability coverage, arguing that the BSA was not only aware of the widespread abuse and failed to take preventative measures to stop it, but they also kept information on abuse from the insurers providing their liability coverage. Similar situations can be seen through insurer disputes with Rockefeller University and the Roman Catholic Archdiocese of New York.

"Many youth organizations have already adopted internal best practices which are proven to help prevent abuse of children. By helping to prevent abuse, these practices also lower the liability risk of future claims against the organizations, which can provide more assurance of solvency to the insurer. However, as youth continue to join youth organizations, particularly as youth are feeling more isolated due to COVID-19 and seeking companionship, there is still a lack of uniform standards for the prevention of abuse in youth organizations.

"AB 506 would require youth organizations to develop and implement child abuse prevention policies and would require their administrators, employees, and volunteers to undergo background screenings and complete mandated reporter training. In addition, liability insurers would be allowed to review a youth organization's compliance with these requirements prior to issuing any policy. Lastly, AB 506 would also require specified volunteers in youth organizations who have direct contact with or supervision of children to become mandated reporters."

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Insurance (Sponsor)
California Coalition of School Safety Professionals
Los Angeles School Police Officers Association
Nonprofit Insurance Alliance of California
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Riverside Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

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

Amendments Mock-up for 2021-2022 AB-506 (Lorena Gonzalez (A))

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

Mock-up based on Version Number 98 - Amended Assembly 4/7/21
Submitted by: Gregory Pagan, Public Safety

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

~~SECTION 1.~~
~~Chapter 7 (commencing with Section 11900) is added to Part 3 of Division 2 of the Insurance Code, to read:~~

~~7.~~

~~Liability Insurance for Youth Service Organizations~~

~~11900.~~

~~(a)To reduce underwriting risk and ensure solvency, an insurer providing liability insurance coverage to a youth service organization shall require the youth service organization to fully comply with all of the following standards:~~

~~(1)An administrator, employee, or volunteer of the youth service organization who is a mandated reporter, as defined in Section 11165.7 of the Penal Code, shall complete the online mandated reporter training provided by the Office of Child Abuse Prevention in the State Department of Social Services.~~

~~(2)An administrator, employee, or volunteer of the youth service organization shall undergo a background screening to identify and exclude any persons with a history of child abuse.~~

~~(3)A youth service organization shall develop and implement child abuse prevention policies and procedures, including both of the following:~~

~~(A)Policies to ensure the secure and anonymous reporting of suspected incidents of child abuse to persons or entities outside of the organization.~~

~~(B)Policies requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children.~~

~~(b)An insurer providing liability insurance coverage to a youth service organization shall require the organization to provide the insurer and the commissioner with an initial report regarding its compliance with subdivision (a) within 60 days of obtaining coverage and compliance updates every quarter thereafter.~~

~~(c)If the insured organization is not in compliance with subdivision (a), the insurer shall notify the director of the organization and the commissioner of the deficiencies and that the insurance policy will be canceled if the specified deficiencies are not corrected within 60 days. If the specified deficiencies are not remedied within the 60 day period, the insurer shall cancel the organization's insurance policy.~~

~~(d)Notwithstanding paragraphs (1) and (2) of subdivision (a), an individual who volunteers fewer than 16 hours per month or 32 hours per year with the youth service organization shall not be required to complete mandated reporter training or undergo a background screening.~~

~~(e)For purposes of this section, "youth service organization" means a nonprofit organization, the operation of which involves direct contact with, or supervision of, children.~~

SECTION 1. *Part 2.9 (commencing with Section 18975) is added to Division 8 of the Business and Professions Code, to read:*

PART 2.9. Youth Service Organizations

18975. (a) An administrator, employee, or volunteer of a youth service organization who is a mandated reporter, as defined in Section 11165.7 of the Penal Code, shall complete the online mandated reporter training provided by the Office of Child Abuse Prevention in the State Department of Social Services.

(b) (1) An administrator, employee, or volunteer of a youth service organization **over 18 years of age** shall undergo a background screening to identify and exclude any persons with a history of child abuse.

(2) Notwithstanding paragraph (1), a volunteer who volunteers fewer than 16 hours per month or 32 hours per year with the youth service organization shall not be required to undergo a background screening.

(c) A youth service organization shall develop and implement child abuse prevention policies and procedures, including, but not limited to, both of the following:

(1) Policies to ensure the ~~secure and anonymous~~ reporting of suspected incidents of child abuse to persons or entities outside of the organization, including the reporting required pursuant to Section 11165.9 of the Penal Code.

(2) Policies requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children.

(d) Before writing liability insurance for a youth service organization in this state, an insurer may request information demonstrating compliance with this section from the youth service organization as a part of the insurer's loss control program.

(e) For purposes of this section, "youth service organization" means an organization that employs or utilizes the services of persons who, due to their relationship with the organization, are mandated reporters pursuant to paragraph (7) of subdivision (a) of Section 11165.7 of the Penal Code.

SEC. 2. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

~~(7)An administrator or employee of a public or private youth center, youth recreation program, or youth organization.~~

(7) The following individuals associated with a public or private youth center, youth recreation program, or youth organization:

(A) An administrator or employee.

(B) A volunteer over 18 years of age who volunteers more than 16 hours per month or 32 hours per year with the youth center, youth recreation program, or youth organization and whose duties involve direct contact with, or supervision of, children.

(8) An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.

(9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child daycare facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a childcare institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed associate marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) An associate professional clinical counselor registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43) (A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public

shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.

(45) An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.

(46) An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.

(47) A qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional, as defined in Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(48) A human resource employee of a business subject to Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code that employs minors. For purposes of this section, a "human resource employee" is the employee or employees designated by the employer to accept any complaints of misconduct as required by Chapter 6 (commencing with Section 12940) of Part 2.8 of Division 3 of Title 2 of the Government Code.

(49) An adult person whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business subject to Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code is a mandated reporter of sexual abuse, as defined in Section 11165.1. Nothing in this paragraph shall be construed to modify or limit the person's duty to report known or suspected child abuse or neglect when the person is acting in some other capacity that would otherwise make the person a mandated reporter.

~~(50)A volunteer for a nonprofit organization whose duties may involve direct contact with or supervision of children, and who volunteers more than 16 hours per month or 32 hours per year with the organization.~~

(b) Except as provided in paragraphs *(7) and* (35) ~~and (50)~~ of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are

not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) (1) Except as provided in subdivision (d) and paragraph (2), employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(2) Employers subject to paragraphs (48) and (49) of subdivision (a) shall provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. The training requirement may be met by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services.

(d) Pursuant to Section 44691 of the Education Code, school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools shall annually train their employees and persons working on their behalf specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(e) (1) On and after January 1, 2018, pursuant to Section 1596.8662 of the Health and Safety Code, a childcare licensee applicant shall take training in the duties of mandated reporters under the child abuse reporting laws as a condition of licensure, and a childcare administrator or an employee of a licensed child daycare facility shall take training in the duties of mandated reporters during the first 90 days when that administrator or employee is employed by the facility.

(2) A person specified in paragraph (1) who becomes a licensee, administrator, or employee of a licensed child daycare facility shall take renewal mandated reporter training every two years following the date on which that person completed the initial mandated reporter training. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(f) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(g) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 27, 2021
Counsel: Nikki Moore

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

AB 89 (Jones-Sawyer) – As Amended February 17, 2021

SUMMARY: Requires a peace officer to reach the age of 25, or obtain a college degree, prior to being hired as a peace officer, unless that person was a peace officer prior to the enactment of this bill. Specifically, **this bill**:

1) Provides that each class of public officers or employees declared by law to be peace officers shall meet minimum standards including being at least 25 years of age.

2) States that if a person is 18 to 24 years of age, a minimum standard to be a peace officer is that the individual shall have a bachelor's degree or an advanced degree from an accredited college or university. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government-approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, or an organization holding full membership in AdvancED.

3) Establishes that this bill shall not apply to an individual 18 to 24 years of age who is already employed as a peace officer as of the effective date of the legislation.

4) Makes legislative findings and declarations.

EXISTING LAW:

1) Requires each class of public officers or employees declared by law to be peace officers to meet all of the following minimum standards:

   a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

   b) Be at least 18 years of age.

   c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

   d) Be of good moral character, as determined by a thorough background investigation.

   e) Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or

university. The high school shall be either a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, an accrediting association holding full membership in the National Council for Private School Accreditation (NCPSA), an organization holding full membership in AdvancED, an organization holding full membership in the Council for American Private Education (CAPE), or an accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations (NFNSSAA).

2) Requires that a peace officer be found to be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, that might adversely affect the exercise of the powers of a peace officer.

3) Requires the following evaluations:

   i) An evaluation of physical condition, by a licensed physician and surgeon.

   ii) An evaluation of emotional and mental condition, by either of the following:

      (1) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program; or

      (2) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate. The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

4) Provides that the law shall not be construed to preclude the adoption of additional or higher standards, including age.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Excessive force at the hands of law enforcement that leads to grave injury or death not only tears apart families and communities

but erodes trust in law enforcement. This data-driven bill relies on years of study and new understandings of brain development to ensure that only those officers capable of high level decision-making and judgment in tense situations are entrusted with working in our communities and correctional facilities. By requiring new peace officer candidates to be more mature and highly educated, the PEACE Act not only professionalizes policing, but also creates a culture that is significantly less reliant on excessive force. The PEACE Act will transform departments across the state and mark a transition in addressing the root causes behind excessive use of force."

2) **Background**: The bill includes legislative findings to support changing the minimum age and/or education requirements of a peace officer:

"There is an interest in minimizing peace officer use of deadly force.

"A study of 1,935 Philadelphia police officers examined the relationship between officer-involved shootings and self-control. The findings point to the conclusion that peace officers with greater self-control are less likely to use deadly force. Inversely, officers with lower self-control are 'significantly more likely' to be involved in a police shooting."

"The Legislature has repeatedly relied on neurological research with respect to criminal sentencing law reflecting a growing understanding that cognitive brain development continues well beyond age 18 and into early adulthood. Scientific evidence on young adult development and neuroscience shows that certain areas of the brain, particularly those affecting judgment and decision making, do not develop until the early to mid-20s."

"Law enforcement officers are required to make split-second decisions to protect the health and safety of the public and address dangerous situations. A young adult with a still developing brain may struggle during events that require quick decision making and judgments."

"The Legislature finds and declares that because there is a negative correlation between officer age and use of deadly force, increasing the minimum age of a police officer will likely result in a police force composed of more mature officers who are able to exhibit greater self-control, and who are less likely to utilize deadly force."

"A small minority of officers is involved in the majority of use of force incidents; so called 'high-rate officers.' In a 2010 study, 6 percent of the officers studied accounted for approximately 40 percent of the use of force incidents in that year. In a 2012 study, 5.4 percent of officers were found to account for 32 percent of use of force situations. High-rate officers tend to be younger compared to low-rate officers."

"A 2007 study found that officers with a bachelor's degree were less likely to use physical force than officers with only a high school graduation. The same study also found no difference between officers with some college and those with only high school education."

"A study has also shown that better educated officers perform better in the academy, receive higher supervisor evaluations, have fewer disciplinary problems and accidents,

are assaulted less often, and miss fewer days of work than their counterparts."

"A 2008 study of the Riverside County Sheriff's Department found that age and education of officers was the main determinant in likelihood to resort to the use of force."

"Studies show that officers with a previous history of using deadly force are more than 51 percent as likely to engage in deadly force again, compared to officers without a history of shootings. For this reason, it is important to minimize potential for an officer to engage in an initial shooting as it likely will reduce the officer's likelihood of using deadly force throughout their service."

"During the years 2014–2018, only 8.7 percent of the police force was 25 years of age or younger and nearly 30 percent of those officers had a bachelor's degree, suggesting that limitations on the age and education of officers would not significantly affect the available workforce."

3) **Population of Peace Officers Under Age 25**: Changing the minimum age of officer eligibility does not appear to substantially reduce the workforce, based on data provided to the committee. For example, at the Department of Corrections and Rehabilitation, only 1.77% of officers are under 25 years old (540 of 30,589). Data from the California State Library regarding the age of California police officers and first-line supervisors of police and detectives show that of 103,776 officers, 9,001 are aged 25 and under, or 11.52%. At the University of California, of the 351 officers employed, 251 are over 25 and have a bachelor's degree; only 2 officers are under 25 and do not have a bachelor's degree, 0.33%. The California State University employs 443 officers; only eight are under the age of 25, and four of those officers have a bachelor's degree.

4) **Death of Daniel Hernandez**: On April 22, 2020, Daniel Hernandez was involved in a car accident, where a person involved in the crash called 911 and reported that someone had a knife and was trying to stab them. Within 75 seconds a 23-year-old officer arrived on scene and stepping out of her car, she asked Hernandez to drop a knife (he was holding a box cutter) before firing all of the bullets in her gun at Hernandez. (James Rainey, Andrew Campa, *She was known as a 'top shot.' Now an L.A. cop is at the center of a deadly shooting*, July 17, 2020, Los Angeles Times, available at: https://www.latimes.com/california/story/2020-07-17/social-media-star-lapd-cop-deadly-shooting.)

   Hernandez was struck at least six times by gunshot; the coroner's report showed he was shot "in the top of the head, and in the shoulder, abdomen, thigh, and upper back. The deputy medical examiner listed the cause of death as multiple gunshot wounds." (Eric Leonard, *Coroner Report Details Death of Man Killed by LAPD Officer in South LA*, Aug. 19, 2020, NBC Los Angeles, available at https://www.nbclosangeles.com/investigations/coroner-report-details-death-of-man-killed-by-lapd-officer-in-south-la/2415270/.)

   The Los Angeles Police Commission ruled in December 2020 that the officer was in violation of LAPD policy when firing two shots at Hernandez after he was on the ground. The four initial rounds were determined to be justified. (Brittany Martin, *The LAPD Officer Who Shot Daniel Hernandez Found to Have Broken Policy*, Dec. 16, 2020, LA Mag, available at: https://www.lamag.com/citythinkblog/toni-mcbride-lapd-policy-violation/.)

The officer was 23 years old at the time of the shooting. Prior to the incident, media profiles and social media posts fueled an image that glorified and glamourized the young officer, connecting her with Hollywood stars and featuring her in magazines. (James Rainey, Andrew Campa, *She was known as a 'top shot.' Now an L.A. cop is at the center of a deadly shooting*, July 17, 2020, Los Angeles Times, available at: https://www.latimes.com/california/story/2020-07-17/social-media-star-lapd-cop-deadly-shooting.)

Under the provisions of this bill, the officer would not have been eligible to become a peace officer until her 25th birthday or until she completed a degree in higher education. Additional experience and education may better prepare young officers to make the kinds of split-second, life-changing decisions that are part and parcel of the job.

5) **Argument in Support**: According to the *California State Council of Service Employees International Union*, "Current science indicates developing areas of the brain, which affect judgment and decision-making, do not reach full maturation or development until the age of 25. Additionally, studies show a 4-year college education reduces the likelihood of using excessive force significantly, while also cultivating officers with high performance evaluations in comparison to those with a high school education and even some college. The PEACE Act relies on decades of data addressing brain development and educational attainment to diminish officers' use of force.

"SEIU supports AB 89, as it is an important step toward change and continues to grow upon past efforts to address police use of force.

"The PEACE Act changes the culture of law enforcement. By requiring new peace officer candidates to be more mature and highly educated, the PEACE Act will not only professionalize policing, but will also create a culture that is significantly less reliant on excessive force."

6) **Argument in Opposition**: According to *Peace Officers' Research Association of California*, "Current law requires peace officers in this state to meet specified minimum standards, including age and education requirements. This bill would increase the minimum qualifying age from 18 to 25 years of age. This bill would permit an individual under 25 years of age to qualify for employment as a peace officer if the individual has a bachelor's or advanced degree from an accredited college or university. AB 89 would specify that these requirements do not apply to individuals 18 to 24 years of age who are already employed as a peace officer as of the effective date of this act.

"Due to the low percentage of college graduates among the minority population, PORAC believes that mandating a college degree for peace officers will only further exacerbate the lack of diversity in law enforcement. Furthermore, requiring someone to wait to start their career until age 25 is not realistic. This is especially true among minorities who oftentimes have to help support their family as early as high school. PORAC fully supports raising the education and training requirements of all peace officers. However, we believe it should be a gradual phase-in program that is mindful of disadvantaged individuals who desire a career in law enforcement."

7) **Related Legislation**: AB 655 (Kalra) would require background checks to determine whether a person seeking to be employed as a peace officer exhibits unlawful bias by engaging in a hate group. AB 655 is pending before this committee.

8) **Prior Legislation**: AB 846 (Burke), Chapter 322, Statutes of 2020, provided that evaluations of peace officers shall include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

REGISTERED SUPPORT / OPPOSITION:

Support

California Faculty Association (Co-Sponsor)
California Nurses Association
California Public Defenders Association (CPDA)
California State Council of Service Employees International Union
Exonerated Nation
Exonerated Nation INC
National Center for Youth Law
San Francisco Public Defender
Santa Barbara Women's Political Committee
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Southeast Asia Resource Action Center
The W. Haywood Burns Institute
Youth Leadership Institute

Opposition

California Correctional Peace Officers Association
California Peace Officers Association
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)
San Francisco Police Officers Association

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

Date of Hearing: April 27, 2021
Counsel: Nikki Moore

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

AB 1347 (Jones-Sawyer) – As Introduced February 19, 2021

SUMMARY: Makes it unlawful for a bail agent to charge a renewal fee on a bail agreement.
1) Specifically, **this bill**:

1) Provides that on and after January 1, 2022, no insurer, bail agent, or other bail licensee shall enter into a contract, agreement, or undertaking of bail which requires the payment of more than one premium for the duration of the agreement, and the duration of the agreement shall be until bail is exonerated.

2) Provides that on and after January 1, 2022, no insurer, bail agent, or other bail licensee, shall charge, collect, or receive a renewal premium in connection with a contract, agreement, or undertaking of bail.

3) States that a violation of this section by an insurer, bail agent, or other bail licensee shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation plus statutory damages in the sum of three thousand dollars ($3,000).

4) Provides that any person affected by a violation of this section shall be entitled, if they prevail, to recover court costs and reasonable attorney's fees as determined by the court in any action brought to enforce this section.

EXISTING LAW:

1) Prohibits excessive bail. (U.S. Const., 8th Amend. & Cal. Const., art. I, § 12.)

2) 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, § 12.)

3) 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, § 28, subd. (f)(3).)

4) 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, § 28, subd. (b)(3).)

5) Provides that the Judicial Council shall adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. (Cal. Const., art. VI, § 6, subd. (d).)

6) Requires the superior court judges in each county to prepare, adopt, and annually revise a uniform, countywide bail schedule. (Pen. Code, § 1269b, subd. (c).)

7) Allows a court, by local rule, to prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges. (Pen. Code, § 1269b, subd. (d).)

8) Provides that in adopting a uniform countywide schedule of bail for all bailable felony offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint. In considering offenses in which a violation of a controlled substance offense is alleged, the judge shall assign an additional amount of required bail for offenses involving large quantities of controlled substances. (Pen. Code, § 1269b, subd. (e).)

9) Requires the countywide bail schedule to contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council. (Pen. Code, § 1269b, subd. (f).)

10) Specifies if a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved. (Pen. Code, § 1269b, subd. (b).)

11) Provides that at the time of issuing an arrest warrant, the magistrate shall fix the amount of bail which, in the magistrate's judgment, will be reasonable and sufficient for the defendant to appear, if the offense is bailable. (Pen. Code, § 815a.)

12) Provides that an arrested person must be taken before the magistrate with 48 hours of arrest, excluding Sundays and holidays. (Pen. Code, 825, subd. (a).)

13) Authorizes the officer in charge of a jail, or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, the bail schedule, or an order admitting to bail in case or surety bond, and to issue and sign an order for the release of the arrested person, and to set a time and place for the person's appearance in court. (Pen. Code, 1269b, subd. (a).)

14) States that if a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, the officer shall file a declaration with the judge requesting an order setting a higher bail. (Pen. Code, 1269c.)

15) 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.)

16) After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. (Pen. Code, § 1289.)

17) Prohibits the release of a defendant on his or her own recognizance (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.)

18) Specifies conditions for a defendant's release on his or her own recognizance (OR). (Pen. Code, § 1318.)

19) Provides that a defendant released on bail for a felony who willfully fails to appear in court, as specified, is guilty of a crime. (Pen. Code, § 1320.5.)

20) Specifies that if an on-bail defendant fails to appear for any scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor within 30 days, or the defendant is brought before the court within 180 days. (Pen. Code, § 1305, subds. (a) & (b).)

21) Requires the Judicial Council to annually adopt a uniform traffic penalty schedule which shall be applicable to all nonparking infractions specified in the Vehicle Code, unless in a particular case before the court the judge or authorized hearing officer specifies a different

penalty. In establishing a uniform traffic penalty schedule, the Judicial Council shall classify the offenses into four or fewer penalty categories, according to the severity of offenses, so as to permit convenient notice and payment of the scheduled penalty. (Veh. Code, § 40310.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As the Chair of the Assembly's Public Safety Committee, it is my priority that poverty and predatory business practices don't get in the way of justice. Socio-economic status should have no bearing on equal treatment under the law. AB 1347 is about racial and economic justice. Blacks and Latinos are far more likely than their white counterparts to remain in prison simply because these added fees make it financially impossible to post bail. Due to COVID court delays leading to much longer timelines in cases, people are now at higher risk of being charged a renewal premium. Money/Cash bail remains one of the most egregious racial disparities in our justice system. This bill will provide a small point of relief against arbitrary and predatory practices used by the bail industry."

2) **Purpose of this bill**: This bill would prevent a bail agent from charging a renewal fee on a bail contract. Renewal fees are additional requirement payments to a bail agent simply because a defendant's case has not been resolved. The author notes that these fees are usury in nature.

   According to the author, "Currently, there are approximately 2,322 licensed bail agents and organizations and another 21 bail bond insurance companies transacting bail in California all regulated by the California Department of Insurance (CDI).

   "Under the current cash bail system, accused people often lack sufficient financial resources to post bail. This system forces accused people and their families into entering bail bond contracts to avoid pretrial detention. According to CDI, bail agents typically charge a consumer 10% of the total bail amount as the bail bond fee. For example, on a $25,000 bail, the 10% fee is $2,500.

   "A 2017 UCLA study reported money bail disproportionately harms low-income people and communities of color. Black defendants are assigned higher average bail amounts than White defendants accused of similar offenses. Bail amounts assigned to Black men average 35% higher than those for White men, even when controlling for the seriousness of the offense.

   "Additionally, a bail agent will require the bond to be secured through collateral such as a lien on a defendant's house. In this situation, the bail agent usually requires 10% of the fee in cash, with the remaining amount secured by the defendant's asset(s).

   "'Renewal fees' are additional nonrefundable fees charged to defendant's that have not had their cases resolved within 12 months. Renewal fees are unnecessary because bail agents and insurers are well secured against any losses. 'Flight risk' of the defendant does not increase after 12 months; therefore, fees are unfair because they penalize defendants with lengthy court proceedings.

"During the COVID-19 pandemic, these additional fees have become even more insidious as hearing timelines and postponements have increased due to no fault of the defendant. A recent CalMatters report, found that at least 1,300 unsentenced people have been locked in county jails for longer than three years awaiting a trial or sentencing. While courts struggle with backlog and attempt to operate in a safe manner, bail agents continue to use any delays to charge onerous and unnecessary fees."

3) **Prohibits Charging Additional Premiums**: This bill prohibits multiple fees for a bail contract, which are incurred due to the length of time a bail contract is open. It does not prohibit a party from making multiple payments, over time, on a single premium charge. It simply prevents additional premium charges simply because time has passed.

   This bill is sponsored by the California Department of Insurance. On the DOI website, the department notes that under existing law, "There are no laws or regulations that prohibit charging a renewal premium, however, some bail agencies do not charge a renewal premium and the bond is valid until the case is resolved. The issue of renewal premium is up to your individual bail agent." (Available at http://www.insurance.ca.gov/01-consumers/170-bail-bonds/.)

4) **Recent Cases**: The California Supreme Court recently ruled that "[t]he common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." (In re Humphrey, (Supreme Court of California) No. S247278, March 25, 2021.) The court established that ability to pay and alternatives to requiring ball shall be considered in a bail hearing.

   In an ongoing case in Alameda County against Bad Boys Bail Bonds for violations of consumer protection laws, a judge recently issued a preliminary injunction against Bad Boys for failure to provide bail co-signers with proper notice of obligations to pay. (Maria Dinezo, *Bail Bond Company Barred From Collecting Millions From Co-Signers*, April 8, 2021, Courthouse News, available at https://www.courthousenews.com/bail-bond-company-barred-from-collecting-millions-from-co-signers/.)

5) **Argument in Support**: According to the *California Department of Insurance*, "CDI has regulated bail bonds since the passage of the Bail Bond Regulatory Act in 1937. CDI's regulatory activities include the licensing of bail agents, investigating potential violations of bail statutes and regulations, prosecuting administrative cases, collaborating with city and district attorneys on criminal cases, and determining whether the rates that insurance companies and bail agents charge are fair and adequate.

   "Under the current cash bail system, accused people often lack sufficient financial resources to post bail. This system forces accused people and their families into entering bail bond contracts to avoid pretrial detention. According to a 2017 University of California, Los Angeles (UCLA) study, cash bail disproportionately harms low-income people and communities of color as bail amounts assigned to Black men average 35% higher than those for White men, even when controlling for the seriousness of the offense.

   "Bail agents typically charge a consumer 10% of the total bail amount as the nonrefundable bail bond fee. For example, on a $25,000 bail, the 10% fee is $2,500. Bail agents may additionally require the bond to be secured through collateral such as a lien on a defendant's

house. But some bail bond companies also charge an additional nonrefundable 'renewal fee' when a defendant's case has not been resolved within 12 months.

"Charging an additional nonrefundable fee after 12 months is an arbitrary practice used by the bail industry to make additional profits off unsuspecting consumers, of which hearing timelines and postponements can only be made worse during this pandemic. Renewal fees are unnecessary because bail agents and insurers are well secured against any losses and 'flight risk' of the defendant does not increase after 12 months. These fees are also unfair because they penalize defendants with lengthy court proceedings.

"With voters rejecting Proposition 25 on the November 2020 Ballot, which would have upheld Senate Bill 10 (Hertzberg, Chapter 244, Statutes of 2018) effectively eliminating cash bail in California, additional consumer protections are necessary now to safeguard bail consumers as California continues to debate broader reforms to the bail system. Your AB 1347 would help curb predatory business practices in the bail industry which threaten the financial stability of families who often are already struggling by making it illegal for bail agents to charge bail bond renewal fees to consumers and would provide harmed consumers with the ability to collect damages for any violation."

6) **Related Legislation**:

a) AB 38 (Cooper) would require the Judicial Council, on or before January 1, 2022, to prepare, adopt, and annually revise a statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. AB 38 failed passage in this committee.

b) AB 329 (Bonta), would require bail to be set at $0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. AB 329 is pending in the Assembly Appropriations Committee.

c) SB 262 (Hertzberg), is identical to AB 329 (Bonta). SB 262 is pending in the Senate Appropriations Committee.

7) **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 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.

d) AB 2388 (Hagman), of the 2013-2014 Legislative Session, would have required the Judicial Council to prepare, adopt, and annually revise an advisory statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses, except Vehicle Code infractions, that counties could reference when setting a countywide bail schedule. AB 2388 was held on the Appropriations Suspense file.

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

Alliance for Boys and Men of Color
American Civil Liberties Union/northern California/Southern California/San Diego and Imperial Counties
Anti-recidivism Coalition
California Department of Insurance
California District Attorneys Association
Californians for Safety and Justice
California Public Defenders Association
Community Legal Services in East Palo Alto
Consumer Attorneys of California
Equal Justice Under Law
Lawyers' Committee for Civil Rights - San Francisco
Public Counsel
San Francisco Public Defender

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: Cheryl Anderson

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

AB 1509 (Lee) – As Amended April 21, 2021

SUMMARY: Repeals several firearm enhancements, reduces the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two or three years, and authorizes recall and resentencing for a person serving a term for these enhancements. Specifically, **this bill**:

1) Repeals the sentence enhancement for committing or attempting to commit a street gang crime while carrying a firearm.

2) Repeals the sentence enhancement for committing or attempting to commit a felony while armed with a firearm or while using a deadly or dangerous weapon.

3) Deletes the sentence enhancement for possessing ammunition that penetrates metal or armor while armed with a firearm in the commission or attempted commission of a felony.

4) Repeals the sentence enhancement for furnishing a firearm to another during the commission or attempted commission of a felony.

5) Repeals the enhancement for use of a firearm, machinegun, or assault weapon in the commission or attempted commission of a felony.

6) Reduces the penalty for the 10-20-life enhancement pertaining to use or discharge of a firearm during specified felony offenses such as robbery, homicide or specified sex offenses, as follows:

   a) The penalty for use of a firearm during any of the specified offenses is reduced from 10 years to one year;

   b) The penalty for discharging a firearm during any of the specified felonies is reduced from 20 years to two years; and,

   c) The penalty for discharging a firearm and proximately causing great bodily injury or death during any of the specified offenses is reduced from 25 years-to-life to three years.

7) Reduces the penalty enhancement for the discharge of a firearm from a vehicle causing great bodily injury or death from five, six, or ten years, to one, two, or three years.

8) Removes felonies in which the defendant personally used a firearm (as defined in the enhancement(s) being repealed) from the violent felonies list and as a qualifying circumstance under the One-Strike-Sex-Law.

9) States that a defendant may submit a petition to have their sentence recalled and request resentencing when one of the following conditions apply:

   a) The defendant was, on or before January 1, 2022, serving a sentence for one of the specified firearm enhancements, based on the law as it read on or before December 31, 2021; and/or,

   b) The defendant was, on or before January 1, 2022, serving a sentence for a violent felony, based on the law as it read prior to December 31, 2021.

10) Requires the court, upon receiving a petition, to determine whether the petitioner satisfies the criteria for relief. If the petitioner satisfies the criteria, the petitioner's sentence associated with the enhancement shall be stricken or resentenced in accordance with the law as it reads on January 1, 2022, and no additional or substitute term of imprisonment shall be added in its place.

11) States that a person who is resentenced shall be given credit for time served and shall be subject to parole for one year following completion of their sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. The person shall be subject to parole supervision by the Department of Corrections and Rehabilitation (CDCR) and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

12) Provides that resentencing shall result in a lesser sentence, unless the original enhancement was imposed concurrently or stayed. The term associated with an enhancement which was repealed shall be stricken and no additional or substitute term shall be added in its place during resentencing. Resentencing shall not alter any term other than the enhancement.

13) States that a person who has completed their sentence for a conviction, whether by trial or plea, of an enhancement which has been repealed may file an application before the trial court that entered the judgment of conviction in their case to have the enhancement conviction or convictions vacated.

14) States that if the application satisfies the criteria for eligibility, the court shall vacate the enhancement convictions.

15) Provides that a hearing is not necessary to grant or deny an application to vacate a repealed enhancement, unless the applicant requests one.

16) Requires the presiding judge to designate another judge to rule on the petition or application, if the court that originally sentenced the petitioner is not available.

17) States that this section does not diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

18) States that sentencing pursuant to this section does not diminish or abrogate the finality of judgments in any case that does not come within the purview of this section.

19) Provides that a resentencing hearing ordered under this section shall constitute a "post conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

20) Provides that person who is committed to a state hospital after being found not guilty by reason of insanity may petition the court to have their maximum term of commitment, as established by law, reduced to the length it would have been under the enhancements as they read on January 1, 2022. In order for the maximum term of commitment to be reduced, the person must have met all of the criteria for a modification of sentence pursuant to this section, had the person been found guilty.

21) States that if a petitioner's maximum term of confinement is ordered reduced under this subdivision, the new term of confinement must provide opportunity to meet requirements to extend the term. If a petitioner's new maximum term of confinement ordered under this section does not provide sufficient time to meet those requirements, the new maximum term of confinement may be extended, not more than 240 days from the date the petition is granted.

22) Makes other technical and conforming changes.

EXISTING LAW:

1) Provides that every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment for one, two, or three years in the court's discretion. Effective January 1, 2022, the court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence. (Pen. Code, § 12021.5, subd. (a).)

2) Provides that very person who carries a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for two, three, or four years in the court's discretion. Effective January 1, 2022, the court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence. (Pen. Code, § 12021.5, subd. (b).)

3) States that except as provided, a person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment for one year pursuant to realignment, unless the arming is an element of that offense. This additional term shall apply to a person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm. (Pen. Code, § 12022, subd. (a)(1).)

4) States that except as provided, if the firearm is an assault weapon, or a machinegun, or a .50 BMG rifle, the additional and consecutive term described in this subdivision shall be three years imprisonment pursuant to realignment whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon, machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon, machinegun, or a .50 BMG rifle. (Pen. Code, § 12022, subd. (a)(2).)

5) Provides that a person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense. If the person has been convicted of carjacking or attempted carjacking, the additional term shall be in the state prison for one, two, or three years. (Pen. Code, § 12022, subd. (b)(1) & (2).)

6) Provides that notwithstanding the enhancement for being armed while committing or attempting to commit a felony, a person who is personally armed with a firearm in the commission of a violation or attempted violation of specified drug offenses shall be punished by an additional and consecutive term of imprisonment pursuant to realignment for three, four, or five years. (Pen. Code, § 12022, subd. (c).)

7) Provides that a person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted of a specified drug offense, shall be punished by an additional and consecutive term of imprisonment pursuant to realignment for one, two, or three years. (Pen. Code, § 12022, subd. (d).)

8) States that for purposes of imposing the aggregated sentence, the enhancements under this section shall count as a single enhancement. (Pen. Code, § 12022, subd. (e).)

9) States that notwithstanding any other law and in an unusual case, the court may strike the additional punishment for the enhancements for being armed during or a principal in the commission of specified drug offenses, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition. (Pen. Code, § 12022, subd. (a)(1).)

10) Provides that any person who, while armed with a firearm in the commission or attempted commission of any felony, has in their immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years. Effective January 1, 2022, the court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. (Pen. Code, § 12022.2, subd. (a).)

11) Provides that any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and

consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or three years in the state prison. Effective January 1, 2022, he court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact. (Pen. Code, § 12022.4, subds. (a) & (b).)

12) States that except as provided, any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense. (Pen. Code, § 12022.5, subd. (a).

13) States that except as provided, any person who personally uses an assault weapon, or a machinegun, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. (Pen. Code, § 12022.5, subd. (b).)

14) Allows the court, in the interest of justice and at the time of sentencing, to strike or dismiss an enhancement otherwise required to be imposed by this section. The authority applies to any resentencing that may occur pursuant to any other law. (Pen. Code, § 12022.5, subd. (c).)

15) States that notwithstanding the limitation relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of assault if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death. (Pen. Code, § 12022.5, subd. (d).)

16) States that for purposes of imposing the aggregate sentence, the enhancements under this section shall count as one single enhancement. (Pen. Code, § 12022.5, subd. (f).)

17) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses[1] is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.[2] (Pen. Code, § 12022.53, subds. (b)-(d).)

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[1] The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

[2] The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

18) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)

19) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)

20) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law. (Pen. Code, § 12022.53, subd. (g).)

21) Allows the court, in the interest of justice, to strike or dismiss a 10-20-life enhancement. (Pen. Code, § 12022.53, subd. (h).)

22) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15 percent of the total term of imprisonment imposed. (Pen. Code, § 12022.53, subd. (i).)

23) Provides that notwithstanding Section 12022.5, any person who, with the intent to inflict great bodily injury or death, inflicts great bodily injury, or causes the death of a person, other than an occupant of a motor vehicle, as a result of discharging a firearm from a motor vehicle in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. (Pen. Code, § 12022.55.)

24) Limits initial not guilty by reason of insanity commitments to the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted and provides for commitment extensions. (Pen. Code, § 1026.5.)

25) Provides that a victim is entitled to reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings. (Cal. Const., Art. I, § 28(b)(7).)

26) Defines any felony in which the defendant used a firearm, as specified, as a violent felony. (Pen. Code, § 667.5, subd. (c)(8).)

27) 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).)

28) 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).)

29) 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).)

30) 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.)

31) Provides sentences of 15-years-to-life, 25-years-to-life, or life without the possibility of parole for certain sex crimes if specified circumstances are found to be true, including specified person use of a firearm enhancements. This is known as the One-Strike-Sex-Law. (Pen. Code, § 667.61.)

32) States that it is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offense. (Pen. Code, § 1192.7.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The Anti-Racism Sentencing Reform Act will rectify a relic of institutionalized racism by eliminating the use of most firearm enhancements and drastically reducing the enhancement in two Penal Code sections. Reducing the use of sentencing enhancements does not mean there are no punitive actions taken, but rather, the reduction aims to curtail the extreme sentencing lengths of people who are incarcerated. These sentencing enhancements have fueled mass incarceration for decades without deterring crime or making us any safer.

"Firearm enhancements are one of the most commonly used enhancements that add extra years to a person's sentence. The latest available data shows that 40% of the entire incarcerated population are impacted by this specific enhancement – with people of color (Black, Brown, API and Indigenous) representing 89% of those with these enhancements. This is what institutionalized racism looks like.

"AB 1509 will result in significant state savings without jeopardizing public safety. The data is clear – enhancements do not improve public safety or effectively deter someone from committing harm. Our policy reform is a data-driven approach to reforming the criminal

legal system to make California safer."

2) **Sentencing Enhancements:** "Generally speaking, sentencing enhancements derive their vitality from, and form a part of, the crime to which they are attached and alter the consequences the offender may suffer. The most direct consequence is additional punishment." (*People v. Fuentes, supra*, 1 Cal.5th at p. 225, citation and quotations omitted.)

3) **Background of "Use of a Gun and You're Done" Law (i.e., the 10-20-life Firearm Law):** "In 1997, the Legislature passed the "Use a Gun and You're Done" law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it." (California Budget and Policy Center (2015) Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.)

   Deterrence was a driving factor behind this legislation: "The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime." (AB 4 (Bordonaro, Chapter 503, Statutes of 1997.)

   In 2017, the Legislature passed SB 620 (Bradford), Chapter 682, Statutes of 2017. This legislation allowed a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

4) **Sentence Increases: Research on the Deterrent Effect and Impact on State Prisons:**

   In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (http://www.lhc.ca.gov/studies/219/Report219.pdf.)

   The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the "significant sentencing enhancements" of the 10-20-life firearm law. (http://www.lhc.ca.gov/studies/219/Report219.pdf.)

5) **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).) The Covid-19 pandemic has underscored this: https://www.hcn.org/issues/53.5/ideas-justice-will-covid-19-vaccinations-mean-more-prison-overcrowding-deaths [as of April 21, 2021].)

6) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, a co-sponsor of this bill, "The Anti-Racism Sentencing Reform Act will eliminate most gun enhancements and reduce the time associated with other gun enhancements to 1/2/3 years and open a pathway for resentencing for those serving time with relevant gun enhancements. Based in Oakland, the Ella Baker Center for Human Rights works to advance racial and economic justice to ensure dignity and opportunity for people with low income and people of color. For that reason, we support AB 1509 as it represents an important step in the struggle for decarceration and protection of our communities.

"Gun enhancements are the most commonly used enhancements that add extra years to a sentence. For example, if someone uses a gun during the commission of a robbery they could be charged for the offense which has a statutory range from 5 to 9 years, as well as additional time for the use of a gun, which could range anywhere from 10 years to a life term. The gun enhancement is then served consecutively, not concurrently, so a person may end up serving as much as five times as long as the underlying offense in enhancement time. The latest available data shows that 37,237 people in CDCR custody had some form of gun enhancement as part of their sentence. More than 89% of these individuals were people of color.

"Sentence enhancements are costly, ineffective, and contribute heavily to systemic racism in the criminal legal system. There are more than 150 sentence enhancements on the books across California's Penal Code, however, there is no compelling evidence that their usage improves public safety. Instead, studies show initial incarceration prevents crime through incapacitation, each additional year of incarceration causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit. Each year of incarceration

costs the state approximately $81,000 per incarcerated person, with lifetime incarceration costing the state upwards of $5 million per individual.

"Not only do enhancements not serve public safety goals, they also serve no meaningful deterrence purpose. Research on extreme sentence lengths offers little to no support for the idea that the threat of longer sentences deters people from committing crimes. What research has consistently found is that people age out of crime, so that by the time the state has sentenced someone to an extremely long sentence, they have reached an age where they no longer pose a threat to public safety."

7) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "...I regret to inform you that we are opposed to your measure, Assembly Bill 1509, which would eliminate specified firearm-related sentencing enhancements and reduce the available terms for other firearm enhancements. The bill would also permit resentencing for offenders who were sentenced under the current enhancement provisions.

"The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Eliminating firearm enhancements and reducing time served undercuts the role these laws play in deterring criminal behavior and protecting our communities from those who have violated the law. Furthermore, the retroactive application of this proposal takes away appropriate remedies from victims of crimes who ostensibly sought and received resolution and justice."

8) **Related Legislation**:

a) AB 1540 (Ting), requires the court to provide counsel for the defendant when there is a recommendation from the California Department of Corrections and Rehabilitation, the Board of Parole Hearings, or the district attorney, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 is scheduled to be heard in this committee on April 27, 2021.

b) AB 1245 (Cooley), allows a defendant who has served at least 15 years in the state prison to file a petition for recall and resentencing, and prohibits the court from denying the petition unless the court finds beyond a reasonable doubt that if released the defendant will commit a future violent crime. AB 1245 is scheduled to be heard in this committee on April 27, 2021.

c) SB 81 (Skinner), provides guidance to courts by specifying circumstances for a court to consider when determining whether to apply an enhancement. SB 81 is pending in the Senate Committee on Appropriations.

d) SB 483 (Allen), retroactively applies Senate Bill 180, of the 2017–2018 Legislative Session, and Senate Bill 136, of the 2019–2020 Legislative Session, to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. SB 483 is scheduled to be heard in the Senate Committee on Public Safety on April 27, 2021.

e) 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.

9) **Prior Legislation**:

a) SB 136 (Wiener), Chapter 590, Statutes of 2019, amended the one-year sentence enhancement for each prior prison or county jail felony term that applies to a defendant sentenced on a new felony by imposing the one-year sentence enhancement on a defendant sentenced on a new felony only if the defendant has a prior conviction for a sexually violent offense.

b) AB 1393 (Mitchell and Lara), Chapter 1013, Statutes of 2018, allows a judge discretion to strike a prior serious felony conviction, in furtherance of justice, to avoid the imposition of the five-year prison enhancement when the defendant has been convicted of a serious felony.

c) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allows a defendant who was sentenced to a lengthy prison term to request a recommendation for resentencing from the district attorney after completing 15 years in prison or half of his or her total term, whichever is less.

d) SB 1437 (Skinner), Chapter 1015, Statutes of 2018, limits liability for individuals based on a theory of first or second degree felony murder and allows individuals previously sentenced on a theory of felony murder to petition for resentencing if they meet specified qualifications.

e) SB 180 (Mitchell), Chapter 677, Statutes of 2017, limited the current three year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substance to convictions for a controlled substance offense where a minor was used or employed in the commission of the offense.

f) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

g) AB 2173 (Wayne), Chapter 126, Statutes of 2002, eliminated duplicative firearm and injury enhancements.

h) AB 4 (Bordonaro), Chapter 503, Statutes of 1997, provided for the 10-20-life firearm law.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition (Co-Sponsor)
Bend the Arc: Jewish Action (Co-Sponsor)
Blameless and Forever Free Ministries (Co-Sponsor)
California United for A Responsible Budget (CURB) (Co-Sponsor)
Congregations Organized for Prophetic Engagement (COPE) (Co-Sponsor)
Dignity and Power Now (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Essie Justice Group (Co-Sponsor)
Immigrant Legal Resource Center (Co-Sponsor)
Initiate Justice (Co-Sponsor)
Jesse's Place (Co-Sponsor)
Kern County Participatory Defense (Co-Sponsor)
Literacy Lab (Co-Sponsor)
Ramsey's Place Organization (Co-Sponsor)
Re:store Justice (Co-Sponsor)
Reentry Relief Project INC. (Co-Sponsor)
Root & Rebound (Co-Sponsor)
Rubicon Programs (Co-Sponsor)
Safe Return Project (Co-Sponsor)
Secure Justice (Co-Sponsor)
Starting Over INC. (Co-Sponsor)
The Place4grace (Co-Sponsor)
The Transformative In-prison Workgroup (Co-Sponsor)
UC Berkeley's Underground Scholars Initiative (USI) (Co-Sponsor)
Underground Scholars Initiative (Co-Sponsor)
Underground Scholars Initiative At the University of California, Irvine (Co-Sponsor)
White People 4 Black Lives (Co-Sponsor)
Ywca Berkeley/oakland (Co-Sponsor)
ACLU California Action
Asian Americans Advancing Justice - California
Asian Prisoner Support Committee
Asian Solidarity Collective
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association (CPDA)
Cat Clark Consulting Services LLC
Center for The Study of Racism, Social Justice, and Health
Communities United for Restorative Youth Justice (CURYJ)
Community Advocates for Just and Moral Governance
Community Legal Services in East Palo Alto
Creative Acts
Criminal Justice Clinic, UC Irvine School of Law

Democratic Party of The San Fernando Valley
Democratic Socialists of America - Los Angeles
Fair Chance Project
Felony Murder Elimination Project
Freedom 4 Youth
Fuel
Heals Project- Helping End All Life Sentences
Homies Unidos INC
Ikar
Legal Services for Prisoners With Children
Mourning Our Losses
No Justice Under Capitalism
Pillars of The Community
Pilot.com, INC.
Pride in Truth
Progressive Democrats for Social Justice
Repeal California's Three Strikes Law Coalition
Restaurant Opportunities Centers of California
San Francisco Public Defender
San Joaquin Pride Center
San Jose State University Human Rights Institute
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County
Smart Justice California
Team Justice
The Everett Program At UC Santa Cruz
Think Dignity
Timelist Group
Ucsf White Coats for Black Lives
Uncommon Law
United Communities for Peace
Usc Suzanne Dworak Peck School of Social Work's Unchained Scholars
We the People - San Diego
Young Women's Freedom Center

371 Letters/Statements of incarcerated individuals
242 private individual letters

Oppose

California Association of Highway Patrolmen
California District Attorneys Association
California Peace Officers Association
California Rifle and Pistol Association, INC.
California State Sheriffs' Association
Gun Owners of California, INC.
Los Angeles Professional Peace Officers Association
Peace Officers Research Association of California (PORAC)

Sacramento County District Attorney
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association

2 individuals

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

Date of Hearing: April 27, 2021
Chief Counsel: Gregory Pagan

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

AB 1336 (Nguyen) – As Amended March 23, 2021

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to establish a hate crimes task force, which local law enforcement may participate in through the establishment of regional task forces. Specifically, **this bill**:

1) Requires the BSCC to establish a hate crimes task force. Local law enforcement agencies may participate in the task force through regional task forces established by the board. Upon appropriation by the Legislature, grants for the task force shall be administered through the board and allocated to law enforcement agencies that participate in regional hate crime task forces.

2) Provides that the board shall, upon receipt of applications for grants from law enforcement agencies, group the agencies into three regional task forces and designate a lead agency in each region. Each lead agency shall convene a task force consisting of the lead agency and any other participating law enforcement agencies in that region.

3) Requires each regional task force to do all the of the following:

   a) Form a joint task force coordination council consisting of the sheriff or chief of police, or a representative of the sheriff or chief of police of the lead agency, and the chiefs of police, sheriffs, or their representatives of each participating law enforcement agency in that region. Each joint task force coordination council shall meet at least quarterly to share intelligence and discuss strategies and tactics to reduce the incidence of hate crimes in the region, to identify and to discuss ways to improve coordination of enforcement activities within that region, with the other regional task forces, and statewide;

   b) Expend funds allocated to the task force shall be for the goal of reducing hate crimes, identifying suspects engaging in hate crimes, identifying interregional movement of offenders, coordinating enforcement efforts, and promoting law enforcement training and best practices to reduce the incidence of hate crimes. Grant funds may be used to pay for officer overtime, travel, training, and related costs;

   c) Upon request, share intelligence regarding hate crime incidents and the identity, location, or other identifying information regarding offenders suspected of committing a hate crime with nonparticipating law enforcement agencies and with other regional task forces; and,

   d) Upon receipt of a grant pursuant to subdivision (a), the joint task force coordination council for each region shall determine how grant funds will be allocated among participating law enforcement agencies within the regional task force with the goals of

maximizing the reduction of hate-related crimes in the region and improving the coordination of intelligence regarding this crime with other regional task forces.

4) Requires the lead agency of each regional task force shall report to the board at least two years of crime statistics relating to incidents of hate crimes in the jurisdictions participating in the task force. For contract cities, a participating sheriff may designate whether a contract city is, or is not, included within the area covered by the grant and include or omit those statistics, as appropriate. The lead agency shall report to the board hate crime statistics for all participating law enforcement agencies in the regional task force for the two years commencing with the receipt of funds from grants. The report shall also include statistics on the number of arrests made for hate crimes within the two years after receipt of grant funds in each of the law enforcement agencies participating in the regional task force and annually thereafter.

5) Provides that the board shall compile statistics received from each of the three regional task forces, as specified, and shall on or after January 1 of the year subsequent to the receipt of those reports, and annually thereafter to report this information to the Legislature and the Governor and shall post the report on the board's internet website.

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.

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).

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, "As a refugee who came here as a young child, I too have been the victim of hate over the years. I have first-hand knowledge of how devastating and hurtful these crimes can be. People have been harassed, they have been shunned, personal property has been vandalized and in some cases, acts of physical violence and death have occurred. We have a responsibility to protect every individual from hate-based crimes.

"Establishing a hate crime task force will allow local law enforcement agencies to participate and share data within a regional approach so that we can work to reduce these incidents in our communities. This approach should give a more complete accounting of the number of hate crimes occurring statewide and allow greater collaboration between law enforcement agencies to find better ways to address and combat hate related crime in California. No one should have to live in fear and AB 1336 is an important first step toward allowing people to feel safe."

2) **Background**: Hate crimes are on the rise nationally and in California within the past five years. According to the Southern Poverty Law Center, there has been a significant increase in the number of "active hate groups" operating in the United States in recent years, and, according to the FBI, California reported more hate crimes than any other state in 2019. In recent months, there has been a well-documented surge in incidents targeted the Asian-American community.

   In 2018, the State Auditor released a report on hate crimes in California. Notably, the report found that law enforcement agencies failed to identify and report a significant percentage of hate crimes to the DOJ, and recommended that the DOJ provide better guidance to assist local law enforcement agencies with the identification and investigation of hate crimes and outreach to vulnerable communities. Ultimately, the audit concluded that "law enforcement agencies' inadequate policies and the DOJ's lack of oversight have resulted in the underreporting of hate crimes in the DOJ's Hate Crime Database."

   According to the State Auditor, these findings show a need for greater guidance and oversight by the DOJ, including with regards to hate crimes reporting and data collection, hate crime policies, outreach to historically vulnerable communities, coordination between law enforcement agencies, and education for the general public.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: Matthew Fleming

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

AB 1480 (Rodriguez) – As Amended April 21, 2021

SUMMARY: Allows a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention that did not result in a conviction, information concerning a referral or participation in a diversion program, and information that has been judicially dismissed or ordered sealed. Specifically, this bill:

1) Allows a criminal justice agency to inquire about, request, and utilize information concerning an arrest or detention that did not result in a conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been dismissed or ordered sealed for persons who are employed in criminal justice agencies, as defined by law, provided that the person's specific duties directly relate to:

   a) The collection or analysis of evidence or property;

   b) The apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or,

   c) The collection, storage, dissemination, or usage of criminal offender record information.

2) Allows a criminal justice agency to release information about an applicant for a nonsworn position within a criminal justice agency, concerning an arrest or detention that did not result in a conviction, and for which the person did not complete a postarrest diversion program, to a government agency employer of that nonsworn employee.

3) Allows a criminal justice agency to release information about a nonsworn employee concerning an arrest or detention which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that nonsworn employee.

EXISTING LAW:

1) Precludes an employer from asking applicants to disclose information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been dismissed or ordered sealed, and precludes any employer from seeking or utilizing such information as a factor in determining any condition of employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and

participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. (Lab. Code § 432.7 subd. (a)(1).)

2) Allows employers to ask an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial. (Lab. Code § 432.7 subd. (a)(1).)

3) Precludes employers from asking an applicant for employment to disclose information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court, and precludes an employer from seeking or utilizing, as a factor in determining any condition of employment, any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law. (Lab. Code § 432.7 subd. (a)(2).)

4) Exempts persons seeking employment or persons already employed as peace officers and persons seeking employment for positions in the Department of Justice or other criminal justice agencies, from the provisions precluding employers from asking an applicant for employment to disclose information concerning an arrest or detention that did not result in conviction, etc. (Lab. Code § 432.7 subd. (e).)

5) Allows any criminal justice agency to release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, which did not result in conviction, and for which the person did not complete a postarrest diversion program, to a government agency employer of that peace officer or applicant. (Pen. Code § 13203 subd. (a).)

6) Allows any criminal justice agency to release information concerning an arrest of a peace officer or applicant for a position as a peace officer, which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant. (Pen. Code § 13203 subd. (b).)

7) States that no peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information. (Lab. Code § 432.7 subd. (g)(1).)

8) States that no other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral

to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information. (Lab. Code § 432.7 subd. (g)(2).)

9) Prevents a criminal justice agency from releasing information under the following circumstances:

   a) Information concerning an arrest for which diversion or deferred entry of judgment has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed;

   b) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated; and,

   c) Information concerning an arrest without a disposition without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed or the individual was exonerated. (Pen. Code § 13203 subd. (c).)

10) Prevents a government agency employing a peace officer from determining any condition of employment other than paid administrative leave based solely on an arrest report, but allows the information contained in an arrest report to be used as the starting point for an independent, internal investigation of a peace officer in accordance with the law. (Lab. Code § 432.7 subd. (b).)

11) Defines "criminal justice agencies" are those agencies at all levels of government which perform as their principal functions, activities which either:

   a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or

   b) Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Expanding the availability of arrest information to the employers of non-sworn employees within criminal justice agencies recognizes the significant role they play in the criminal justice system while not affecting due process rights.

   "In the spirit of fostering transparency, ensuring that employees remain of the highest integrity, and maintaining community trust in the ethics of the public servants who work to protect our neighborhoods, it's appropriate to make this information available to law enforcement employers."

2) **Background on Arrest Information**: As a general matter, state law precludes employers from looking too closely at arrest information which resulted in something less than a conviction. Although arrests frequently show up in criminal history searches, if a specific

arrest did not result in a conviction, an employer is prohibited from asking questions about that arrest, or seeking documentation about the arrest, such as police reports and court records. They are also prohibited from using arrest information in hiring or promotion decisions.

One reason for this policy may be that an arrest, in and of itself, does not mean that a person is guilty of a crime. The fact that a person was arrested only means that the arresting officer had "probable cause" to make the arrest. The question of what constitutes "probable cause" for an arrest is not an exact formula, must be decided on a case by case basis, and certainly requires less evidence than that which would be required to hold someone criminally liable for a crime. (*See People v. Ingle* (1960) 53 Cal.2d. 407, 412-13.) In fact, the Penal Code explicitly states that a police officer can arrest a person even if no crime occurred, so long the officer had probable cause to *believe* that the person committed a felony. (Pen. Code § 836 subd. (a)(3).)

3) **Exemption for Peace Officers**: Despite the general restriction on the use of arrest information that did not result in a conviction, there is an exemption in the law for peace officers. Because peace officers are charged with upholding the law they are subjected to a higher level of scrutiny than the average person.

   Just like an arrest does not necessarily mean a person is guilty of a crime, the absence of a conviction also does not necessarily mean they have done no wrong. A finding of guilt requires proof beyond reasonable doubt; this is a lofty standard and sometimes cases are dismissed or a defendant is found not guilty due to a lack of evidence, rather than a lack of wrongdoing. Current law allows an employer of peace officers to look into the details of an arrest, and therefore gives the employer a better opportunity to evaluate the moral fitness of the applicant, and permits a better understanding of how the applicant may handle the responsibility that comes along with upholding and enforcing the laws of the State.

   This bill would expand a criminal justice agency's ability to obtain information about its nonsworn employees who work in roles that have peace officer-like duties. Under current law, a criminal justice agency is allowed to make inquiries and requests regarding its peace officers both at the time the peace officer is seeking employment and at any time throughout the officer's tenure with the agency. When it comes to employees other than peace officers, however, the agency can only make inquiries and requests regarding arrest information at the time the person is an applicant for employment. This bill would allow agencies to make requests and inquiries of a non-peace officer at any time during their employment, provided that the person is employed in a role in which his or her specific duties directly relate to 1) the apprehension, prosecution adjudication, incarceration, or correction of criminal offenders, 2) the collection, storage, dissemination or usage of criminal offender record information, or 3) the collection or analysis of evidence or property.

4) **Argument in Support**: According to the bill's sponsor, the *California State Sheriffs' Association*: "Labor Code §432.7 prohibits asking employees about arrest records that did not result in a conviction. However, persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies, as defined in Penal Code §13101, are exempt from Labor Code §432.7. These provisions in the law allow a law enforcement agency to complete a background check on applicants for non-sworn positions and ask about prior arrests, but once they are hired, a law

enforcement agency, due to a loophole in the law, can no longer question them about a future arrest. There is a companion section in Penal Code §13203 that allows a criminal justice agency to release information concerning an arrest or detention to the employer of a peace officer, but nothing addresses non-sworn employees of a law enforcement agency.

"Having ethical and conscientious personnel is pivotal to safeguard the integrity of our criminal justice system no matter the rank or title. So that law enforcement agencies can sustain trustworthy relationships within their communities, they must have the necessary means to request and receive arrest records for specified non-sworn employees. This process ensures equity, transparency, and accountability. For these reasons, CSSA is pleased to sponsor AB 1480."

5) **Prior Legislation**:

a) AB 2461 (Lackey), of the 2019 – 2020 Legislative Session, was identical to this bill. AB 2461 was not heard in this committee.

b) AB 1372 (Grayson), of the 2019 – 2020 Legislative Session, was identical to this bill as introduced. AB 1372 was amended into an unrelated bill in the Senate and died in the Senate Governmental Organization Committee.

c) AB 2715 (Limon), of the 2017-2018 Legislative Session, would have expanded the amount of personal information that is available to criminal justice agencies when they evaluate continuing employees who are engaged in the handling of sensitive information and other law enforcement duties, and simultaneously reduced the amount of personal information available to those agencies when evaluating potential employees for positions unrelated to those duties. AB 2715 died in the Assembly Public Safety Committee.

d) AB 1008 (McCarty), Chapter 789, Statutes of 2017, requires employers to follow certain procedures prior to considering an applicant's criminal history as part of the hiring process.

e) AB 2343 (Torres), Chapter 256, Statutes of 2012, requires that when state or federal summary criminal history information is furnished to an agency, organization or individual, a copy of the information be provided to the person about whom the information relates if there is an adverse employment, licensing, or certification decision.

f) AB 2727 (Bradford), of the 2009-2010 Legislative Session, would have restricted the situations in which an employer could deny an application for employment based on a prior criminal conviction. AB 2727 failed passage in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: Matthew Fleming

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

AB 1281 (Blanca Rubio) – As Amended March 18, 2021

As Proposed to be Amended in Committee

SUMMARY: Provides that expungement of a criminal conviction does not release the defendant from specified, unexpired criminal protective orders issued by the court in the underlying case. Specifically, **this bill**:

1) States that dismissal of an accusation or information following successful completion of probation does not release the defendant from the terms and conditions of an unexpired criminal protective order that has been issued by the court in connection with an underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.

2) States that dismissal of an accusation or information following full compliance with a non-probation sentence does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.

3) States that dismissal of an accusation or information following successful participation in the California Conservation Camp program as an incarcerated individual hand crew member, as a member of a county incarcerated individual hand crew does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.

4) States that persons who qualify for, and who are granted automatic conviction relief are not released from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.

5) States that for all such dismissals, the protective order shall remain in full force and effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

EXISTING LAW:

1) Requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation and the petitioner successfully completed probation or terminated early, is not serving a sentence for, on probation for, or charged with the commission of any offense. The court has discretion to do

so in the interests of justice in other probation cases. (Pen. Code, § 1203.4, subds. (a) & (b).)

2) Specifies that expungement relief for convictions in which probation was granted releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.4, subd. (a)(1)-(3)):

   a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

   b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

   c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and,

   d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

3) Requires the court to grant expungement relief, with specified exceptions, to defendants convicted of a misdemeanor and not granted probation or an infraction after one year from the date of the pronouncement of judgement, if the defendant has fully complied with and performed the sentence, is not serving a sentence, is not charged with a crime, has lived an honest and upright life, and has conformed to and obeyed the law. If the defendant does not satisfy these requirements, the court may in its discretion and in the interests of justice after one year from the date of pronouncement of judgment grant relief in non-probation cases in which the defendant has fully complied with and performed the sentence, is not serving a sentence, and is not charged with a crime. (Pen. Code, § 1203.4a subds. (a) & (b).)

4) Specifies that expungement relief for infraction/misdemeanor non-probation cases releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.4a, subds. (a) & (c)):

   a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

   b) May not possess or own or have under his or her custody or control any firearm Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

   c) Is not relieved of any ban on holding public office; and,

   d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

5) States that if a defendant successfully participated in the California Conservation Camp program as an inmate hand crew member, as specified, or successfully participated as a

member of a county inmate hand crew, as specified, and has been released from custody, the defendant is eligible for dismissal of charges. (Pen. Code, § 1203.4b.)

6) Allows the court to grant expungement relief for a felony conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. (Pen. Code, § 1203.41.)

7) Specifies that expungement relief for county jail felony convictions releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.41, subds. (a) & (b)):

   a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

   b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

   c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and

   d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

8) Allows the court to grant expungement relief for a conviction of a petitioner sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing to obtain an expungement. (Pen. Code, § 1203.42.)

9) Specifies that expungement relief for a conviction which would have been a county jail felony if committed after realignment releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.42, subds. (a) & (b)):

   a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

   b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

   c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and

   d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

10) Allows the court to grant expungement relief to probationer's whose criminal record resulted from a mental disorder stemming from military service, with specified exceptions and if specified conditions are met. (Pen. Code, 1170.9, subd. (h).)

11) Allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner has completed a term of probation and can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking. The court may grant the same expungement relief as in other expunged probation cases. (Pen. Code, § 1203.49.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "CA Penal Code sections 1203.4, 1203.4a and 1203.4b, commonly referred to as the 'expungement' sections, allow defendants to get their cases dismissed after successful completion of probation (1203.4), or in the absence of probation, via a successful completion of the sentence of the court (1203.4a), and if the person has been incarcerated, after completion of the California Conservation Camp Program for eligible crimes (1203.4b). Those code sections also state that dismissal of the case does not exempt the defendant from firearms prohibitions or prohibitions to hold public office. Based on Appellate and CA Supreme Court rulings, sex offender registration requirements also don't end with any 'expungement' because registration requirements are designed to protect the public and not serve as punishment for the defendant.

   "However, the law is silent on what should happen to criminal protective orders issued in serious cases such as domestic violence, stalking, and elder abuse where courts may issue a protective order for up to 10 years. This vagueness in the law has created a lack of guidance for the courts around the enforceability of these important protective orders where some courts may be compelled to choose between denying a case dismissal in an effort to preserve a protective order or granting a case dismissal along with a dismissal of the unexpired protective order, thereby leaving the most vulnerable of crime victims unprotected.

   "This bill would clarify the vagueness in the existing laws by explicitly allowing a court to dismiss an eligible case in appropriate situations and also keep the validly issued and unexpired 10-year criminal protective order in place until its natural expiration date. If, however, the court decides to terminate the protective order early or shorten the length of the order, this bill allows the court to exercise that discretion as well.

2) **Expungement Relief in General**: Originally, expungement relief was available to defendants placed on probation. (Pen. Code, § 1203.4.) However, expungement relief has been extended to other categories of cases, including people convicted of misdemeanors and infractions who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.) In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment. (Pen. Code, § 1203.42.) There are also specific provisions providing expungement relief to probationers

who were victims of human trafficking (Pen. Code, § 1203.49) or whose criminal record resulted from a mental disorder stemming from military service (Pen. Code, § 1170.9, subd. (h).) Last year, the Legislature passed and the governor signed AB 2147 (Reyes) Chapter 60, Statutes of 2020. That added a new expungement section, 1203.4b, which applies when a defendant successfully participates in the California Conservation Camp program as an incarcerated individual hand crew member, or as a county hand crew member, is eligible for expungement.

When a conviction is expunged, the person is generally released from "all penalties and disabilities" resulting from the conviction. (Pen. Code, §§ 1203.4, subd. (a), 1203.4a subd. (a), 1203.4b, subd. (c)(1), 1203.41, subd. (a), 1203.42, subd. (a), 1203.49, 1170.9, subd. (h).) However, there are a number of exceptions, including several statutory exceptions to that release – e.g., gun possession and holding elected office. (Pen. Code, §§ 1203.4, subds. (a) & (c), 1203.4a, subd. (a), 1203.41, subds. (a) & (b), 1203.42, subd. (b), 1203.49, 1170.9, subd. (h)(4).) As explained:

> . . . The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. . . .

(*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 140.) "Therefore, a conviction which has been expunged still exists for limited purposes...." (*Ibid.)*

This bill would codify an additional exception to release from "all penalties and disabilities," as provided under Penal Code sections 1203.4, 1203.4a, and 1203.4b. In particular, it would specify that expungement under these provisions does not release a person from an unexpired criminal protective order.

3) **Need for this Bill**: Penal Code section 273.5, subdivision (j) provides that upon conviction for willful infliction of corporal injury upon a cohabitant (otherwise known as domestic violence), the sentencing court must consider issuing a postconviction restraining order for up to 10 years prohibiting any contact with the victim. (Pen. Code, § 273.5, subds. (a)-(d), (j).) Penal Code section 136.2, subdivision (i) authorizes a court to issue a postconviction protective order for up to 10 years if a defendant is convicted of a domestic violence offense and the protected person qualifies as a victim. (See *People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 465-466.) Similar protective orders can be issued under existing law for the crimes of elder abuse and stalking. (Pen. Code, §§ 368 subd. (l) and 646.9, subd. (k).)

This bill would codify that when a felony or misdemeanor conviction is dismissed/expunged after probation is successfully completed, when an infraction or misdemeanor is dismissed/expunged after a non-probation sentence is completely fulfilled, or when an offense is dismissed/expunged as a result of successful participation in a hand crew, the defendant is not released from an unexpired criminal protective order. The court, however, retains discretion to terminate or modify the order.

4) **Committee Amendments**: In 2019, the Legislature passed AB 1076 (Ting) Chapter 578, Statutes of 2019. That bill created a new expungement statute in the Penal Code (1203.425) and required the Department of Justice (DOJ) to review its records on a monthly basis in order to identify persons who are eligible for conviction relief, and grant that relief without requiring the person to file a motion or a petition with the court. AB 1076 was subject to an appropriation and will go into effect in July 1, 2022. As introduced, the provisions of this bill would not have applied to cases in which a defendant was granted conviction relief pursuant to the provisions enacted by AB 1076. The committee amendments include relief under AB 1076 in the provisions of this bill in order to avoid discrepancies in how protective orders are treated following expungement of a conviction.

5) **Argument in Support**: According to the bill's sponsor, the *Los Angeles County District Attorney's Office*: "AB 1281 seeks to amend the sections in the Penal Code, colloquially referred to as the 'expungement' sections, to specify that dismissal of a case under those sections would not relieve a defendant from the terms and conditions of an unexpired 10-year criminal protective order issued in the case. These 10-year protective orders are only issued in certain serious cases such as domestic violence, stalking, and elder abuse. They play a significant role in protecting some of the most vulnerable victims of violent crime. Existing law allows a defendant to petition the court for a case dismissal after successful completion of probation, successful completion of participation in the California Conservation Camp program as an incarcerated individual hand crew member, or in the case of a misdemeanor (or infraction) where the sentence did not include probation, after successful completion of the sentence. Additionally, beginning July 2022, individuals who have successfully completed probation in many cases, or successfully completed their non-probationary sentence in a misdemeanor will be eligible for automatic conviction relief from the Department of Justice. However, the statutes are silent on the viability of unexpired 10-year protective orders when individuals who are subject to the orders get their cases dismissed under the 'expungement' sections.

"Under existing law, a defendant whose case has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425, effective 2022, shall be 'released from all penalties and disabilities resulting from the offense.' Although there are no cases directly on point, several appellate courts have held that in other contexts, provisions designed to protect the public are not "penalties and disabilities" from which a defendant may be released. For example, in *People v. Hamdon* (2014) 225 Cal. App.4th 1065, the court held that a defendant must still register as a sex offender per PC 290.5 even if the conviction had been set aside per PC 1203.4a. The court relied on two CA Supreme Court cases which held that registration is not punitive. Similarly, several CA Court of Appeal decisions have established that the "penalties and disabilities" from which a probationer may be released do not include non-penal restrictions designed to protect the public, such as qualification for employment as a peace officer and licensing of attorneys and doctors.

"Additionally, Penal Code sections 1203.4, 1203.4a, 1203.4b, and 1203.425 clearly state that dismissed cases do not exempt the defendant from firearms prohibitions or prohibitions to hold public office resulting from the original conviction. However, the lack of mention of protective orders has created uncertainty around their future enforceability.

"Criminal protective orders are not punitive in nature. They are non-penal restrictions designed to protect crime victims. Unless Penal Code sections 1203.4, 1203.4a, 1203.4b, and

1203.425 are amended to exclude 10-year criminal protective orders from the "penalties and disabilities" provision of those sections, there will always be a lack of clarity in the laws as to whether these important protective orders are still valid after a case has been dismissed."

6) **Argument in Opposition**: According to the *American Civil Liberties Union California Action*: "Restraining orders issued in criminal cases can remain in effect for periods of time far longer than a defendant's sentence or period of probation, potentially up to ten years. For that time period, the defendant remains subject to the control of the criminal justice system. The restrictions imposed under the restraining order in many cases can be a significant obstacle to the individual's ability to return to a law-abiding life in the community. For example, in a domestic violence case a restraining order may be issued barring contact with witnesses to the crime. Those witnesses may be members of the defendant's family or neighbors. The restraining order may therefore make it impossible for the defendant to return to their former home or even neighborhood without violating the order. The end result in many cases would likely be conviction for violation of the restraining order, and a prolonged cycle of reincarceration.

   "AB 1281 would broadly require all restraining orders to remain in effect unless the judge affirmatively chooses to terminate or modify the order. This will leave many defendants who successfully petition to have the cases against them dismissed under the jurisdiction of the criminal court for years after the dismissal, even when there is no reason to believe that they will otherwise break the law or cause harm."

7) **Prior Legislation**:

   a) AB 2147 (Reyes), Chapter 60, Statutes of 2020, allowed a defendant who successfully participated in the California Conservation Camp Program (Fire Camp) or a county inmate hand crew to petition for a dismissal of their conviction.

   b) AB 2808 (Cervantes), of the 2019 – 2020 Legislative Session, would have provided that expungement of a criminal conviction does not release the defendant from any unexpired criminal protective order. AB 2808 died in the Senate Public Safety Committee without a hearing.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
Crime Victims Alliance
Prosecutors Alliance California

Oppose

ACLU California Action

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

Amended Mock-up for 2021-2022 AB-1281 (Blanca Rubio (A))

Mock-up based on Version Number 98 - Amended Assembly 3/18/21
Submitted by: Matthew Fleming, Assembly Public Safety Committee

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

SECTION 1. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) (1) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if they are not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if they have been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in their probation papers, of this right and privilege and the right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve them of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have custody or control of any firearm or to prevent conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(4) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(5) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 287 or of former Section 288a, Section 288.5, subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or 311.11, or any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars ($150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars ($150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars ($150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 287 or of former Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

SEC. 2. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction shall, at any time after the lapse of one year from the date of pronouncement of judgment, if they have fully complied with and performed the sentence of the court, are not then serving a sentence for any offense and are not under charge of commission of any crime, and have, since the pronouncement of judgment, lived an honest and upright life and conformed to and obeyed the laws of the land, be permitted by the court to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty; or if the defendant has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which they have been convicted, except as provided in Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 13555 of the Vehicle Code.

(b) If a defendant does not satisfy all the requirements of subdivision (a), after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interests of justice, may grant the relief available pursuant to subdivision (a) to a defendant convicted of an infraction, or of a misdemeanor and not granted probation, or both, if they have fully complied with and performed the sentence of the court, are not then serving a sentence for any offense, and are not under charge of commission of any crime.

(c) (1) The defendant shall be informed of the provisions of this section, either orally or in writing, at the time of sentencing. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing, provided that, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

(2) Dismissal of an accusatory pleading pursuant to this section does not permit a person to own, possess, or have custody or control of any firearm or to prevent conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusatory pleading underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(4) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(d) This section applies to any conviction specified in subdivision (a) or (b) that occurred before, as well as those occurring after, the effective date of this section, except that this section does not apply to the following:

(1) A misdemeanor violation of subdivision (c) of Section 288.

(2) Any misdemeanor falling within the provisions of Section 42002.1 of the Vehicle Code.

(3) Any infraction falling within the provisions of Section 42001 of the Vehicle Code.

(e) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county and the court for the cost of services rendered at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(f) A petition for dismissal of an infraction pursuant to this section shall be by written declaration, except upon a showing of compelling need. Dismissal of an infraction shall not be granted under this section unless the prosecuting attorney has been given at least 15 days' notice of the petition for dismissal. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(g) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 3. Section 1203.4b of the Penal Code is amended to read:

1203.4b. (a) (1) If a defendant successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, as determined by the Secretary of the Department of Corrections and Rehabilitation, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, and has been released from custody, the defendant is eligible for relief pursuant to this section, except

that incarcerated individuals who have been convicted of any of the following crimes are automatically ineligible for relief pursuant to this section:

(A) Murder.

(B) Kidnapping.

(C) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(D) Lewd acts on a child under 14 years of age, as defined in Section 288.

(E) Any felony punishable by death or imprisonment in the state prison for life.

(F) Any sex offense requiring registration pursuant to Section 290.

(G) Escape from a secure perimeter within the previous 10 years.

(H) Arson.

(2) Any denial of relief pursuant to this section shall be without prejudice.

(3) For purposes of this subdivision, successful participation in a conservation camp program and successful participation as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, means the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program.

(b) (1) The defendant may file a petition for relief with the court in the county where the defendant was sentenced. The court shall provide a copy of the petition to the secretary, or, in the case of a county incarcerated individual hand crew member, the appropriate county authority.

(2) If the secretary or appropriate county authority certifies to the court that the defendant successfully participated in the incarcerated individual conservation camp program, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, as specified in subdivision (a), and has been released from custody, the court, in its discretion and in the interests of justice, may issue an order pursuant to subdivision (c).

(3) To be eligible for relief pursuant to this section, the defendant is not required to complete the term of their probation, parole, or supervised release. Notwithstanding any other law, the court, in providing relief pursuant to this section, shall order early termination of probation, parole, or supervised release if the court determines that the defendant has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief pursuant to this section.

(4) All convictions for which the defendant is serving a sentence at the time the defendant successfully participates in a program as specified in subdivision (a) are subject to relief pursuant to this section.

(5) (A) A defendant who is granted an order pursuant to this section shall not be required to disclose the conviction on an application for licensure by any state or local agency.

(B) This paragraph does not apply to an application for licensure by the Commission on Teacher Credentialing, a position as a peace officer, public office, or for contracting with the California State Lottery Commission.

(c) (1) If the requirements of this section are met, the court, in its discretion and in the interest of justice, may permit the defendant to withdraw the plea of guilty or plea of nolo contendere and enter a plea of not guilty, or, if the defendant has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which the defendant has been convicted, except as provided in Section 13555 of the Vehicle Code.

(2) The relief available pursuant to this section shall not be granted if the defendant is currently charged with the commission of any other offense.

(3) The defendant may make the application and change of plea in person or by attorney.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed.

(2) The order shall state, and the defendant shall be informed, that the order does not relieve the defendant of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for licensure by the Commission on Teacher Credentialing, a peace officer, public office, or for contracting with the California State Lottery Commission.

(3) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in the person's custody or control any firearm or prevent their conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(4) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(5) Dismissal of an accusation or information pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been

issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

SEC. 4. Section 1203.425 of the Penal Code is amended to read:

1203.425. (a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.
(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.
(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.
(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.
(v) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.
(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to

conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

~~(G)~~ (H) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(H) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(I) In a subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.
(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:
(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section.
(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(Amended by Stats. 2020, Ch. 29, Sec. 16. (SB 118) Effective August 6, 2020.)

Date of Hearing: April 27, 2021
Counsel: Matthew Fleming

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

AB 1127 (Santiago) – As Amended March 18, 2021

As Proposed to be Amended in Committee

SUMMARY: Prohibits a juvenile adjudication from being considered a prior serious or violent felony conviction for purposes of sentence enhancement under the Three Strikes Law. Specifically, **this bill**:

1) States that a prior juvenile adjudication does not constitute a prior serious or violent felony.

2) States that a person convicted of a felony who had their sentence enhanced because of a prior juvenile serious or violent felony conviction may file a petition with the court that sentenced the petitioner to have the petitioner's prior juvenile conviction enhancement vacated and to be resentenced on any remaining counts when all of the following conditions apply:

   a) A complaint, information, or indictment was filed against the petitioner that alleged the petitioner had suffered a prior conviction that constituted a serious or violent felony;

   b) The prior conviction alleged occurred when the petitioner was a juvenile and the case was adjudicated in juvenile court;

   c) The fact of the prior conviction alleged was either admitted or found to be true by a judge or jury after a conviction on the underlying charge or charges in the complaint, information, or indictment; and,

   d) The petitioner's sentence was actually enhanced due to this prior juvenile conviction being found true.

3) Requires the petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court, or on the public defender of the county where the petitioner was convicted.

4) Requires the petition to include a declaration by the petitioner that they are eligible for relief, as specified, the superior court case number and year of the petitioner's conviction, and whether the petitioner requests the appointment of counsel.

5) Requires the court to review the petition and determine if the petitioner has made a prima facie showing that the petitioner is eligible. Requires the court to appoint counsel if a prima facie case has been made and authorizes the court to appoint counsel if one has been not.

6) Requires the court, upon determining that a prima facie case has been made, to issue an order to show cause why relief should not be granted. Requires the prosecutor to file and serve a response within 60 days of service of the petition and allow the petitioner to file and serve a reply within 30 days after the prosecutor response is served.

7) Requires, within 60 days after the order to show cause has been issued, that the court hold a hearing to determine whether to vacate and recall the petitioner's sentence and resentence the petitioner on any remaining counts and enhancements, excluding the enhancement imposed as a result of the juvenile adjudication.

8) Specifies that under no circumstances shall the new sentence be greater than the initial sentence.

9) States that at the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior sentence shall be vacated and the petitioner shall be resentenced on the remaining charges and enhancements.

10) Specifies that on resentencing the prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence.

11) States that if the court determines that the petitioner is eligible for relief and the prosecutor does not object, it may grant relief without a hearing on the order to show cause and instead proceed directly to a resentencing hearing.

12) States that all of the deadlines shall be extended by the court upon a showing of good cause.

EXISTING LAW:

1) Creates, under realignment, two classifications of felonies: those punishable in county jail and those punishable in state prison. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent "strike" offenses. (Pen. Code, § 1170, subd. (h).)

2) Defines a "strike" prior as serious felonies and violent felonies, as specified, including specified juvenile adjudications that occurred when the defendant was 16 years of age or older. (Pen. Code, §§ 667, subd. (d) and 1170.12, subd. (b).)

3) Provides that a defendant who commits serious or violent felony and has previously been convicted of one "strike" prior conviction must be sentenced to twice the base term of the current felony. (Pen. Code, §§ 667, subd. (e)(1) and 1170.12, subd. (c)(1).)

4) Provides that a defendant who commits a serious or a violent felony and has previously been convicted of two or more "strike" prior convictions, must be sentenced to at least 25-years-to-life in state prison. (Pen. Code, §§ 667, subd. (e)(2) and 1170.12, subd. (c)(2).)

5) Requires consecutive rather than concurrent sentencing for multiple offenses committed by strikers, unless the current felony convictions arise out of the same set of operative facts.

(Pen. Code, §§ 667, subd. (c)(6) and 1170.12, subd. (a)(6).)

6) Requires an affected defendant be committed to state prison, and disallows diversion or probation. (Pen. Code, §§ 667, subd/ (c)(2) and (c)(4), and 1170.12, subds. (a)(2) and (a)(4).)

7) Provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

8) Establishes criteria to determine whether to transfer a minor from juvenile court to the court of criminal jurisdiction. (Welf. & Inst. Code, § 707.)

9) States that in a case in which a minor is alleged to have committed *any* felony when he or she was 16 years of age or older, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(1).)

10) States that in a case in which a minor is alleged to have committed specified offenses when the minor was 14 or 15 years of age, but was not apprehended prior to the end of juvenile court jurisdiction, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

11) Requires the court to consider the following criteria when deciding to transfer the case:

    a) The degree of criminal sophistication exhibited by the minor;

    b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;

    c) The minor's previous delinquent history;

    d) Success of previous attempts by the juvenile court to rehabilitate the minor; and,

    e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code, § 707, subd. (a)(3).)

12) Enumerates specific serious and/or violent predicate offenses which permit transfer to adult court. (Welf. & Inst. Code, § 707, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The purpose of juvenile delinquency proceedings is to rehabilitate youth, yet when it comes to Three Strikes sentencing, our state doubles down on unjust, punitive punishments for our juveniles, especially our youth of color. It makes no sense that we count juvenile strikes the same as adult strike convictions when in fact juvenile delinquency proceedings are not criminal proceedings. This inconsistency in current law makes our youth suffer harsher and longer sentences when they are convicted of adult strike offenses instead of rehabilitating. AB 1127 we eliminate juvenile

strikes so that we create a justice system that emphasizes rehabilitation not incarceration, and that treats all Californians with fairness and dignity, especially people of color."

2) **Juvenile Court**: As a general rule any person under the age of 18 who commits either a crime or a status offense falls within the jurisdiction of the juvenile delinquency court. (Welf. & Inst. Code, §§ 601 & 602.) This extends to any minor alleged to have committed a crime before his or her 18th birthday, regardless of age at the time of arrest or commencement of proceedings. (Welf. & Inst. Code, § 603.) For many years there was no minimum age under which the juvenile court lacked jurisdiction.

The creation of the juvenile court, now over 100 years old, was rooted in the idea that adolescents, who are not fully developed or mature, are less culpable than adults. Accordingly, the focus of the juvenile court was supposed to be rehabilitation, not punishment. (See e.g. *In re Gault* (1967) 387 U.S. 1, 15-16.) However, "There is evidence … that there may be grounds for concern that the child [in juvenile court] receives the worst of both worlds: that he gets neither the protections accord to adults nor the solicitous care and regenerative treatment postulated for children." (*Id.* at p. 18, fn. 23, citations omitted.) In fact, many would argue that, with the exception of the right to a jury trial, a delinquency proceeding is quasi-criminal and indistinguishable from an adult criminal proceeding.

The treatment of juveniles as equally culpable as adults clashes with emerging empirical evidence on the immaturity of adolescents with respect to both their ability to make informed and nuanced judgments about their behavior, as well as their moral development. Researchers in the science of human development generally agree that from a developmental standpoint an adolescent is not an adult. And some scholars argue that the unique nature of adolescent development affect considerations of both culpability and deterrence when measuring the value and suitability of imposing adult criminal sanctions on juveniles:

> The culpability analysis of juvenile impulsiveness and risk-taking implicitly embraces the developmental notion that some forms of adolescent behavior are the result of a not yet fully formed ability to control impulses. In effect, young people do not have the same capacity for self-control as adults and this should be considered a mitigating factor when assessing culpability. Similarly, the proclivity of adolescents to take risks and act on a whim skews the traditional deterrence calculus for the adolescent actor. Adolescents are not likely to recognize all possible options and therefore, their preference prioritization may be completely tilted toward outcomes that they expect will provide immediate gratification but that do not actually maximize their utility.

(Jill M. Ward, *Deterrence's Difficulty Magnified: The Importance of Adolescent Development in Assessing the Deterrence Value of Transferring Juveniles to Adult Court*, (2003) 7 UC Davis Juv. L. & Pol'y 253, 267, fn. 6.)

United States Supreme Court jurisprudence has also recognized that children are different. For example, in *Roper v. Simmons* (2005) 543 U.S. 551, the Court discussed the differences between juvenile offenders and adults when it held that persons who were under the age of 18 at the time of the offense are ineligible for the death penalty. First the court noted that a lack of maturity and an underdeveloped sense of responsibility are found in youth more and more often result in impetuous and ill-considered actions and decisions. (*Id.* at p. 569.) A

"second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." (*Ibid.*) And third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." (*Id.* at p. 570.)

3) **Three Strikes and Proposition 36**: In 1994, California passed the "Three Strikes" law. At the time it was enacted, the essence of the Three Strikes law was to require a defendant convicted of any new felony, having suffered one prior conviction of a serious felony as defined in section 1192.7(c), a violent felony as defined in section 667.5(c), or a qualified juvenile adjudication or out-of-state conviction (a "strike"), to be sentenced to state prison for twice the term otherwise provided for the crime. If the defendant was convicted of any felony with two or more prior strikes, the law mandated a state prison term of at least 25 years to life.

   As originally enacted, Three Strikes produced some appalling results. Shane Taylor, for example, was given a third strike and a sentence of 25 years to life for possessing less than $10 worth of drugs. (Chinn, Three Strikes of Injustice, California Innocence Project, October 11, 2012, available at: https://californiainnocenceproject.org/2012/10/three-strikes-of-injustice/, [as of April 20, 2021].) Leandro Andrade was a nine-year army veteran and father of three young children. He was convicted of two theft offenses for stealing children's videotapes from two different department stores. (Chemerinsky, Cruel and Unusual: the Story of Leandro Andrade, 52 Drake L. Rev. 1, 1995, at page 1-2, available at: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?httpsredir=1&article=2404&context=faculty_scholarship, [as of April 20, 2021].) The total cost of the videotapes that Andrade stole was about $150. (*Id.*) Nonetheless, Andrade was charged with two felonies because he had committed several nonviolent felony offenses 12 years prior to the theft of the videotapes. (*Id.* at 2.) As a result of the Three Strikes law, Andrade was sentenced to two consecutive terms of 25 years to life in prison, making him ineligible for parole for 50 years. (*Id.* at 3.)

   In 2012, Californians voted to enact Proposition 36, which revised the Three Strikes law so that mandatory 25 - life sentences would only be imposed upon a conviction for a new "violent" or "serious" felony. In addition, proposition 36 only allowed the use of a juvenile adjudication to count as a "strike" if the juvenile was 16 years of age or older at the time they committed the prior offense, and the offense met other specified requirements. Recognizing that the brain and moral development of adolescents is not as formed as that of an adult, in addition to the compelling arguments made by the bill's sponsor (*infra*), this bill seeks to prevent the use of any juvenile adjudication as a strike, even those that occurred after the defendant's 16th birthday. If this bill were enacted then a 16 year old could not be charged with a "strike" on the basis of a juvenile conviction. Instead, the juvenile would have to be transferred to, and convicted in adult court.

4) **Argument in Support**: According to the bill's sponsor, the *Los Angeles County District Attorney's Office*: "In 1994, California enacted the Three Strikes and You're Out law which dramatically increases the punishment for persons convicted of a felony who previously were convicted of one or more 'serious' or 'violent' felonies. The Three Strikes law was intended to keep violent murderers, rapists and child molesters in prison. However, today more than half of inmates sentenced under the law are serving sentences for nonviolent crimes.

"California's current Three Strikes law permits specified felonies that are found true in a juvenile court proceeding to be alleged as a 'strike' prior in a future adult criminal proceeding to enhance a defendant's potential length of incarceration. California is the only state that uses juvenile adjudications as strike priors to trigger mandatory third strike sentences of twenty-five years to life.

"The repercussions of a juvenile strike are the same as the repercussions of an adult strike. This is true despite the fact that juvenile delinquency proceedings and criminal proceedings are substantially different. The main differences between the two systems are:

- Juvenile delinquency proceedings are not criminal proceedings;
- Juveniles are not entitled to jury trials;
- The primary purpose of juvenile court proceedings is rehabilitation;
- Juvenile strikes disproportionally affect people of color; and
- The list of felonies that constitute strikes are different in juvenile and adult proceedings.

"Juvenile Delinquency Proceedings are not Criminal Proceedings

"A juvenile accused of a crime in delinquency court is not referred to as a 'defendant' but as a "minor." A juvenile is not charged with a crime in the same manner as an adult. A juvenile is also not "convicted" in a juvenile proceeding but is instead "adjudicated a ward of the court." The reason for these differences is because a juvenile delinquency proceeding is not a criminal proceeding.

"Welfare and Institutions Code Section 203 states:

> An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.

"Even though there is no conviction and the proceeding is not considered criminal, the juvenile adjudication of a juvenile strike can still be used in an adult criminal proceeding to enhance sentencing. In no other area of law can the outcome of a non-criminal case be used to enhance sentencing in a future criminal case. In fact, a prior juvenile strike cannot even be used in a future juvenile case to enhance a sentence.

"Juveniles are not Entitled to a Trial by Jury

"The right to a jury trial in criminal cases is one of the foundations of our criminal justice system. The right to jury trial is included in The Bill of Rights as well as the California Constitution. While this right is guaranteed in criminal trials under both the United States and California Constitutions, juveniles are not entitled to a jury trial in delinquency cases.

"The United States Supreme Court held that juveniles are not entitled to a jury trial in delinquency cases (*McKkeiver v. Pennsylvania* ((1971) 403 U.S. 528)). The Court based the holding on the fact that juvenile proceedings are not criminal proceedings. The Court found that since juvenile court proceedings adequately protect the rights of minors, the right to a jury trial is not necessary. The Court stated that juvenile proceedings are meant to be more informal and intimate than an adult criminal proceeding.

"It is unfair to use a prior adjudication in which a right as fundamental as the right to a jury trial is not protected to enhance a future criminal sentence. Nothing in AB 1127 prevents the transfer of a juvenile strike case to adult criminal court where all constitutional rights are protected if the People wish to preserve the right to use a strike in a future criminal proceeding. Should a transfer be granted, the minor would have all the rights adult defendants do, not virtually all the rights.

"Stated Purpose of Juvenile Court is Rehabilitation

"The stated goals of juvenile delinquency court are to protect minors and to keep the public safe. The process and goals are different from adult court and so are the disposition options. In juvenile delinquency proceedings, the ultimate disposition recommendation is based not just on the seriousness of the crime, but on the minor as a whole. The disposition in a juvenile court is not meant to be punitive, and retribution is prohibited under the Welfare and Institutions Code Section 202.

"If the purpose of delinquency court is rehabilitation and determining the best interests of the minor, then cases in juvenile proceedings should serve to rehabilitate, not to be used for a punitive purpose in the future. It is illogical for the Legislature to acknowledge that minors need to be treated differently, and yet when they become adults, their juvenile adjudication can be used as criminal enhancements resulting in lengthier incarcerations.

"Juvenile Strikes Disproportionally Affect People of Color

"Juvenile strikes disproportionally affect youth of color, especially African American youth. Youth of color are more likely to be impacted by the juvenile justice system in a serious way at every stage of a delinquency case – from arrest, to filing, to detention, and placements. African American youth are more likely to face strike charges, and African American adults are certain to have longer sentences because of that past juvenile strike adjudication.

"List of Felonies that Constitute Strikes are Different in Juvenile and Adult Proceedings

"The offenses listed in Welfare and Institutions Code Section 707(b) which constitute juvenile strikes are similar to but not identical to the list of adult serious and violent felonies. Notably missing are crimes such as First Degree Residential Burglary (Penal Code Section 459), Criminal Threats (Penal Code Section 422), Lewd or Lascivious Acts with a Minor (Penal Code Section 288(a), and Carjacking without a Weapon (Penal Code Section 215).

"The fact there are several exceptions as to what constitutes a strike indicates that the Legislature and the voters intended that strikes committed by a juvenile are distinguishable from strikes committed by an adult.

"The science behind juvenile decision making is quite clear because the juvenile brain is not fully developed, and juveniles make decisions differently than adults. The United States Supreme Court has repeatedly held that children have a lack of maturity and underdeveloped sense of responsibility. This lack of maturity leads juveniles to engage in reckless, impulsive and heedless risk taking, particularly when it comes to committing crimes.

"To rectify these injustices, AB 1127 would eliminate strikes committed and adjudicated as a juvenile from counting as enhancements in future adult felonies. AB 1127 would also allow people to petition for resentencing if their prior juvenile strike was used to enhance their future adult criminal conviction.

"By rectifying this inconsistency in our juvenile justice system, AB 1127 would take much needed steps to reduce mass incarceration in our state and allow California to lead the nation in addressing the disparate impact that juvenile strikes have on people of color."

5) **Prior Legislation**:

a) SB 439 (Mitchell), Chapter 1006, Statutes of 2018, prohibited the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or specified sex offenses.

b) SB 1391 (Lara) Chapter 1012, Statutes of 2018, repealed the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old, unless the minor was not apprehended prior to the end of juvenile court jurisdiction.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
ACLU California Action
Alameda County Public Defender's Office
Asian Prisoner Support Committee
California Academy of Child and Adolescent Psychiatry
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
East Bay Community Law Center
Ella Baker Center for Human Rights
Equal Justice Under Law
Essie Justice Group
Fresh Lifelines for Youth
Fresno Barrios Unidos
Gathering for Justice
Independent Defense Counsel Office, County of Santa Clara
Justice and Diversity Center of The Bar Association of San Francisco
Legal Services for Prisoners With Children

Milpa (motivating Individual Leadership for Public Advancement)
Monterey County Public Defender
National Center for Youth Law
National Institute for Criminal Justice Reform
Pacific Juvenile Defender Center
Riverside Justice Table
Safe Return Project
San Francisco Public Defender
San Mateo County Bar Association, Private Defender Program
Santa Cruz Barrios Unidos
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Silicon Valley De-bug
Smart Justice California
Youth Law Center

Opposition

None

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

Amended Mock-up for 2021-2022 AB-1127 (Santiago (A) , Quirk (A))

Mock-up based on Version Number 98 - Amended Assembly 3/18/21
Submitted by: Matthew Fleming, Assembly Committee on Public Safety

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

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) (1) A person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction that includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision does not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious or violent felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Care Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication does not constitute a serious or violent felony conviction.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the

defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 311.11, and Section 314.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined

in subdivision (d). The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385.

(g) Prior serious or violent felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony serious or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 7, 2012.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. Section 1170.12 of the Penal Code is amended to read:

1170.12. Aggregate and consecutive terms for multiple convictions; prior conviction as prior felony; commitment and other enhancements or punishment.

(a) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in subdivision (b), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(b) Notwithstanding any other law and for the purposes of this section, a prior serious or violent conviction of a felony is defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior serious and/or violent felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior serious or violent conviction is a serious or violent felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication does not constitute a prior serious or violent felony conviction.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 287, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious or violent felonies:

(I) A "sexually violent offense" as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by Section 287 or former Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machinegun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(d) (1) Notwithstanding any other law, this section shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as defined in this section. The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385.

(e) Prior serious or violent felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior serious or violent felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of subdivisions (a) to (e), inclusive, or of Section 1170.126, or the application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. Section 1170.96 is added to the Penal Code, to read:

1170.96. (a) A person convicted of a felony who had their sentence enhanced because of a prior juvenile serious or violent felony conviction may file a petition with the court that sentenced the petitioner to have the petitioner's prior juvenile conviction enhancement vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) A complaint, information, or indictment was filed against the petitioner that alleged the petitioner had suffered a prior conviction under subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 or alleged pursuant to paragraph (3) of subdivision (d) of Section 667 or paragraph (3) of subdivision (b) of Section 1170.12.

(2) The prior conviction alleged occurred when the petitioner was a juvenile and the case was adjudicated in juvenile court.

(3) The fact of the prior conviction alleged was either admitted or found to be true by a judge or jury after a conviction on the underlying charge or charges in the complaint, information, or indictment.

(4) The petitioner's sentence was actually enhanced due to this prior juvenile conviction being found true.

(b) (1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court, or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by the petitioner that they are eligible for relief under this section, based on all of the requirements of subdivision (a).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner **is eligible for relief under**~~falls within the provisions of~~ this section. If the **court determines that a prima facie case has been made, and the** petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. **If the court determines that a prima facie case has not been made and the petitioner has requested counsel, the court may appoint counsel in its discretion, for the purpose of investigating the petitioner's eligibility for relief under this section and attendant proceedings.**

(d) If the court determines that the petitioner has made a prima facie showing that they are eligible for relief, the court shall issue an order to show cause why relief should not be granted. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. ~~These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause.~~

~~(d)~~ **(e)**(1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate ~~the enhancement~~ and ~~to~~ recall the **petitioner's** sentence and resentence the petitioner on any remaining counts and enhancements**, excluding the enhancement imposed as a result of the juvenile adjudication described in subdivision (a).** ~~in the same manner as if the petitioner had not been previously sentenced~~. ~~, provided that the~~ **Under no circumstances shall the** new sentence~~, if any, is not~~ **be** greater than the initial sentence. ~~This deadline may be extended for good cause.~~

(2) ~~The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have their prior juvenile conviction enhancement vacated and for resentencing.~~

~~(3)~~ At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior ~~enhancement~~ **sentence** shall be vacated and the petitioner shall be resentenced on the remaining charges and enhancements. **On the issue of resentencing, T**~~t~~he prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence ~~to meet their respective burdens~~.

(3) If the court determines that the petitioner is eligible for relief and the prosecutor does not object, it may grant relief without a hearing on the order to show cause and instead proceed directly to a resentencing hearing.

(e) **All of the deadlines in prescribed by this section shall be extended by the court upon a showing of good cause.**

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

~~(f)~~ **(g)** A person who is resentenced pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to three years following the completion of the sentence.

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

Date of Hearing: April 27, 2021
Chief Counsel: Gregory Pagan

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

AB 913 (Smith) – As Introduced February 17, 2021

SUMMARY: Clarifies and updates definitions in the Collateral Recovery Act to conform to current practices and with other provisions of law. Specifically, **this bill**:

1) Updates the definition of "deadly weapon" to refer to a "firearm" to conform to the practices of law enforcement.

2) Clarifies the definition of "legal owner" to conform to the corresponding legal definition of "registered owner".

3) Clarifies that personal effects left in a vehicle belong to the registered owner.

4) Conforms the definition of "repossession" to Bus. & Prof. Code § 7507.12 which describes when a repossession is complete.

5) Clarifies for a repossession that a "private building" is one that is "locked and secured" and a "secured area" is an area that is "not open."

6) Clarifies that a "violent act" which must be reported to the Bureau of Security and Investigative Services (BSIS) refers to an act that occurs during the repossession.

7) Intent to recruit previous repossession agency licensees back and retain family members in the industry.

8) Increases the time in which an expired repossession agency license may be renewed from three years to ten years.

9) Allows a family member of a qualified manager who has died to reinstate and retain the repossession agency license number by paying the renewal fee and meeting requirements of the chapter.

10) Clarifies that employees of a licensed repossession agency who perform out of office skip tracing, or who drive camera cars are not required to be licensed.

11) Updates the law to recognize modern technology communication by authorizing the notice of inventory of personal effects to be delivered by email

12) Clarifies that "unlawful entry" means entering an area that is locked and secured as defined.

EXISTING LAW:

1) Establishes the Bureau of Security and Investigative Services (BSIS) within the Department of Consumer Affairs (DCA) to license and regulate repossessors under the Collateral Recovery Act. (Bus. & Prof. Code, §§ 7500 – 7511.)

2) Defines "assignment" as any written authorization by the legal owner, lienholder, lessor, lessee, registered owner, or the agent of any of them, to repossess any collateral, including, but not limited to, collateral registered under the Vehicle Code (VEH) that is subject to a security agreement that contains a repossession clause. "Assignment" also means any written authorization by an employer to recover any collateral entrusted to an employee or former employee in possession of the collateral. (Bus. & Prof. Code, § 7500.1, subd. (a).)

3) Defines "collateral" as any specific vehicle, trailer, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement. (Bus. & Prof. Code, § 7500.1, subd. (e).)

4) Defines "debtor" as any person obligated under a security agreement. (Bus. & Prof. Code, § 7500.1, subd. (i).)

5) Defines "legal owner" as a person holding a security interest in any collateral that is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement. (Bus. & Prof. Code, § 7500.1, subd. (n).)

6) Defines "licensee" as an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency. (Bus. & Prof. Code, § 7500.1, subd. (o).)

7) Defines "repossession" as the locating or recovering of collateral by means of an assignment. (Bus. & Prof. Code, § 7500.1)

8) Requires, a licensed repossessor to remove and inventory personal effects from the collateral after repossession. The inventory of the personal effects must be complete and accurate, and the personal effects must be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession. (Bus. & Prof. § 7507.9)

9) Authorizes a debtor, with the consent of the licensee, to waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the notices required by the Act and signs a statement that the debtor has received all the property. (Bus. & Prof. Code, § 7507.9, subd. (h).)

10) Requires a repossession agency to request written authorization from the debtor before releasing personal effects or other personal property not covered by a security agreement. (Bus. & Prof. Code, § 7507.9, subd. (i).)

11) Exempts a vehicle repossessed pursuant to the terms of a security agreement from registration solely for the purpose of transporting the vehicle from the point of repossession

to the storage facilities of the repossessor, and from the storage facilities to the legal owner or a licensed motor vehicle auction, provided that the repossessor transports with the vehicle the appropriate documents authorizing the repossession and makes them available to a law enforcement officer on request. (Veh. Code, § 4022)

12) Provides that a vehicle removed and seized by a peace officer as specified shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met: (Veh. Code, § 14602.6, subd. (f).)

a) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.
b) The following payment requirements are met:
   i) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Vehicle Code § 22850.5 unless the legal owner voluntarily requested a post-storage hearing.

   ii) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in Civil Code § 1747.02(a), except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

   iii) A person operating or in charge of a storage facility described above who violates the requirements shall be civilly liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing, storage, and related fees, but not to exceed five hundred dollars ($500).

   iv) A person operating or in charge of a storage facility described above shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

   v) Credit charges for towing and storage services shall comply with Civil Code § 1748.1. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

c) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in Business and Professions Code § 7500.1(b); a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following, as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the

vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to the Collateral Recovery Act, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies, that the agent is exempt from licensure pursuant to Bus. & Prof. §§ 7500.2 or 7500.3.

d) No administrative costs authorized under Vehicle Code, § 22850.5(a) shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this paragraph. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.

e) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle, provided all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

13) Provides that, when collateral is released to a licensed repossessor, licensed repossession agency, or its officers or employees, the following apply:

a) The law enforcement agency and the impounding agency, including any storage facility acting on behalf of the law enforcement agency or impounding agency, shall comply with the release requirements of Vehicle Code § 14602.6 and shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section. A law enforcement agency shall not refuse to issue a release to a legal owner or the agent of a legal owner on the grounds that it previously issued a release.

b) The legal owner of collateral shall, by operation of law and without requiring further action, indemnify and hold harmless a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard from a claim arising out of the release of the collateral to a licensed repossessor or licensed repossession agency, and from any damage to the collateral after its release, including reasonable attorney's fees and costs associated with defending a claim, if the collateral was released in compliance with this section. (Veh. Code, § 14602.6, subd. (j).)

14) Provides that, pursuant to Vehicle Code § 4022 and to Vehicle Code § 22651(o)(3)(B), a vehicle obtained by a licensed repossessor as a release of collateral is exempt from registration pursuant for purposes of the repossessor removing the vehicle to his or her storage facility or the facility of the legal owner. A law enforcement agency, impounding authority, tow yard, storage facility, or any other person in possession of the collateral shall release the vehicle without requiring current registration and pursuant to Veh. Code, §§14602.6, subd. (f), 4000, subd. (g)(1).)

15) Provides that the legal owner of collateral shall, by operation of law and without requiring further action, indemnify and hold harmless a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard from a claim arising out of the release of the collateral to a licensee, and from any damage to the collateral after its release, including reasonable attorney's fees and costs associated with defending a claim, if the collateral was released in compliance with this subdivision. (Veh. Code, § 4000, subd. (g)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 913 is an industry-sponsored measure that will update and clarify the laws regulating the repossession industry in California. The bill clarifies and conforms definitions used in the law. Outdated definitions in the Act lead to confusion and conflicting approaches in the repossession industry. Clarifications need to be made to ensure that consumers are protected, and that the profession can efficiently and effectively operate. Additionally, the law needs to be updated to reflect current communication practices by allowing a notice of inventory of personal effects and a notice of seizure to be delivered by email."

2) **Argument in Support**: According to the *California Association of Licensed Repossessors*, "AB 913 clarifies and updates the definitions in in Bus. & Prof. Code § 7500.1 to conform current practices and other law. Most of the provisions in AB 913 were in last year's AB 2759 (Olbernolte), Chapter 354, Statutes of 2020. Specifically, Bus. & Prof. Code §§ 7500.1, 7504.4, 7506.7, 7508.2 were in that bill and passed the Assembly on Consent with no "NO" vote. However these changes were amended out of AB 2759 on August 6, 2020 due to the limited time to analyze and discuss the bill under the restricted Legislative schedule brought about by the Covid-19 Pandemic.

   "CARL believes AB 913 will help to clarify and update the terms related to the repossession industry. These changes clear up confusing and conflicting provisions in the repossession law, modernize the law to reflect current consumer-friendly practices, and enable the profession to operate efficiently and effectively."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Licensed Repossessors

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: David Billingsley

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

AB 1308 (Ting) – As Introduced February 19, 2021

SUMMARY: Requires the Department of Justice (DOJ), on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified, for all convictions that occurred on or after January 1, 1973 rather than just those that occurred on or after January 1, 2021. The provisions of this bill would be operative on July 1, 2022, subject to an appropriation in the annual Budget Act.

EXISTING LAW:

1) Requires DOJ, as of January 1, 2021, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons with convictions that meet specified criteria and are eligible for automatic conviction record relief. (Pen. Code § 1203.425, subd. (a)(1).)

2) States that a person is eligible for automatic conviction relief if they meet all of the following conditions:

   a) The person is not required to register pursuant to the Sex Offender Registration Act;

   b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

   c) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges;

   d) Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

   e) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

      i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code § 1203.425, subd. (a)(2).)

3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person who is eligible, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 1203.425, subd. (b).)

4) Requires the DOJ, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 1203.425, subd. (c).)

5) Requires the DOJ, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria to be eligible for arrest record relief. (Pen. Code § 851.93, subd. (a)(1).)

6) States that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 2021, and meets any of the following conditions:

   a) The arrest was for a misdemeanor offense and the charge was dismissed;

   b) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest;

   c) The arrest is for a realigned felony offense, punishable by a maximum of three years in the county jail, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest;

   d) The person successfully completed any of the following, relating to that arrest:

      i) A prefiling diversion program, as defined, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

      ii) A drug diversion program administered by a superior court or a deferred entry of judgment program; and,

      iii) A pretrial diversion or other diversion program, as specified. (Pen. Code § 851.93, subd. (a)(2).)

7) Requires the DOJ to grant relief to a person identified as eligible for arrest record relief, without requiring a petition or motion by a party for that relief if the relevant information is

present in the department's electronic records. (Pen. Code § 851.93, subd. (b).)

8) Requires the DOJ, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 851.93, subd. (c).)

9) Specifies that automatic conviction and arrest record relief shall be operative commencing July, 2022, subject to an appropriation in the annual Budget Act. (Pen. Code §§ 1203.425, subd. (a)(1)(A) and 851.93, subd. (g).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "8 million Californians have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction, but remain as obstacles to employment. Nearly 90 percent of employers, 80 percent of landlords, and 60 percent of colleges screen applicants' criminal records.

   "Existing law allows people who were never convicted or who have served their time for low level offences to petition the court to expunge their records. This process costs on average $3,757 and less 20% of eligible Californians have petitioned for expungement.

   "In order to these reduce barriers to housing and employment, reduce costs, and reduce strain on courts, California created a system to automatically expunge eligible criminal records. However this automatic relief is only available for criminal records that filed after January 1, 2021.

   "AB 1308 expands automatic expungement to eligible records back to January 1, 1973."

2) **Employment Barriers for People with Criminal History Records**: Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

   The refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have been involved in criminal activity seek to come clean and refocus their lives on productive, non-criminal endeavors, but find it nearly impossible to land employment. Unable to earn a steady income and excluded from the dignity and social inclusion that a job confers, people with criminal histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

3) **Automatic Conviction and Arrest Record Relief**: In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 1076 established a procedure in which persons who had been arrested or convicted under certain conditions could have their cases dismissed, arrest records sealed, and have such information be withheld from disclosure, all without having to file a petition with the court. The purpose of AB 1076 was to remove barriers to housing and employment for recently convicted and arrested individuals in order to foster their successful reintegration into the community.

   As originally envisioned, AB 1076 would have applied to any arrest or conviction regardless of when that arrest or conviction occurred. A subsequent version of the bill made it applicable only to those arrests and convictions that occurred on or after January 1, 1973. In its chaptered version, AB 1076 applied only to those arrests and convictions which occur on or after January 1, 2021. This bill would reset the date for automatic arrest record and conviction relief to January 1, 1973. The provisions of this bill are contingent upon an appropriation in the Annual Budget Act. Money was appropriated in last year's budget act to address the scope of records relief covered by AB 1076.

   Existing law (separate from AB 1076) provides for a number of procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her arrest/conviction information sealed or dismissed. When these procedures are successful, they generally treat the arrest or conviction as if it had never occurred. This allows persons formally arrested or convicted, to lawfully withhold information about their arrest or conviction when applying for jobs, which is vitally important to successfully reentering the community and not returning to a life of crime. Typically, the procedure for sealing an arrest record, or dismissing a conviction is a court process. It requires the defendant to submit an application, or "petition" with the court, and the court makes a determination about whether the person is eligible for the relief he or she is seeking.

   AB 1076 streamlined the process of defendants that have suffered arrests or convictions after January 1, 2021, that would otherwise be eligible through petitioning the court. AB 1076 removed the requirement that a defendant file a petition with the court, and instead requires DOJ to proactively seek out defendants who are eligible for relief by searching its criminal information databases. Once DOJ makes a determination that a person is eligible for either arrest record or conviction record relief, it must grant relief in the form of either 1) sealing an arrest record, or 2) in the case of a guilty plea, withdrawing the plea of guilty, entering a plea of not guilty, and dismissing the charges, or 3) in the case of a conviction after a plea of not guilty, vacating the conviction and dismissing the charges against the person. DOJ would be required to search for eligible defendants on a monthly basis and inform the superior court with jurisdiction over the case when relief is granted.

   AB 1076 left in place certain prohibitions resulting from arrests or convictions after relief has been granted, such as the prohibition on owning a firearm after a conviction for domestic violence or a felony, and would not restore someone's driving privilege if that privilege was

lost as a result of the conviction for which he or she is obtaining relief. AB 1076 also does not allow DOJ to grant conviction records relief to a person who is required to register as a sex offender, or a person who is under court supervision or facing criminal charges. The provisions of this bill extend AB 1076 to cover arrests and convictions that occurred on or after January 1, 1973.

4) **Argument in Support**: According to the *Pillars of the Community – San Diego* "Studies show that lack of access to employment and housing are primary factors that drive individuals to reoffend. As a result, barriers to criminal record relief reduce the likelihood of successful reentry and harm public safety. They also perpetuate the long history of disproportionate impact of the justice system on socioeconomically disadvantaged communities, and communities of color in particular.

"In California, eight million residents have criminal convictions on their records hampering their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Criminal records are serious barriers to successful reentry and come at a cost of $20.8 billion annually to California's economy. Nationally, it has been estimated that the U.S. loses roughly $372.3 billion per year in terms of gross domestic product due to employment losses among people living with convictions.

"Current law allows individuals to clear arrests that did not result in a conviction, and to clear convictions that are eligible for dismissal by petitioning the court. This imposes a burden on affected individuals to be made aware of their eligibility and retain an attorney to proactively file the necessary petition. Additionally, under that current petition-based record clearance model, each record costs the system $3,757, whereas an automated system costs 4 cents per record."

5) **Related Legislation**:

a) SB 731 (Durazo), would make an arrest for a felony when there is no indication that the criminal proceeding has been initiated at least 3 years after the arrest eligible for record relief. Expands automatic conviction relief to felonies not included under existing law. Provides certain relief back to 1973. SB 731 is awaiting hearing in the Senate Appropriations Committee.

b) AB 1540 (Ting), requires the court to provide counsel for the defendant when there is recommendation from the CDCR, BPH, or the district attorney, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 is awaiting hearing in the Assembly Public Safety Committee.

c) AB 1245 (Cooley), would authorize a petition for 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 set for hearing on April 27, 2021, in the Assembly Public Safety Committee.

d) AB 262 (Patterson), would provide additional legal rights 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 262 is awaiting

hearing in the Assembly Appropriations Committee.

6) **Prior Legislation**:

a) AB 2978 (Ting), of the 2019-2020 Legislative Session, contained the same provisions as this bill. AB 2978 was never heard in the Assembly Public Safety Committee.

b) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires starting on January 1, 2021, and subject to an appropriation in the annual Budget Act, that the DOJ, on a monthly basis, review the records in the statewide criminal justice databases grant relief to persons who identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.

c) AB 972 (Bonta), of the 2019-2020 Legislative Session, would have established a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 was held in the Assembly Appropriations Committee.

d) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held of the Assembly Appropriations Suspense File.

e) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

Prosecutors Alliance California (Sponsor)
California for Safety and Justice (Co-Sponsor)
ACLU California Action
Asian Solidarity Collective
California Public Defenders Association (CPDA)
Community Advocates for Just and Moral Governance
Drug Policy Alliance
Ella Baker Center for Human Right
Initiate Justice
National Association of Social Workers, California Chapter
Pillars of The Community
Rubicon Programs
San Francisco Public Defender
Showing Up for Racial Justice North County
Showing Up for Racial Justice San Diego
Silicon Valley De-bug
Smart Justice California
Team Justice
We the People - San Diego County

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: Nikki Moore

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

AB 1452 (Ting) – As Amended March 18, 2021

SUMMARY: Requires a member of the clergy or spiritual adviser to be granted visitation privileges within 48 hours of an incarcerated person's transfer to another state prison.

EXISTING LAW:

1) Provides that it is the intention of the Legislature that all prisoners shall be afforded reasonable opportunities to exercise religious freedom. (Pen Code, § 5009.)

2) Provides that, except in extraordinary circumstances, upon the transfer of an inmate to another state prison institution, any member of the clergy or spiritual adviser who has been previously authorized by the Department of Corrections and Rehabilitation to visit that inmate shall be granted visitation privileges at the institution to which the inmate is transferred within 72 hours of the transfer. (Pen Code, § 5009.)

3) Establishes that visitations by members of the clergy or spiritual advisers be subject to the same rules, regulations, and policies relating to general visitations applicable at the institution to which the inmate is transferred. (Pen Code, § 5009.)

4) Provides that a departmental or volunteer chaplain who has ministered to or advised an inmate incarcerated in state prison may, voluntarily and without compensation, continue to minister to or advise the inmate while he or she is on parole, provided that the departmental or volunteer chaplain so notifies the warden and the parolee's parole agent in writing. (Pen Code, § 5009.)

5) States that nothing in this section limits the department's ability to prohibit a departmental chaplain from ministering to a parolee, or to exclude a volunteer chaplain from department facilities, if either is found to be in violation of any law or regulation and that violation would ordinarily be grounds for adverse action or denial of access to a facility or person under the department's custody. (Pen Code, § 5009.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Religious communities provide a vital network of support for prisoners and can play an important role. Ensuring that an incarcerated individual can meet with their religious or spiritual advisor within 48, rather than 72, hours after transfer will give inmates the ability to transition smoothly and maintain

structure that will help them uphold positive behavior changes and prepare for reentry into the community."

2) **Purpose of this bill**: This bill decreases the time a person must wait before they can visit with a member of the clergy or spiritual advisor two 48 hours, instead of 72.

   According to the author, "Current law grants visitation between members of clergy or spiritual advisors with the incarcerated individual within 72 hours. Limiting an incarcerated person's ability to meet with their religious/spiritual advisor upon transfer can have disastrous effects. Changes in environment and community can necessitate mediation with a religious/spiritual advisor and having to wait three days could mean the difference between life and death. Ensuring that an incarcerated individual can meet with their religious/spiritual advisor in 48 hours will give inmates the ability to transition smoothly and maintain structure that will help them uphold positive behavior changes and prepare for reentry into the community."

3) **Free Exercise of Religion**: The First Amendment protects a prisoner's right to practice their religion of choice.

   The Free Exercise Clause of the First Amendment-of the U.S. Constitution has been made applicable to the states by incorporation into the Fourteenth Amendment (see Cantwell v. Connecticut (1940) 310 U.S. 296,303). The Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof …." (U.S. Const., Amendment 1.)

   Article I, section 4, of the California Constitution is the state's Free Exercise Clause. It provides, in pertinent part: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace and safety of the State. The Legislature shall make no law respecting an establishment of religion." (Cal. Const., art. 1, § 4.)

   Congress has acted the Religious Land Use and Institutionalized Persons Act to further an incarcerated person's religious rights, providing that a prison or jail cannot substantially burden a prisoner's exercise of their religion unless it can demonstrate that it has a compelling interest that cannot be achieved through any other less restrictive means.

   This bill helps facilitate a person's religious practice during vulnerable times for a incarcerated person, which furthers the goals of these principles.

4) **Argument in Support**: According to the *California Catholic Conference,* "An incarcerated individual's ability to meet with their clergy member or spiritual advisor can provide numerous positive outcomes. Stress inherent in the carceral environment can exacerbate existing mental problems as well as stimulate other problems. The potential positive role of religion on mental health has linked various dimensions of religious practice with aspects of mental well-being, including reduced mental distress, lower anxiety, reduced stress, lower depression, and reduced hostility.

   "Religious communities provide a vital network of support for prisoners and can play an important role. Chaplains and spiritual advisors encompass a full range of spiritual services,

including a listening presence, help in dealing with powerlessness pain and alienation. They can assist people to change what can be changed and to cope positively and peacefully with that which cannot be altered. Ensuring that an incarcerated individual can meet with their religious or spiritual advisor within 48 hours after transfer will give inmates the ability to transition smoothly and maintain structure that will help them uphold positive behavior changes and prepare for reentry into the community."

5) **Related Legislation**: AB 990 (Santiago) would establish the right of visitation as a protected civil right for a person in custody of the CDCR, change the standard for CDCR to limit civil rights, and codify specific procedures and visitation rules, including requiring CDCR permit in-person visitation at least four days per week. AB 990 is currently pending before the Assembly Appropriations Committee.

6) **Prior Legislation**: AB 627 (Leslie), Chapter 306, Statutes of 2005, provided that CDCR departmental or volunteer chaplain who ministered or advised an incarcerated person may continue to do so when the inmate is paroled as long as the departmental or volunteer chaplain notifies the warden and the parolee's agent in writing.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California Public Defenders Association

Opposition

None

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

Date of Hearing: April 27, 2021
Counsel: David Billingsley

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

AB 1540 (Ting) – As Amended April 22, 2021

SUMMARY: Requires the court to provide counsel for the defendant when there is recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. Creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above. Specifically, **this bill**:

1) Establishes additional rules and procedures for the existing process for courts when CDCR, BPH, Sheriff, or District Attorney, or the Attorney General recommend that a sentence of convicted defendant be recalled and that the defendant be resentenced.

2) Requires the court considering the resentencing to apply the sentencing rules of the Judicial Council and any changes in the law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

3) Allows the resentencing court to, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

   a) Reduce a defendant's term of imprisonment by modifying the sentence; and

   b) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment.

4) Specifies that the court may 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.

5) Requires the court to give credit for time served.

6) Requires the court state on the record the reasons for its decision to deny resentencing.

7) Specifies that the court may state its decision to grant resentencing on the record or in writing.

8) Provides that resentencing may be granted without a hearing upon a stipulation by the parties.

9) States that resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection.

10) States that if a hearing is held the defendant shall appear at the hearing by video unless counsel requests their physical presence in court.

11) Specifies that if a resentencing request is from CDCR, BPH, Sherriff, a District Attorney, or the Attorney General, all of the following shall apply:

    a) The court shall provide notice to the defendant and set an initial conference within 30 days;

    b) The court's order setting the conference shall also appoint counsel to represent the defendant; and,

    c) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety because the court finds an unreasonable risk that the defendant would commit a violent felony, as specified.

12) Makes Legislative Findings and Declarations.

13) Makes technical and conforming changes.

EXISTING LAW:

1) Provides that the purpose of imprisonment for crime is punishment; that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances; and that the elimination of disparity, and the provision of uniformity, of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as determined by the Legislature, to be imposed by the court with specified discretion. (Pen. Code, § 1170, subd. (a)(1).)

2) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)

3) Provides that the court can recall the defendant's sentence within 120 days of the defendant's commitment, or at any time upon a recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings (for prison sentences) or the county correctional administrator (for jail sentences) and impose a new sentence. (Pen. Code, § 1170, subd. (d)(1).) Provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the

court. (Pen. Code, § 1170.1(d).)

4) Allows a defendant who was a minor at the time he or she received a sentence of life without the possibility of parole to petition the court for a new sentence after completing 15 years imprisonment. (Pen. Code, § 1170, subd. (d)(2)(A)(i).)

5) Allows the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings to make a recommendation to the sentencing court that a defendant's sentenced be recalled and that he or she be given a new sentence for medical reasons. (Pen. Code, § 1170, subd. (e)(1).)

6) Provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, Rule 4.406(b)(4).)

7) Provides that, in exercising discretion to select one of the three authorized prison terms referred to in statute, "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).)

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

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

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

11) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.421.)

12) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.423.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's Penal Code allows for law enforcement authorities to request a person be resentenced if the circumstances have changed since the original sentencing and/or if the person's incarceration is no longer in the interest of justice. Although the requests for resentencing are made by law enforcement authorities, the ultimate decision to recall a person's sentence and reduce their punishment remains with the courts. Courts are currently left to sift through a statute that does not provide adequate structure for the resentencing process, leaving many requests languishing in limbo, or worse -

denied without reason. The changes contained in AB 1540 strengthen common procedural problems to address equity and due process concerns in how courts should handle second look sentencing requests."

2) **Determinate Sentencing**: Most felonies are punished under the Determinate Sentencing Law (DSL). (Pen. Code, § 1170.) The DSL covers felonies for which three specified terms are provided in statute; crimes declared to be felonies but for which there is no specified term; and crimes simply made punishable by imprisonment in the state prison or in the county jail pursuant to realignment. The latter two categories are punishable by 16 months (low term), 2 years (middle term), or 3 years (upper term). (Pen. Code, § 18.)

   Under the DSL, where three terms are specified, the court is free to choose any of the three terms, using valid discretion. The judge must still state reasons for the term selected. (Pen. Code, § 1170, subd. (b); see also Cal. Rules of Court, rules 4.406(b)(4) , 4.420(e).) "[T]he 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), see also Pen. Code, § 1170, subd. (b).) The Rules of Court list both aggravating factors and mitigating factors. In each category there are factors relating to the crime and factors relating to the defendant. (See Cal. Rules of Court, rule 4.421 and rule 4.423.)

   Currently, under Penal Code section 1170, subdivision (d), a trial court may recall a defendant's sentence and "impose any otherwise permissible new sentence, which may include consideration of facts that arose after [the defendant] was committed to serve the original sentence." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 465.) The new sentence cannot be greater than the original sentence. (Pen. Code, § 1170, subd. (d)(1).) The court's recall of a sentence for resentencing on the recommendation of the county correctional administrator, the Secretary of the CDCR, or the Board of Parole Hearings, or the county correctional administrator may occur at any time. However, a trial court's recall for resentencing on its own motion must occur within 120 days after the commitment date. (Pen. Code, § 1170, subd. (d)(1).)

3) **Prison Over-Crowding**: 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 weekly report, as of April 7, 2021, on the prison population notes that the in-state

adult institution population is currently 92,028 inmates, which amounts to approximately 103.7% of design capacity. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/04/Tpop1d210407.pdf)

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).)

California has announced it is closing two prisons and it possible more prisons could be closed in coming years. California has declared that Deuel Vocational Institution in Tracy and California Correctional Center in Susanville will be closed. According to the Legislative Analyst's Office, the state could close a total of five prisons by 2025, which in turn could save an estimated $1.5 billion in annual spending. The corrections department, which has a budget of $16 billion, oversees 34 prisons and more than 50,000 employees. (https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Feb%2022%20Sub%205%20Agenda.pdf).

By allowing prisoners to request a recommendation for resentencing from the district attorney, this bill may result in more prisoners being resentenced to less time, thereby reducing California's prison population.

4) **Committee on the Revision of the Penal Code Recommendation on Resentencing:** On January 1, 2020, the Committee on Revision of the Penal Code (Committee) was formed. The Committee has seven members. Five are appointed by the Governor for four-year terms. One is an assembly member selected by the speaker of the assembly; the last is a senator selected by the Senate Committee on Rules. The Governor selects the Committee's chair

   The principal duties of the Committee include establishing alternatives to incarceration that will aid in the rehabilitation of offenders and improving the system of parole and probation. The Committee made several recommendations to improve the criminal justice system in its 2020 Annual Report and Recommendations. One of the 10 recommendations made by the Committee was to establish a judicial process for "second look" resentencing. The recommendation builds on California's existing law allowing incarcerated individuals to be resentenced in the interest of justice. (http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf)

   California has expanded the statute governing resentencing to allow certain law enforcement officials, including the Secretary of CDCR or the district attorney of the county of conviction, to request that a person be resentenced at any time for any reason. A court that receives such a request is vested with authority to recall the person's sentence and issue a new, reduced punishment, if "circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice."

   The Committee noted that despite these expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the

parties, appointing counsel, or giving parties an opportunity to be heard. (Id.)

With respect recall and resentencing, the Committee recommended the following:

a) Establish judicial procedures for evaluating resentencing requests;

   i) In all cases, require notice, initial conference within 60 days, and written reasons for court decisions.

   ii) For all cases initiated by law enforcement, require appointment of counsel.

b) Establish that resentencing is presumed if law enforcement officials recommend resentencing because a sentence is unjust or because of a person's exceptional rehabilitative achievement while incarcerated; and

c) Expand "second look" sentencing opportunities by allowing any person who has served more than 15 years to request a reconsideration of sentence by establishing that "continued incarceration is no longer in the interest of justice." (Id.)

This bill is a response to the Committee's recommendations on resentencing. Consistent with the Committee's recommendations, this bill would require a court to appoint the defendant an attorney when the recommendation for recall and resentencing is made by BPH, CDCR, county sheriff housing the defendant, or the prosecuting agency. In those same cases, the court would be required to set an initial conference within 30 days and there would be a presumption in favor of recall and resentencing.

The Legislature has made a number of changes in the law over the past few years providing courts more discretion to dismiss enhancements. Those changes in the law potentially would give a court more flexibility to resentence if the law at the time of resentencing was applied. This bill directs the court to apply the sentencing rules of the Judicial Council and any changes in the law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. Based on that directive, it appears the court would apply the law at the time of resentencing, rather than the law as it was at the time of the defendant's initial sentence. However, this bill provides a court broad discretion regardless of the timeframe of the applicable law. Under the provisions of this bill, the court is not limited by the charge(s) on which the defendant was convicted. The court could sentence the defendant on lesser included or lesser related offenses. That would provide the court a wide range of option in selecting a new sentence.

This bill would require a court to presume that it is appropriate to recall and resentence a defendant that has been referred by CDCR, BPH, the county sheriff, or the prosecuting agency, unless a court finds an unreasonable risk that the defendant would commit a violent felony, as specified. That is a fairly high bar. However, these are cases which have already been vetted as being appropriate for recall and resentencing by the law enforcement agencies recommending recall and resentencing. Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence).

5) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "Penal Code section 1170(d)(1) has existed for decades, but was given a renewed focus in 2018 when two bills passed that granted district attorneys the ability to make these referrals and provided CDCR with funds to make recommendations. Since then, CDCR has made close to 2,000 recommendations and an increasing number of district attorneys are making use of the process. However, this increase in referrals has revealed several procedural issues that AB 1540 (Ting) seeks to address.

"For example, right now large numbers of referrals are being ignored or denied by the courts without any input from either side. This is in part because Penal Code § 1170(d)(1) doesn't provide guidance on how the courts should handle these types of recommendations. Incarcerated individuals also often don't have access to lawyers, and, in many cases, have no idea they have been recommended.

"AB 1540 (Ting) seeks to address these issues so that Penal Code § 1170(d)(1) can be fully and fairly applied. It will do this by ensuring that an incarcerated person receives notice of their referral; establishing court deadlines and the right to counsel; providing a presumption in favor of resentencing for all law enforcement referrals; and clarifying that a judge can reduce a charge to a lesser-included or lesser-related offense. AB 1540 (Ting) will also give the Attorney General's office the power to recommend a person for resentencing when they prosecuted the case and make Penal Code § 1170(d)(1) its own Penal Code section to clarify the law."

6) **Argument in Opposition**: According to the *California District Attorneys Association*, ". . . , AB 1540 would shift the burden of proof from a standard which allows the court to grant a petition when the evidence shows that the inmate's continued incarceration is no longer in the interest of justice, to an impossible-to-rebut standard that would require the court to grant every petition "unless there is evidence beyond a reasonable doubt that the defendant is likely to commit a future violent crime." This would not only impose the highest standard of proof in the inverse but would require the impossible – the ability to not only accurately predict the future, but to do so beyond a reasonable doubt. There will never be proof beyond a reasonable doubt of the future conduct of any human being because no human is possessed of such ability. Moreover, the proposed standard only contemplates the commission of a future "violent" crime. This, by definition, precludes consideration of the likelihood that the inmate will commit future non-violent crimes such as domestic violence, rape by intoxication or child molestation which are highly likely to be repeated in the absence of successful rehabilitation.

"Finally, AB 1540 would apply not only to convictions at trial but also to convictions resulting from plea bargain and would preclude the prosecution and court from withdrawing their end of the original plea agreement when resentencing was granted. Freeing the inmate of the obligations of a plea agreement while continuing to bind the court and prosecution will have negative consequences. Neither prosecutors nor the court will be willing to enter into plea bargains that entail reduced sentences or dismissal of charges when the defendant will not be bound by his or her end of the agreement."

7) **Related Legislation**:

a) AB 1245 (Cooley), would authorize a petition for 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 awaiting hearing in the Assembly Public Safety Committee.

b) AB 124 (Kamlager), would authorize the court to resentence an inmate upon a motion by the inmate and would require the court, when resentencing an inmate, to consider if the inmate experienced intimate partner violence, commercial sex trafficking, commercial sexual exploitation, or human trafficking. AB 124 is awaiting hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 865 (Levine), Chapter 523, Statutes of 2018, authorized the court, under specified conditions, to resentence any person who was sentenced for a felony conviction prior to January 1, 2016, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service.

b) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires starting on January 1, 2021, and subject to an appropriation in the annual Budget Act, that the DOJ, on a monthly basis, review the records in the statewide criminal justice databases grant relief to persons who identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.

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.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
ACLU California Action
Alliance for Boys and Men of Color
American Friends Service Committee
Anti-recidivism Coalition
Asian Americans Advancing Justice - California
Asian Prisoner Support Committee
Bend the Arc: Jewish Action
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
Californians for Safety and Justice
Cat Clark Consulting Services LLC
Communities United for Restorative Youth Justice (CURYJ)
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights

Essie Justice Group
Felony Murder Elimination Project
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Initiate Justice
Prison Yoga Project
Prisoner Advocacy Network
Prosecutors Alliance California
Re:store Justice
Root & Rebound
Rubicon Programs
San Francisco District Attorney's Office
San Francisco Public Defender
San Mateo County Participatory Defense
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Smart Justice California
Special Circumstances Conviction Project
Starting Over INC.
Success Stories Program
Survived & Punished
The Dream Corps
The Transformative In-prison Workgroup
The W. Haywood Burns Institute
Transgender, Gendervariant, Intersex Justice Project
Uncommon Law
Urban Peace Movement
We the People - San Diego
Western Center on Law & Poverty
White People 4 Black Lives
Young Women's Freedom Center

2 private individuals

Oppose

California District Attorneys Association

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