Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – April 3, 2018
State Capitol, Room 126

PART II

AB 2405 (Patterson) – AB 3112 (Grayson)

Date of Hearing: April 3, 2018
Counsel: David Billingsley

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

AB 2405 (Patterson) – As Introduced February 14, 2018

SUMMARY: Increases the punishment for specified drug crimes involving carfentanil. Specifically, **this bill:**

1) Adds carfentanil to Schedule II of California's drug schedule.

2) Specifies that possession of carfentanil for purposes of sale shall be punished as a realigned felony for six, seven, or eight years in county jail or state prison, as specified.

3) States that a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any carfentanil shall be punished as a realigned felony for 9, 10, or 11 years in county jail or state prison, as specified.

4) Provides that any person who transports any fentanyl within this state from one county to another noncontiguous county shall be punished as a realigned felony for 9, 12, or 15 years in county jail or state prison, as specified.

EXISTING LAW:

1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code §§ 11054-11058.)

2) Fentanyl is listed on Schedule II. ((Health & Saf. Code §§ 11055.)

3) Provides that, except as specified, the term "controlled substance analog" means either of the following:

   a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or (Health & Saf. Code, § 11401, subd. (b)(1).)

   b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401,

subd. (b)(2).)

4) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

5) Provides the following penalties for trafficking of cocaine, cocaine base, heroin and specified opiates:

   a) Possession for sale is punishable as felony, by imprisonment for two, three, or four years (as specified under Realignment); and (Health and Saf. Code § 11351.)

   b) Sale is punishable as a felony, by imprisonment for three, four, or five years (as specified under Realignment). Sale includes any transfer or distribution. Transportation of fentanyl, to a noncontiguous county, for purposes of sale is punishable as a felony, by imprisonment for up to nine years (as specified under Realignment). (Health and Saf. Code § 11352.)

6) Specifies that it is a felony to manufacture specified controlled substances, including carfentanil, punishable by imprisonment for three, five, or seven years (as specified under Realignment). (Health and Saf. Code § 11379.6.)

7) Provides the following additional sentencing enhancements based on the weight of the heroin, opiate or cocaine possessed for sale or sold. (Health and Saf. Code §§ 11370.4, subd. (a).)

   a) 1 kilogram = 3 years

   b) 4 kilograms = 5 years

   c) 10 kilograms = 10 years

   d) 20 kilograms = 15 years

   e) 40 kilograms = 20 years

   f) 80 kilograms = 25 years

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Even though it only takes a few granules of carfentanil the size of grains of table salt to kill someone, the danger of this drug is not reflected in our laws. AB 2405 is a necessary measure that will add the incredibly lethal substance, carfentanil, to the list of Schedule II drugs. This action will highlight the growing threat that this drug poses to our community.

"Drug dealers across California are slipping this drug into other substances and we need to respond by cracking down on those who sell and import the drug. AB 2405 will increase the penalties for possession for sale, transportation for sale, and transportation across state lines, which will help to stop the increasing presence of Carfentanil in our state. This is a terrible and deadly drug when used by humans and we must do all that we can to protect people from it."

2) **Fentanyl and Carfentanil:** Fentanyl was synthesized in the 1960s and has been used medically since 1968. The Centers for Disease Control and Prevention (CDC) website provides this description of fentanyl:

> Fentanyl, a synthetic and short-acting opioid analgesic, is 50-100 times more potent than morphine and approved for managing acute or chronic pain associated with advanced cancer. …[M]ost cases of fentanyl-related morbidity and mortality have been linked to illicitly manufactured fentanyl and fentanyl analogs, collectively referred to as non-pharmaceutical fentanyl (NPF). NPF is sold via illicit drug markets for its heroin-like effect and often mixed with heroin and/or cocaine as a combination product—with or without the user's knowledge—to increase its euphoric effects. While NPF-related overdoses can be reversed with naloxone, a higher dose or multiple number of doses per overdose event may be required …due to the high potency of NPF. (Internal quotation marks and footnotes omitted.) (http://emergency.cdc.gov/han/han00384.asp)

Carfentanil or carfentanyl is an analog of the synthetic opioid analgesic fentanyl, and is one of the most potent opioids known. Carfentanil was first synthesized in 1974 by a team of chemists at Janssen Pharmaceutica. (https://pubchem.ncbi.nlm.nih.gov/compound/carfentanil#section=Top)

3) **Drug Analog Law in California:** California law treats a substance that is the chemical or functional equivalent of a drug listed in Schedule I or II of the controlled substance schedules the same as the scheduled drug. Such a substance is defined as a controlled substance analog. California law allows prosecution of a person for possession of, or commerce in, of a substance that is an analog of a Schedule I or II drug. (Health & Saf. Code, §§ 11400-11401.) The purpose of the analog law is to prevent street chemists from circumventing drug laws by synthesizing drugs which have slight chemical or functional differences from the prohibited drug.

California's drug analog law provides two ways to establish that a substance is an analog of a drug. The first method relies on demonstrating that the substance has a chemical structure which is "substantially similar" to the chemical structure of the drug. (Health & Saf.Code, § 11401, subd. (b)(1).) The second method requires a showing that the substance has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is "substantially similar" to the effect of the drug. (Health & Saf. Code, § 11401, subd. (b)(2).)

This bill would add carfentanil to the Schedule II list. Carfentanil is an analog of fentanyl. Fentanyl is currently listed on Schedule II. Because carfentanil is any analog of fentanyl it is already treated the same as fentanyl and other Schedule II drugs, even though it is not specifically listed on Schedule II.

Possession for sale of carfentanil is currently a felony, punishable by for imprisonment up to four years. (Health and Saf. Code § 11351.) Sale of carfentanil or transportation for sale of carfentanil is currently a felony, punishable by imprisonment for up to five years. (Health and Saf. Code § 11352.) Transportation of carfentanil, to a noncontiguous county, for purposes of sale is a felony punishable by imprisonment for up to nine years. (Health and Saf. Code § 11352.) Manufacture of carfentanil is punishable by imprisonment for up to seven years. (Health and Saf. Code § 11379.6.)

4) **Increasing Sentences for Carfentanil:** Criminal justice experts and commentators have noted that, with regard to sentencing, "a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

> Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits. (http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf.)

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

> A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have "large crime prevention benefits," but that incremental, lengthy prison sentences are ineffective for crime deterrence:

> Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the singular. Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small

prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.

Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure. Specifically, the incremental deterrent effect of increases in lengthy prison sentences is modest at best. Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders. For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime. (*Id.*)

With regard to the drug trade, the authors state:

For several categories of offenders, an incapacitation strategy of crime prevention can misfire *because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case*. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high . . . Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits . . . . At the corner of Ninth and Concordia in Milwaukee in the mid-1990s, for example, 94 drug arrests were made within a 3-month period. "These arrests, [the police officer] pointed out, were easy to prosecute to conviction. But . . . the drug market continued to thrive at the intersection" . . . .

Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and... avoid arrest. Similar analyses apply to members of deviant youth groups and gangs: as members ... are arrested and removed from circulation, others take their place. Arrests and imprisonments of easily replaceable offenders create illicit "opportunities" for others. (*Id.*)

5) **Jail Overcrowding**: Realignment began in October 2011. Since that time county jails have had oversight over most non-serious, non-violent, non-sexual felons and parolees who violate their parole. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail a certain portion of the jail population is serving sentences that are much longer than one year. Those factors related to realignment have served to increase population pressure on county jails.

In November of 2017, the Public Policy Institute of California published a report discussing population impacts on California jails related to Realignment and Proposition 47. After

realignment began, the jail population began to rise; as of October 2014, the month before the passage of Proposition 47, it stood at 82,005 inmates, a gain of 14%—and about 2,000 inmates over the rated capacity of 80,000 (set by the California Board of State and Community Corrections). To address these capacity constraints, counties released 14,321 pre-sentenced and sentenced inmates in October 2014—an increase of 4,102 (or 40%) from September 2011. (http://www.ppic.org/publication/californias-county-jails/)

Voters approved Proposition 47 in November 2014, reclassifying several property and drug crimes from felonies to misdemeanors. Prop 47 has had an immediate and lasting impact: the average daily population dropped by almost 10,000 between October 2014 and January 2015. The jail population has remained relatively flat since January 2015, and as of December 2016 it stood at 73,460 inmates, a decrease of 8,545 (or 10.4%) from October 2014. At the end of 2016, 28 jails housed populations that exceeded their rated capacities, compared to 53 jails in October 2014. (*Id.*)

This bill would dramatically increase sentences for individuals convicted of specified criminal offenses involving carfentanil. The sentences served by the individuals sentenced pursuant to the provisions of this bill would predominately be served in county jail. The balance of the individuals sentenced under this bill would serve their sentences in the state prison, if based on prior convictions of specified offenses.

6) **Related Legislation:**

a) AB 1948 (Jones-Sawyer), would add fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered. AB 1948 is awaiting hearing in the Assembly Appropriations Committee.

b) AB 2467 (Patterson), would increase the punishment for specified drug crimes involving fentanyl. AB 2405 is set for hearing in the Assembly Public Safety Committee on April 3, 2018.

c) SB 1103 (Bates), would apply the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1103 is set for hearing in the Senate Public Safety Committee on April 10, 2018.

d) AB 3105 (Waldron), would make sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. Would dramatically raise penalties for sale of fentanyl at defined lower amounts. AB 3105 is awaiting hearing in the Assembly Public Safety Committee.

7) **Prior Legislation:**

a) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II. Would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.

b) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

8) **Argument in Support**: According to the *California District Attorneys Association*, "Carfentanil is an analog of fentanyl and is 10,000 times more potent than morphine. These substances reduce blood pressure, diminish breathing and may induce a deep sleep coma. As we have seen far too often, overdoses of fentanyl and carfentanil can be fatal. Unfortunately, fentanyl and carfentanil are now being sold on the street as substitutes for heroin, or laced within, often without the end user even being aware of the product being used or the risk involved. Indeed, even accidental absorption through the skin or inhalation of airborne particles from the powder form of the substances may result in an overdose, creating a particularly dangerous situation for first responders and law enforcement officers who unwittingly come into contact with the substance.

"Drug incidents and overdoses from fentanyl and carfentanil are on the rise throughout the entire nation, this state included, creating a significant threat to public health and safety."

9) **Argument in Opposition**: According to the *Drug Policy Alliance*, "AB 2405 would not reduce the distribution of carfentanil nor prevent overdoses. Instead, it could undermine current efforts to address the opioid overdose crisis. Substantial evidence demonstrates that criminal penalties do not have any effect on reducing either the supply of drugs or the demand for them. Studies on tough on crime policies clearly show that incarceration does not decrease the demand for drugs. One study found that states that increase their incarceration rates do not experience a decrease in drug use. When a drug seller is incarcerated, the supply of drugs is not reduced nor is the drug market impacted. Because the drug market is driven by demand rather than supply, research indicates that an incarcerated seller will simply be replaced by another individual to fill the market demand.

"When we incarcerate people for distribution of drugs we often inadvertently lock up people impacted by the opioid overdose crisis. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking at state prisons used drugs prior to the offense. These individuals often distribute drugs, not for profit, but as a way to support their own substance use disorder.

"While AB 2467 seeks to reduce opioid overdoes in California, there is no evidence its criminalization tactics would reduce fentanyl or fatal overdoes. Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoes and diseases, increases stigma and marginalization and drives people away from needed treatment, health, and harm reduction services."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Crime Lab Directors
California District Attorneys Association
California Peace Officer Association
California Police Chiefs

California State Sheriffs' Association
Fresno County Deputy Sheriff's Association
Los Angeles County Sheriff's Department

Opposition

American Civil Liberties Union of California
Drug Policy Alliance

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

Date of Hearing: April 3, 2018
Consultant: Mureed Rasool

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

AB 2412 (Arambula) – As Introduced February 14, 2018

SUMMARY: Provides that, upon appropriation by the Legislature, the Board of State and Community Corrections (BSCC) shall award grants to rural underserved cities for the purposes of constructing, renovating, or relocating police department facilities. Specifically, **this bill**:

1) Mandates that the BSCC shall award grants to cities for the purposes of constructing, renovating, or relocating police department facilities.

2) States that grants must be awarded to communities with population concentrations with high unemployment rates, low incomes, low levels of homeownership, high rent burdens, sensitive populations, or low levels of attainment.

3) Establishes eligibility criteria requiring grants to be awarded only to cities with a population of under 30,000 and that have 25 percent or more of its census tracts with either:

   a) Household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the Department of Housing and Community Development's designation of "low income;" or

   b) Areas identified by the California Environmental Protection Agency as disproportionately affected by environmental pollution or other hazards.

EXISTING LAW:

1) Establishes the BSCC. (Pen. Code, § 6024, subd. (a).)

2) Requires the BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. BSCC shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd. (a).)

3) Requires the BSCC to also do the following, among other things:

   a) Develop recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state;

b) Identify, promote, and provide technical assistance relating to evidence-based programs, practices, and promising and innovative projects consistent with the mission of the board;

c) Receive and disburse federal funds, and perform all necessary and appropriate services in the performance of its duties as established by federal acts;

d) Develop procedures to ensure that applications for grants are processed fairly, efficiently, and in a manner consistent with the mission of the board;

e) Identify delinquency and gang intervention and prevention grants that have the same or similar program purpose, are allocated to the same entities, serve the same target populations, and have the same desired outcomes for the purpose of consolidating grant funds and programs and moving toward a unified single delinquency intervention and prevention grant application process in adherence with all applicable federal guidelines and mandates;

f) Cooperate with, and render technical assistance, to the Legislature, state agencies, local governments, or other public or private agencies, organizations, or institutions in matters relating to criminal justice and delinquency prevention;

g) Develop incentives for units of local government to develop comprehensive regional partnerships whereby adjacent jurisdictions pool grant funds in order to deliver services, to a broader target population and maximize the impact of state funds at the local level;

h) Conduct evaluation studies of the programs and activities assisted by the federal acts. (Pen. Code, § 6027, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Many communities in the Central Valley and other rural parts of California do not have adequate facilities for their police forces. The poverty rate in the Valley communities is extremely high, with an average unemployment rate of roughly 10%. As a result, there is limited local funding available for capital improvement projects. In these areas, public safety agencies do not have the necessary space for personnel and equipment. Many lack the space for training, evidence storage, dispatch operations, booking, holding cells and other spaces required by Peace Officer Standards and Training (POST). Some are forced to use mobile units in parking lots while others share their space with the City Council. Many of the existing buildings were built in the 1970s and face serious safety concern. These substandard police stations also do not have private interview rooms or space to gather witness reports. The men and women who protect our communities need safe and secure places to work and serve the public. This measure will establish a competitive grant program at the BSCC that, upon appropriation by the Legislature, will give cities the opportunity to seek funding for desperately need public safety infrastructure."

2) **Board of State and Community Corrections (BSCC):** The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state

and federal standards in the operation of local correctional facilities. It is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (Legislative Analyst's Office. (2013). *The 2013-14 Budget: The Governor's Criminal Justice Proposals.* <http://www.lao.ca.gov/analysis/2013/crim_justice/criminal-justice-proposals/criminal-justice-proposals-021513.pdf> [Mar. 28, 2018].) The criminal justice grant programs currently administered by the BSCC include the Evidence-Based Practices Program, Strengthening Law Enforcement and Community Relations Grant, and the Law Enforcement Assisted Diversion program.

3) **Police Department Facilities**: In general, local governments fund and administer police services. (Legislative Analyst's Office. (2015). *The 2015-2016 Budget: Governor's Criminal Justice Proposals.* <http://www.lao.ca.gov/reports/2015/budget/Criminal-Justice/cj-budget-analysis-022015.pdf> [Mar. 28, 2018].) Most funds come from revenue generated by local taxes and fees. (*Id.*)

   Based on the material provided by the author, many small communities lack the resources needed to properly fund their police departments. As a result, many departments have trouble providing training, storing evidence, dispatching operations, booking criminals, and providing holding cells as is required by the Commission on Peace Officer Standards and Training (POST).

   This bill would provide funding for these small communities so that they could renovate or construct police departments.

4) **Argument in Support**: According to the *California Police Chiefs Association*, "Our members recognize that some of our agencies require additional funding to carry out day-to-day operations in their respective jurisdictions. AB 2412 focuses funding towards disadvantaged jurisdictions in need of additional support by requiring grants to be awarded to communities that meet specified requirements, including a population of 30,000 or less and have 25% or more of their census tracts with lower median household incomes, or areas disproportionately affected by environmental pollution, or other hazards."

5) **Prior Legislation**:

   a) SB 826 (Leno), Chapter 23, Statutes of 2016, allocated $10.15 million to specified cities for the purposes of constructing, renovating, or relocating police department facilities.

   b) AB 93 (Weber), Chapter 10, Statutes of 2015, allocated approximately $8 million to specified cities for the purposes of constructing, renovating, or relocating police department facilities.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association

Opposition

None

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

Date of Hearing: April 3, 2018
Counsel: Liah Burnley

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

AB 2438 (Ting) – As Introduced February 14, 2018

SUMMARY: Requires the court to automatically expunge a conviction after a defendant has completed probation and fully complied with the sentence of the court. Specifically, **this bill:**

1) Requires the court to automatically expunge the convictions of defendants who have fulfilled the conditions of probation, after the termination of probation, if the defendant is not serving a sentence for any offense, is not charged with the commission of any crime, and has lived an honest upright life and has conformed to and obeyed the laws of the land.

2) Deletes the requirement that a defendant make an application for expungement in person, by an attorney, or by a probation officer authorized in writing.

3) Requires the expungement order to state that the expungement does not relieve the defendant of the obligation to disclose the conviction in an application of public office or licensure by any state or local agency.

4) States that automatic expungement of the above-mentioned convictions shall apply retroactively and prospectively to all convictions of which the defendant completed probation on or after November 23, 1970.

5) Requires the court to automatically expunge the convictions of defendants convicted of an infraction or a misdemeanor and not granted probation, after one year from the date of the pronouncement of judgement, if the defendant has fully complied with and performed the sentence of the court, is not serving a sentence for any offense, is not charged with the commission of any crime, and has lived an honest upright life and has conformed to and obeyed the laws of the land.

6) Allows a court, in its discretion, to grant expungement to a defendant convicted of an infraction or a misdemeanor and not granted probation, but does not satisfy the above-mentioned requirements, if the defendant complied with and performed the sentence of the court, is not then serving a sentence for any offence and not currently charged with a crime.

7) Deletes the requirement that a petition for expungement of an infraction must be by written declaration.

8) Requires a defendant convicted of an infraction or a misdemeanor and not granted probation, to be informed that their conviction may be automatically expunged, either orally or in writing, at the time of sentencing.

9) States that automatic expungement of the above-mentioned convictions shall apply retroactively and prospectively.

10) States that automatic expungement does not permit a person to own, posses, or have in his or her custody or control any firearm.

11) States that automatic expungement does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

12) States that automatic expungement does not apply to any misdemeanor convictions for specified violations of the Vehicle Code, specified sex offenses, or any infractions.

13) States that automatic expungement does not apply to a person who receives a notice to appear or is otherwise charged with a violation of specified provisions of the Vehicle Code.

14) Deletes the provisions requiring individuals who petition for expungement relief to reimburse the court for the costs of services rendered, whether or not the petition is granted, at a rate determined by the court.

15) Deletes the provisions requiring individuals who petition for expungement relief to reimburse the county for the costs of services rendered, whether or not the petition is granted, at a rate determined by the county board of supervisors.

16) Deletes the provisions requiring individuals who petition for expungement relief to reimburse the city for the costs of services rendered, whether or not the petition is granted, at a rate determined by the city council.

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 if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a).)

2) Requires a court to grant expungement relief, with specified exceptions, for a misdemeanor conviction for which the sentence did not include a period of probation, or for an infraction conviction, if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.4a subd. (a).)

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

4) 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.)

5) Allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking. (Pen. Code, § 1203.49.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Authors Statement**: According to the author, "Each year, California spends $11 billion on prisons and there are an estimated 8 million individuals with a criminal conviction record. Californians with criminal records face additional barriers in gaining employment, making it more likely that they might reoffend. This bill would help prevent individuals from reoffending by expediting the process of clearing a record after a defendant's successful completion of probation."

2) **Expungement Relief in General**: Originally, expungement relief was available to defendants placed on probation. 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.) Then, 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.

   Expungement relieves a person "shall be released from all penalties and disabilities resulting from the offense." (). However, in California, expungement does not completely wipe away a person's record of conviction. When expungement relief is granted, the conviction is set aside and the charging document is dismissed. This neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) In fact, a person who is eligible to have their record expunged still faces many of the consequences of a criminal conviction, such as the inability to have a firearm or hold public office, if the conviction is one that prevents a person from holding such a position. An expunged conviction has the same effects in subsequent criminal cases as convictions that are not expunged. Applicants applying for employment do not have to disclose the conviction on an application for employment, but must disclose the conviction on an application for licensure by any state or local agency.

3) **Obtaining Expungement Relief:** To expunge a conviction, a person must first obtain their criminal records. This can be accomplished this by requesting criminal history records from the Department of Justice, paying the $25 application fee, and the LiveScan fingerprint fee. (http://www.courts.ca.gov/1070.htm) Next, an individual seeking expungement must complete a petition for each conviction, file each petition with the clerk of the superior court in the county of conviction, serve additional copies of each petition with the district attorney's office in the county of conviction, include supportive materials such as letters of support, school diplomas, or transcripts, and travel to the court in the county of conviction to attend a hearing, dressed in appropriate court attire. (*Id.*) A person who petitions for expungement relief may be required to reimburse the court, the county, or both for the costs—even if expungement is not granted. If a petition is denied, a person may contact the

court clerk to determine the problem, and repeat this process. (*Id.*)

A report by Californians for Safety and Justice, the sponsor of the bill, states "Public defenders offices, self-help centers and nonprofit legal service providers assist individuals applying for these remedies. These are often called "clean slate" programs. For roughly $400,000 per year, for example, the Contra Costa Public Defender's Office's clean slate program is staffed by one public defender, two legal assistants and three clerks. With that investment, the program processed about 1,100 expungements last year in addition to assisting with other clean slate relief like applications to terminate probation early. Without 'clean slate' services, the majority of people with convictions are not aware of, or able to access, legal remedies to reduce the barriers they face in reentry. These critical services are available in a very limited fashion. They are not in every county and they are not scaled up to meet the needs of people re-entering from the justice system. They are also not evenly dispersed geographically or available to the majority of people living with convictions." (https://safeandjust.org/wp-content/uploads/CSJSafeSound-Dec4-online_2.pdf)

4) **Feasibility of Automatic Expungements:** Under current law, the courts are required to grant expungement relief, for eligible petitioners who complete probation, and for eligible petitioners convicted of infractions and misdemeanors but not sentenced to probation that complete their sentence. Notably, the court has discretion to grant expungement relief for petitioners convicted of a realignment felony. This bill aims to streamline the non-discretionary expungements by removing the requirement that a person file a petition, attend a court hearing, and pay the applicable fees. Doing so could relieve court clerks of the administrative burden of processing expungement petitions, fee waivers, and calendaring expungement hearings, and would relieve district attorneys of their responsibility to review this category of expungement petitions.

   However, this bill applies both retrospectively and prospectively, requiring courts to automatically expunge the convictions of every defendant that completed probation on or after November 23, 1970, and for every defendant convicted of an infraction, and every defendant convicted of a misdemeanor and not granted probation, provided that the defendant is not currently on probation, charged with a crime, or serving the sentence for a crime. Retroactive application would require the courts, presumably in collaboration with county probation departments and the Department of Justice, to sift through numerous criminal records and determine the identity of each of the defendants in order to determine whether the defendant is currently on probation, facing criminal charges, or serving a sentence for a crime. The Legislature should consider whether the rehabilitative benefits of retroactive application outweigh the administrative workload and costs.

5) **Examples from other states**: In New York, deferred adjudications include automatic expungement upon completion unless a District Attorney demonstrates that the interests of justice require otherwise. (N.Y. Crim. Proc. Law §§ 160.58, 216.00 et seq.) In South Dakota, arrest and convictions for misdemeanors, municipal violations, and petty offenses are automatically removed from public record after 10 years. (S.D. Codified Laws § 23A-3-34.) The Director of the Bureau of Criminal Statistics in South Dakota may authorize destruction of records of misdemeanors ten years after discharge, and records of persons seventy-five years of age or older who have been crime-free for at least 10 years. (S.D. Codified Laws § 23-6-8.1.)

6) **Argument in Support**: According to *SEIU California*, "A criminal conviction exposes individuals to thousands of collateral consequences that will follow them long after the successful completion of their sentence. These collateral consequences serve as substantial, lifelong barriers to stability and safety for the 8 million Californians who are living with a criminal record. The Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions found that 76 percent of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues.

"California law currently provides for a process through which certain people who have completed probation sentences or misdemeanor and infraction sentences can apply to have the underlying convictions expunged for limited purposes. Unfortunately, too many people who are already eligible for this process, and are working hard to rebuild their lives, are either unable to navigate it for lack of legal expertise or lack of funds, or are too daunted by the process to even attempt it.

"This bill streamlines that process by allowing for a limited clearing of records that would occur automatically if they have successfully completed probation or have completed misdemeanor and infraction sentences and waited one year, and if that individual is not serving any sentence, are not on probation for any offense, and are not charged with any offense. This is the same population that current law has already deemed eligible for the existing process.

"AB 2438 would help thousands of Californians who have already paid their debt to society to better rebuild their lives through increased access to employment, education, housing, and other key preconditions for safety and stability."

7) **Argument in Opposition**: Writing in opposition, the *Chief Probation Officers* state that "There are operational challenges as to how to address persons wo subsequently come back into the system and whether they would be eligible for this relief multiple times as well as what information remains accessible to probation and other law enforcement regarding the persons criminal history.

"Lastly, probation supervises 350,000 adult felons in the criminal justice system. Requiring probation to automatically expunge each of these records would come at a great cost and workload to county probation departments."

8) **Related Legislation**: AB 1793 (Bonta), of the 2017-2018 Legislative Session, would allow automatic expungement or reduction of a cannabis conviction, as specified. AB 1793 is pending in Assembly Public Safety Committee.

9) **Prior Legislation**:

a) AB 1384 (Bradford), Chapter 284, Statutes of 2011, allows a court to grant expungement relief to a defendant who has been convicted of an infraction or misdemeanor but not granted probation.

b) AB 651 (Bradford), Chapter 787, Statutes of 2013, allows a court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice

realignment, as specified.

c) AB 1115 (Jones-Sawyer), Chapter 207, Statutes of 2017, allows a court to grant expungement relief to a defendant sentenced to state prison for a felony that, if committed prior to criminal justice realignment, would have been eligible for sentencing to a county jail, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Building Opportunities for Self Sufficiency
Center on Juvenile and Criminal Justice
Drug Policy Alliance
East Bay Community Law Center
Ex-Offender Action Network
LA Voice
Los Angeles Metropolitan Churches
Los Angeles Regional Reentry Partnership
Motivating Individual Leadership for Public Advancement
Mayor Michael Tubbs, City of Stockton
National Institute for Criminal Justice Reform
Pillars of the Community
Reentry Solutions Group
Root & Rebound Reentry Advocates
Safe Return Project
Saint Mark United Methodist Church
San Joaquin Pride Center
SEIU California

Opposition

Chief Probation Officers
California District Attorneys Association

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

Date of Hearing: April 3, 2018
Counsel: David Billingsley

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

AB 2467 (Patterson) – As Introduced February 14, 2018

SUMMARY: Increases the punishment for specified drug crimes involving fentanyl. Specifically, **this bill:**

1) Specifies that possession of fentanyl for purposes of sale shall be punished as a realigned felony for four, five, or six years in county jail or state prison as specified.

2) States that a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any fentanyl shall be punished as a realigned felony for seven, eight, or nine years in county jail or state prison as specified.

3) Provides that any person who transports any fentanyl within this state from one county to another noncontiguous county shall be punished as a realigned felony for 7, 10, or 13 years in county jail or state prison as specified.

EXISTING LAW:

1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code §§ 11054-11058.)

2) Fentanyl is listed on Schedule II. ((Health & Saf. Code §§ 11055.)

3) Provides the following penalties for trafficking of cocaine, cocaine base, heroin and specified opiates, including fentanyl:

   a) Possession for sale is punishable as felony, by imprisonment for two, three, or four years (as specified under Realignment); and (Health and Saf. Code § 11351.)

   b) Sale is punishable as a felony, by imprisonment for three, four, or five years (as specified under Realignment). Sale includes any transfer or distribution. Transportation of fentanyl, to a noncontiguous county, for purposes of sale is punishable as a felony, by imprisonment for up to nine years (as specified under Realignment). (Health and Saf. Code § 11352.)

4) Specifies that it is a felony to manufacture specified controlled substances, including fentanyl, punishable by imprisonment for three, five, or seven years (as specified under

Realignment). (Health and Saf. Code § 11379.6.)

5) Provides that, except as specified, the term "controlled substance analog" means either of the following:

   a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or (Health & Saf. Code, § 11401, subd. (b)(1).)

   b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(2).)

6) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

7) Provides the following additional sentencing enhancements based on the weight of the heroin, opiate (including fentanyl), or cocaine possessed for sale or sold. (Health and Saf. Code §§ 11370.4, subd. (a).)

   a) 1 kilogram = 3 years

   b) 4 kilograms = 5 years

   c) 10 kilograms = 10 years

   d) 20 kilograms = 15 years

   e) 40 kilograms = 20 years

   f) 80 kilograms = 25 years

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, " Despite the minuscule amount it takes to kill someone, the number of people dying of fentanyl overdoses is on the rise. A trafficker can transform a kilogram of fentanyl into thousands of pills sold for millions of dollars in profit. To prevent the spread of this highly lethal drug on our streets, AB 2467 will increase the penalties for possession for sale, transportation for sale, and transportation of fentanyl across state lines. While many people intentionally abuse fentanyl, there are some who unknowingly take it after it has been cut into other drugs. Regardless of the intended use, it is imperative that we do all that we can to fight and stop the spread of fentanyl by targeting the dealers who prosper from destroying lives.."

2) **Fentanyl and Fentanyl Analogs:** Fentanyl was synthesized in the 1960s and has been used medically since 1968. The Centers for Disease Control and Prevention (CDC) website provides this description of fentanyl:

> Fentanyl, a synthetic and short-acting opioid analgesic, is 50-100 times more potent than morphine and approved for managing acute or chronic pain associated with advanced cancer. …[M]ost cases of fentanyl-related morbidity and mortality have been linked to illicitly manufactured fentanyl and fentanyl analogs, collectively referred to as non-pharmaceutical fentanyl (NPF). NPF is sold via illicit drug markets for its heroin-like effect and often mixed with heroin and/or cocaine as a combination product—with or without the user's knowledge—to increase its euphoric effects. While NPF-related overdoses can be reversed with naloxone, a higher dose or multiple number of doses per overdose event may be required …due to the high potency of NPF. (Internal quotation marks and footnotes omitted.) (http://emergency.cdc.gov/han/han00384.asp)

The DEA has reported to the United States Senate that most illicit fentanyl is produced in Mexico "with its analogs and precursors obtained from distributors in China. Fentanyl is smuggled across the [Southwest U.S. border] in kilogram quantities…" (http://www.dea.gov/pr/speeches-testimony/2015t/111715t.pdf)

3) **Increasing Sentences for Fentanyl:** Criminal justice experts and commentators have noted that, with regard to sentencing, "a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

> Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits. (http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf.)

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

> A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)

In regard to deterrence, the authors note that in "the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy. . . .

> Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not." (*Id.*)

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have "large crime prevention benefits," but that incremental, lengthy prison sentences are ineffective for crime deterrence:

> Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the singular. Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.
>
> Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure. Specifically, the incremental deterrent effect of increases in lengthy prison sentences is modest at best. Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders. For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime. (*Id.*)

With regard to the drug trade, the authors state:

> For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high . . . Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits . . . . At the corner of Ninth and Concordia in Milwaukee in the mid-1990s, for example, 94

> drug arrests were made within a 3-month period. "These arrests, [the police officer] pointed out, were easy to prosecute to conviction. But . . . the drug market continued to thrive at the intersection" . . . .
>
> Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] ... overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and... avoid arrest. Similar analyses apply to members of deviant youth groups and gangs: as members ... are arrested and removed from circulation, others take their place. Arrests and imprisonments of easily replaceable offenders create illicit "opportunities" for others. (*Id.*)

4) **Jail Overcrowding**: Realignment began in October 2011. Since that time county jails have had oversight over most non-serious, non-violent, non-sexual felons and parolees who violate their parole. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail a certain portion of the jail population is serving sentences that are much longer than one year. Those factors related to realignment have served to increase population pressure on county jails.

   In November of 2017, the Public Policy Institute of California published a report discussing population impacts on California jails related to Realignment and Proposition 47. After realignment began, the jail population began to rise; as of October 2014, the month before the passage of Proposition 47, it stood at 82,005 inmates, a gain of 14%—and about 2,000 inmates over the rated capacity of 80,000 (set by the California Board of State and Community Corrections). To address these capacity constraints, counties released 14,321 pre-sentenced and sentenced inmates in October 2014—an increase of 4,102 (or 40%) from September 2011. (http://www.ppic.org/publication/californias-county-jails/)

   Voters approved Proposition 47 in November 2014, reclassifying several property and drug crimes from felonies to misdemeanors. Prop 47 has had an immediate and lasting impact: the average daily population dropped by almost 10,000 between October 2014 and January 2015. The jail population has remained relatively flat since January 2015, and as of December 2016 it stood at 73,460 inmates, a decrease of 8,545 (or 10.4%) from October 2014. At the end of 2016, 28 jails housed populations that exceeded their rated capacities, compared to 53 jails in October 2014. (*Id.*)

   This bill would dramatically increase sentences for individuals convicted of specified criminal offenses involving fentanyl. The sentences served by the individuals sentenced pursuant to the provisions of this bill would predominately be served in county jail. The balance of the individuals sentenced under this bill would serve their sentences in the state prison, if based on prior convictions of specified offenses.

5) **Related Legislation:**

a) AB 1948 (Jones-Sawyer), would add fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered. AB 1948 is awaiting hearing in the Assembly Appropriations Committee.

b) AB 2405 (Patterson), would classify carfentanil in Schedule II of the drug schedule and increase penalties for trafficking in carfentanil. AB 2405 is set for hearing in the Assembly Public Safety Committee on April 3, 2018.

c) SB 1103 (Bates), would apply the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1103 is set for hearing in the Senate Public Safety Committee on April 10, 2018.

d) AB 3105 (Waldron), would make sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 would dramatically raise penalties for sale of fentanyl at defined lower amounts. AB 3105 is awaiting hearing in the Assembly Public Safety Committee.

6) **Prior Legislation:**

a) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II. SB 176 would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.

b) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

7) **Argument in Support**: According to the *Peace Officers Research Association of California,* "This bill would punish the possession, sale, or purchase for sale of fentanyl by imprisonment in a county jail for 4,5, or 6 years, the transportation, importation, sale, furnishing, administering, or giving away of fentanyl by imprisonment in a county jail for 7, 8, 9 years, and the trafficking of fentanyl by imprisonment in a county jail for 7, 10. Or 13 years. This bill contains other related provisions and other existing laws."

8) **Argument in Opposition**: According to the *Drug Policy Alliance*, "AB 2467 would not reduce the distribution of fentanyl nor prevent overdoses. Instead, it could undermine current efforts to address the opioid overdose crisis. Substantial evidence demonstrates that criminal penalties do not have any effect on reducing either the supply of drugs or the demand for them. Studies on tough on crime policies clearly show that incarceration does not decrease the demand for drugs. One study found that states that increase their incarceration rates do not experience a decrease in drug use. When a drug seller is incarcerated, the supply of drugs is not reduced nor is the drug market impacted. Because the drug market is driven by demand rather than supply, research indicates that an incarcerated seller will simply be replaced by another individual to fill the market demand.

"When we incarcerate people for distribution of drugs we often inadvertently lock up people

impacted by the opioid overdose crisis. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking at state prisons used drugs prior to the offense. These individuals often distribute drugs, not for profit, but as a way to support their own substance use disorder.

"While AB 2467 seeks to reduce opioid overdoes in California, there is no evidence its criminalization tactics would reduce fentanyl or fatal overdoes. Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoes and diseases, increases stigma and marginalization and drives people away from needed treatment, health, and harm reduction services."

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Deputy District Attorneys
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Fresno Deputy Sheriff's Association
Los Angeles County Sheriff's Department
Peace Officers Research Association of California

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
Drug Policy Alliance

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

Date of Hearing: April 3, 2018
Counsel: Matthew Fleming

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

AB 2495 (Mayes) – As Introduced February 14, 2018

SUMMARY: Makes it unlawful for a local city or county government to charge a person for the costs of investigation, prosecution, or appeal that that city or county sustains in a criminal case. Specifically, **this bill**: prohibits a city, county, or city and county, including an attorney acting on behalf of a city, county, or city and county, from charging a criminal defendant for the costs of investigation, prosecution, or appeal in a criminal case, including, but not limited to, a criminal violation of a local ordinance.

EXISTING LAW:

1) Defines a nuisance as anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any public right of way. (Civ. Code § 3479.)

2) Allows the legislative body of a city to provide for the summary abatement of any nuisance at the expense of the persons causing it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with law. (Gov. Code § 38773.)

3) Provides that the legislative body of a city may by ordinance establish a procedure to collect abatement costs by a nuisance abatement lien, but the ordinance must require notice to the owner of record of the parcel of land on which the nuisance is maintained. (Gov. Code § 38773.1 subd. (a).)

4) Provides that notice of an abatement lien shall be served in the same manner as a summons in a civil action and that if the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located. (Gov. Code § 38773.1 subd. (b).)

5) Provides that a nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. (Gov. Code § 38773.1 subd. (c).)

6) Provides that a nuisance abatement lien shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel. (Gov. Code § 38773.1 subd. (c)(1).)

7) Provides that in the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information required by law shall be recorded by the governmental agency, and that a nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index. (Gov. Code § 38773.1 subd. (c)(2).)

8) Provides that a nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. (Gov. Code § 38773.1 subd. (c)(3).)

9) Provides that notwithstanding any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner, and that a city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. (Gov. Code § 38773.1 subd. (c)(4).)

10) Provides that, as an alternative to the procedure authorized by California State law, the legislative body of a city may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel. (Gov. Code § 38773.5 subd. (a).)

11) Provides that a city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance, so long as:

    a) If the city ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails;

    b) The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees; and

    c) In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding. (Gov. Code § 38773.5 subd. (b).)

12) States that the city legislative body, by ordinance, may provide that upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described by law is responsible for a condition that may be abated in accordance with an ordinance enacted pursuant to specified state law, the court may order that person to pay treble costs of the abatement. (Gov. Code § 38773.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Local governments should help neighborhoods and business owners clean up property to maintain quality of life and reduce blight; they should not be in the business of policing for profit. A lemonade stand, outdoor

holiday decoration, backyard chickens or faded address numbers shouldn't cost someone thousands of dollars in fines and fees and a lien against their property to remedy. AB 2495 would right a wrong where local governments can charge defendants for the privilege of being investigated and prosecuted for minor crimes, including criminal violations of a local ordinance such as public nuisance offense."

2) **Legal Background Regarding Nuisances**: A "public nuisance" is a legal term used to describe anything that makes everyday life for members of the community unsafe or inconvenient. A public nuisance could be almost anything that is dangerous, offensive, or obstructive. Some common examples of a nuisance include loud fireworks, strong odors such as those produced by raw sewage, or some kind of physical obstruction that interferes with the public right of way, such as decorations or large bushes that block the view of oncoming traffic.

   Existing law affords city and county governments broad authority to establish their own procedures for the legal enforcement of public nuisances, which is often referred to as "nuisance abatement." Cities and counties can go after the person alleged to have caused the nuisance in administrative, civil, and even criminal proceedings. Furthermore, existing law provides that city and county governments can establish local ordinances which allow for the recovery of all costs associated with the effort to abate the nuisance.

3) **Examples of the Problem this Bill Seeks to Rectify**: Pursuant to existing law, the city of Indio has enacted a local ordinance which proclaims that "the City is authorized to initiate an administrative or civil action to impose and recover all costs, expenses, and fees (including attorneys' fees) expended by the City related to any nuisance abatement or code enforcement action." (*see* City of Indio Code of Ordinances § 10.20 subd. B.) Indio's ordinance further specifies that administrative costs include "time spent by a city or employee or contractor for nuisance or code enforcement activities related to the violation" and also "legal services including litigation costs, court costs, and attorneys' fees." (*Ibid.*) Likewise, the city of Coachella has an ordinance which states "the person(s) responsible for causing the public nuisance conditions shall be liable for all costs of abatement incurred by the city, including, but not limited to administrative costs." (City of Coachella Code of Ordinances § 3.36.010 subd. B.)

   In addition to establishing procedures for the enforcement of public nuisances and recovery of costs, the cities of Indio and Coachella have taken to the practice of retaining a private law firm in order to criminally prosecute those individuals who are accused with having caused public nuisances. This practice appears to have led to exorbitant fines being levied against persons who have caused only minimal nuisances. These cases have been well-covered in local news and have recently attracted national attention (Westervelt, *Some California Cities Criminalize Nuisance Code Violations*, National Public Radio, "All Things Considered," Feb. 14, 2018, available at: <https://www.npr.org/2018/02/14/585122825/some-california-cities-criminalize-nuisance-code-violations> [as of March 26, 2018].)

   A couple of examples of Indio and Coachella's nuisance abatement that were published in the Palm Springs Desert Sun are particularly striking. In the first example, a 79 year-old landlord was charged with a criminal infraction as a result of the fact that one of her tenants had a few chickens on her property. (Kelman, *She Was Fined $5,600 for a few Chickens*, The Desert Sun, available at:

<https://www.desertsun.com/story/news/crime_courts/2018/02/13/institute-justice-attacks-california-prosecution-fees/331308002/> [as of March 26, 2018].) Although she initially thought she had resolved the matter by pleading guilty to the infraction and paying a small fine, she was later billed thousands of dollars by the private law firm that the city of Indio had retained to prosecute her.

In the second example, a man was criminally charged in Coachella after making a minor expansion to his home without a permit. As a result of the criminal charge, the man pled guilty, brought his house up to code, and paid a $900 fine. More than a year later, the law firm retained by the City of Coachella – the very same that was used in the $5,600 chicken case – sent him a bill for $26,000. The man protested the amount and the law firm raised the bill to $31,000. (Kelman, *They Confessed to Minor Crimes. Then City Hall Billed them $122k in "Prosecution Fees,"* The Desert Sun, available at: <https://www.desertsun.com/story/news/crime_courts/2017/11/15/he-confessed-minor-crime-then-city-hall-billed-him-31-k-his-own-prosecution/846850001/> [as of March 28, 2018].)

The examples continue, including a $25,200 bill for an unsightly yard (it had been used for illegal dumping), a $4,200 bill for a Halloween decoration that stretched across a road, and a $5,100 bill for selling a parking space without a business license. (*Id.*) These fines seem totally out of proportion with the inconveniences caused, and this pattern of nuisance abatement is troubling to say the least. Such scenarios beg for a solution. This bill would prevent local cities and counties from passing the costs of their investigations and prosecutions of minor crimes off on the same people they elect to prosecute. It would also prevent a law firm, such as the one retained by Indio and Coachella in the examples above, from selling the services of local ordinance drafting and nuisance abatement prosecution as a package designed to generate profit by charging exorbitant fees to those who have committed the most minor legal violations.

4) **Prior Legislation**: SB 567 (Torlakson) Chapter 60, Statutes of 2003, increased the fines for city and county ordinances determined to be a criminal infraction.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Civil Justice Association of California

Opposition

None

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

Date of Hearing: April 3, 2018
Counsel: Liah Burnley

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

AB 2513 (Jones-Sawyer) – As Introduced February 14, 2018

SUMMARY: Deletes the requirement that persons convicted of specified drug offenses register with local law enforcement. Specifically, **this bill**:

1) Repeals provisions requiring persons convicted of controlled substance offenses to register with local law enforcement.

2) Requires the statements, photographs, and fingerprints obtained pursuant to the provisions requiring registration to be destroyed no later than January 1, 2021.

3) Removes the requirement that local law enforcement immediately notify the employer of a teacher, instructor, or non-teacher school employee arrested for a controlled substance offense, and instead requires law enforcement to provide such notice when a school employee is convicted of a control substance offense.

EXISTING LAW:

1) Requires a person who is convicted of a specified controlled substance offense to register with the chief of police in the city in which they reside or with the sheriff of the county if the person resides in an unincorporated area. (Health & Safety Code § 11590 subd. (a).)

2) Requires a person who is convicted in federal court or any out-of-state court, for the commission of an offense that if committed in California would have been punishable as one of the controlled substance offenses requiring registration, to register in the city or county in which he or she resides. (Health & Safety Code § 11590 subd. (a)-(b).)

3) Specifies that registration includes a written statement signed by the registrant, the registrant's fingerprints, and the registrant's photograph. (Health & Safety Code § 11594.)

4) Requires the law enforcement agency, after receipt of the registrant's statement, fingerprints, and photograph, to forward the information to the Department of Justice (DOJ). (Health & Safety Code § 11594.)

5) Prohibits the public and persons other than a regularly employed peace or law enforcement officer from inspecting the statements, photographs, and fingerprints. (Health & Safety Code § 11594.)

6) Requires registrants who change their place of residence to inform the law enforcement agency with whom they last registered of their new address, requires the law enforcement agency to forward the registrant's new address and information to the DOJ, and requires the

DOJ to forward the registrant's information to the law enforcement agency with local jurisdiction of the new registrants new place of residence. (Health & Safety Code § 11594.)

7) States that the registration requirements terminate five years after the registrant is discharged from prison, released from jail, or the termination of probation or parole. (Health & Safety Code § 11594.)

8) Requires a person convicted of an offense requiring registration to be informed of their obligation to register prior to discharge, parole, or release from jail, prison, school, road camp, or other institution, by an official at the institution. (Health & Safety Code § 11592.)

9) Requires a person convicted of an offense requiring registration to be informed of their obligation to register prior to release on probation or discharge upon payment of a fine by the court in which the person was convicted. (Health & Safety Code § 11593.)

10) States that any person required to register who knowingly violates any of the provisions relating to registration is guilty of a misdemeanor. (Health & Safety Code § 11594.)

11) Clarifies that persons convicted of a controlled substance offense are not required to register if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance. (Health & Safety Code § 11590 subd. (a).)

12) States that the provisions requiring registration do not apply to misdemeanor convictions for possessing non-narcotic substances, cannabis, hallucinogenic stimulants, and depressants, as specified. (Health & Safety Code § 11590 subd. (c).)

13) Clarifies that persons convicted of possession, possession for sale, transport, and furnishing to a minor a non-narcotic Schedule III, IV, or V substance, are only required to register for offenses involving LSD, methamphetamine, and their analogs. (Health & Safety Code § 11590 subd. (a).)

14) Defines "controlled substance" as "a drug or substance listed in Schedules I, II, III, IV, and V." (Health & Safety Code § 11007.)

15) States that Schedule I substances are opiates, opium derivatives, hallucinogenics, and depressants, as specified (Health & Safety Code § 11054.)

16) States that Schedule II substances are opiates, opium, stimulants, and depressants, as specified. (Health & Safety Code § 11055.)

17) States that Schedule III substances are stimulants, depressants, naloprphine, narcotic drugs, and anabolic steroids, as specified. (Health & Safety Code § 11056.)

18) States that Schedule IV substances are narcotic drugs, depressants, fenfluramine, stimulants, and pentazocine, as specified. (Health & Safety Code § 11057.)

19) States that Schedule V substances are narcotic drugs, as specified. (Health & Safety Code § 11058.)

20) Defines "narcotic drug" as "a substance produced by extraction of a vegetable including opium, opiates, opium poppy, coca leaves, cocaine, ecgonine, and acetylfentanly, and their salts, compounds, isomers, and derivatives." (Health & Safety Code § 11019.)

21) Defines "opiate" as "any substance habit and addiction-forming or addiction-sustaining liability." (Health & Safety Code § 11020.)

22) Requires the DOJ to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) database in which pharmacies, clinics, and other dispensers of Schedule II through IV controlled substances provide specified dispensing information on a weekly basis. (Health & Safety Code § 11165, et seq.)

23) Requires every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest of any school employee for a controlled substance offense, to do one of the following:

   a) If the school employee is a teacher in a public school, immediately notify by telephone the superintendent of the school district employing the teacher and immediately give written notice of the arrest to the Commission on Teacher Credentialing in the county where the person is employed. Upon receiving notice of the arrest, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person;

   b) If the school employee is a non-teacher in a public school, immediately notify by telephone and give written notice of the arrest to the superintendent of school district employing the non-teacher; or,

   c) If the school employee is a teacher in a private school, immediately notify by telephone and give written notice of the arrest to the private school authority employing the teacher. (Health & Safety Code § 11591 subd. (a)-(c).)

24) Requires every sheriff or chief of police, upon the arrest of any teacher or instructor employed by a community college district for a controlled substance offense, to immediately notify the superintendent of the community college district by telephone and immediately give written notice to the Office of the Chancellor of the California Community Colleges. Upon receiving notice of the arrest, the superintendent of the community college district shall immediately notify the governing board of the community college district employing the person. (Health & Safety Code § 11591.5 subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As Chair of Public Safety, I have a strong interest in reforming the justice system. The Narcotics Registry imposes an additional step for offenders, which can be costly for law enforcement to administer and burdensome for both the former offender and law enforcement. Law enforcement already has access to one's criminal history, which includes drug offenses. It is time to recognize that the Narcotics

Registry is unnecessary and costly."

2) **Narcotics Registry:** Individuals convicted of any of the following controlled substance offenses are required to register with local law enforcement:

HS 11350	Possess for personal use of opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V.
HS 11351	Possess for sale of opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V.
HS 11351.5	Possess for sale or purchase for sale of cocaine base.
HS 11352	Transport, import into this state, or sale of opiates, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V.
HS 11353	Use of a minor with to violate any controlled substance offense.
HS 11353.5	Prepare for sale a controlled substance on school grounds or a public playground, a child day care facility, a church, or a synagogue; sale of a controlled substance to a minor at a school, child day care facility, public playground, church, or synagogue.
HS 11353.7	Prepare for sale a controlled substance in a public park; sale of a controlled substance to a minor under the age of 14 years in a public park.
HS 11354	Sale of a controlled substance by a minor to a minor; use of a minor, by a minor, to violate any controlled substance offense.
HS 11355	Agree, consent, or offer to unlawfully sell, furnish, transport, administer, or give away opiates, cannabis, synthetic cannabis, peyote, any narcotic drug listed in Schedule III, IV, or V, or any other liquid, substance, or material in lieu of any such controlled substance.
HS 11357	Possess more than 28.5 grams of cannabis or more than eight grams of concentrated cannabis. [Does not apply to convictions of a misdemeanor.]
HS 11358	Plant, cultivate, harvest, dry, or processes cannabis plants.
HS 11359	Possess cannabis for sale.
HS 11360	Transport, import into this state, or sell cannabis. [Does not apply to convictions of a misdemeanor.]
HS 11361	Hire, employ, or use a minor to transport cannabis; sell of cannabis to a minor.
HS 11363	Plant, cultivate, harvest, or dry peyote.
HS 11366	Open or maintain a place for the purpose of unlawfully selling, giving away, or using opiates, cannabis, synthetic cannabis, peyote, or any narcotic drug listed in Schedule III, IV, or V.
HS 11366.5	Manage or control a building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale.
HS 11366.6	Use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale any amount of cocaine base, cocaine, heroin, phencyclidine, amphetamine, methamphetamine, or LSD.
HS 11368	Forge or alter a prescription; issue an altered prescription; possess any narcotic drug secured by a forged, fictitious, or altered prescription.
HS 11377	Possess any non-narcotic substance listed in Schedule III, IV, or V, hallucinogenic substances, except cannabis, mescaline, peyote, and synthetic cannabis, GHB, fenethylline, n-ethylamphetamine, stimulants, and depressants. [Does not apply to convictions of a misdemeanor.]
HS 11378	Possess for sale any substance that is an opiate or a non-narcotic substance listed in Schedule III, IV, or V.
HS 11378.5	Possess for sale PCP or its analogs or precursors.
HS 11379	Transport, import into the state, sale, furnish, administer, or give away opiates and any non-narcotic substance listed in Schedule III, IV, or V.
HS 11379.5	Transport, import into the state, sale, furnish, administer, or give away PCP or any of its analogs or precursors.
HS 11379.6	Manufacture, compound, convert, produce, derive, process, or prepare a controlled substance.
HS 11380	Use of a minor to violate any provision involving opiates and non-narcotic substances listed in Schedule III, IV, or V.
HS 11383	Possess, at the same time specified chemicals, and any compound or mixture containing specified chemicals, with the intent to manufacture PCP or its analogs.
HS 11550	Use or be under the influence of opiates and a narcotic substances listed in Schedule III, IV, or V.

Additionally, individuals who reside in California and have been convicted of a similar offense in a different state or in federal court, must register with their local law enforcement agency within 30 days of moving into the state. It is questionable whether these individuals are informed of their obligation to register, which is a constitutional requirement. Individuals convicted of controlled substance offenses in California state courts are informed of their obligation to register upon release from custody or discharge of supervision, or by the court if custody is not imposed.

Individuals are required to register for five years after release from custody, discharge of

supervision, or payment of a court ordered fine if supervision or custody is not imposed. To comply with registration requirements, individuals must give personal information to their local law enforcement official, including a signed written statement, conviction information, fingerprints, a picture, address, driver's license number, registered vehicles, and occupation and employment information. Notably, the information collected by law enforcement is not open for inspection to the public, but it is maintained by and shared among local law enforcement agencies and the DOJ. The registry assists law enforcement in monitoring the whereabouts of those convicted of drug offenses and to help law enforcement prevent further crimes. A law enforcement officer may arrest someone that they have cause to believe has not registered, and which is a misdemeanor offense. (*People v. Ramirez* (1967) 253 Cal. App. 2d 910.)

After the five year registration obligation ends, the individual's name and personal information is not removed from the list of registered drug offenders and there is no method of which an individual can get their name and information removed from the list. The registry permits law enforcement to keep track of the identity of individuals with records of drug convictions indefinitely, which could permanently brand people as drug abusers. Criminal record expungement and termination of probation does not have any effect on an individual's obligation to register. This creates a significant privacy concern for rehabilitated individuals with old records of drug convictions. Particularly concerning is the fact that most marijuana offenses no longer require registration, but the DOJ and local law enforcement may still catalogue personal information of individuals convicted of marijuana offenses prior to decriminalization. Though state law requires agencies to purge records of marijuana convictions contained in statewide databases, it is unclear to what extent law enforcement officials are removing records of marijuana convictions collected in their narcotics registries, if at all. (Health and Safety Code, § 11361.5)

This bill would repeal the provisions requiring people convicted of drug offenses to register with their local law enforcement official, and requires the DOJ and local law enforcement to destroy the statements, photographs, and fingerprints obtained pursuant to controlled substance offender registration no later than January 1, 2021.

3) California's Move Away from Punishment towards Treatment for Substance Abuse:

a) **Treatment over Punishment**: In 2014, a study by the pew research center found overwhelmingly increasing bipartisan support for treating drug offenses as a public health issue, outside of the criminal justice system. Two-thirds of Americans want the government to focus more on providing treatment for people who use drugs like cocaine and heroin. Just 26% think the focus should be more on prosecuting people who use such drugs. (http://www.people-press.org/2014/04/02/americas-new-drug-policy-landscape/)

This sentiment is reflected in California by recent efforts to slash the criminal penalties for drug offenses. In 2000, voters approved Proposition 36, which allows courts to divert non-violent defendants, probationers, and parolees charged with simple drug possession or drug use "from incarceration into community-based substance abuse treatment programs." (Prop. 36, § 3; *People v. Davis* (2003) 104 Cal.App.4th 1443, 1448.) If diversion is successfully completed, the charges are dismissed and the defendant is spared "the stigma of a criminal record." (*People v. Ormiston* 105 Cal.App.4th 676, 690.) In 2014, voters approved Proposition 47, which reduced possession of heroin,

methamphetamine, and other drugs to a misdemeanor. In 2016, a majority of California voters supported Proposition 64, which reduced the penalties for over a dozen marijuana-related offenses. Under Proposition 64, most felony marijuana offenses were reduced to misdemeanors.

The judiciary branch has also moved towards treatment over punishment, marked by the proliferation of drug courts throughout the state. Most drug courts include initial intensive treatment services and ongoing monitoring and continuing care for a year or more. (http://www.courts.ca.gov/5979.htm.) Similarly, the Legislature has also begun to reduce punishments for substance abuse. In 2017, the Legislature passed legislation that eliminated the three-year sentence enhancement for people convicted of specified drug crimes and legislation that allowed the overdose antidote naloxone to be sold without a prescription. This year, legislation is pending in this committee that would automatically expunge convictions of certain marijuana convictions.

According to the California Department of Public Health, 70 percent of the deaths involved prescription opioids. (https://publicpolicy.stanford.edu/news/california-confronts-opioid-addiction-%E2%80%98epidemic-despair%E2%80%99). In addition, street heroin use is often a cheaper alternative for those whose addiction begins with expensive pills. (*Id.*) The DOJ maintains the CURES database, which contains patient and prescription information, and provides prescribers with alerts about patients who have received higher doses of painkillers or prescriptions from multiple providers. (https://oag.ca.gov/cures/) Local law enforcement agents can access CURES records. Public health officials say CURES is key to preventing opioid-related deaths in California and has had success. (https://publicpolicy.stanford.edu/news/california-confronts-opioid-addiction-'epidemic-despair') However, the Sacramento Bee reported that, according the Attorney General's Office, the CURES information "was half of what is needed in order to be certified" in 2016 and is now being tested to ensure it can handle more users. (http://www.sacbee.com/news/politics-government/capitol-alert/article199444229.html .)

Despite California's shifting approach on substance abuse, a person must register and be monitored by their local police or sheriff if they are convicted of one of the many controlled substance offenses, including using, or being under the influence of, an addictive opiate or narcotic drug. (Health & Safety Code, § 11590.) The narcotics registry is a continuation of policies that prioritize policing substance abusers over facilitating treatment. The Legislature should consider whether such resources could be better allocated to substance abuse treatment and prevention, such as managing the CURES database.

b) **The Narcotics Registry is based on an Outdated Understanding of Drug Crime**: In *People v. Kun*, the court considered whether the registration requirement is grossly disproportionate to the defendant's individual culpability. (*People v. Kun* (1987) 195 Cal. App. 3d 370, 375.) The court denied constitutional challenges to the Narcotics Registry of a defendant, who was honorably discharged from the military, had been steadily employed, had no history of prior arrests, and was convicted of a felony possession of 18 pounds of marijuana after admitting to working on a marijuana farm. (*Id.*) The court stated that the defendant could not "be compared with the minor sexual transgressions" in two cases where misdemeanor sex offenders were not required to register on the sex offender registry. (*Id.*) The court determined that the registration requirements are

constitutional form of punishment, because the Legislature "determined that cultivation of marijuana is a serious offense." (*Id.*) Similarity, in *People v. Hove*, the court held that even though the registration requirement intrudes on defendants privacy rights, it is not an unconstitutional intrusion of privacy because there is a rational legislative basis for collecting and managing information concerning the whereabouts of drug offenders convicted of more serious drug offenses such a possessing marijuana for sale. (*People v. Hove* (1992) 7 Cal. App. 4th 1003.) The court further stated that the defendant, who was convicted for possession of six pounds of marijuana, presented a significant danger to society. (*Id.*)

Courts have upheld the drug offender registration requirements on the grounds that there is a rational basis for tracking dangerous offenders. However, these decisions hark back to the failed war on drugs. Taking into account the recent efforts of California voters to decriminalize marijuana and reduce the penalties for other drug offenses, and the public's evolving views on how to treat substance abuse, the bases for the courts' decisions upholding the narcotics registry—that drug offenders present a significant danger to society—should be examined. Indeed, in enacting Proposition 47, voters specifically chose to "ensure that prison spending is focused on violent and serious offenses, maximize alternatives for nonserious, nonviolent crime, and invest the savings generated from [Prop 47] into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment." Today, the public may even consider the defendants in *Hove* and *Kun* or entrepreneurs rather than dangerous offenders.

The rational for continuing drug offender registration is further called into question by law enforcements existing tools to police drug offenders, including their access to conviction and arrest histories of drug offenders—even records that have been expunged or sealed, capability to conduct warrantless searches of individuals under correctional supervision, including drug testing, access to information in the DOJ's CURES database about prescription drugs, and ability to collaborate with drug courts that can monitor substance abusers. In sum, the Legislature should consider whether it is reasonable to require local law enforcement to dedicate time and resources to registering drug offenders registrants, in light of other available means to police controlled substance offenses.

4) **Reporting Drug Arrests**: Current law requires law enforcement to immediately notify the school districts when a school employee is *arrested* for a controlled substance offense. This bill instead requires law enforcement to submit notification when the school employee is *convicted* of a controlled substance offense. This bill also specifies that the notification requirement does not apply to misdemeanor cannabis convictions.

The fact that a person is arrested is not definitive proof that the person is guilty of the criminal offense or that the person engaged in the alleged conduct. On the other hand, a record of conviction is generally sufficient proof to demonstrate that the person engaged in the criminal conduct. Many individuals who are arrested are never charged, sometimes the charges are dropped or dismissed, or the individual is acquitted by a jury.

In the employment context, employers are prohibited from asking an applicant about prior arrests that did not lead to convictions. (Labor Code, § 432.7.) The Senate Labor and Industrial Relations Committee analyses for AB 1008 points out that, "African Americans and Latinos face deep and persistent levels of discrimination at all phases of the criminal

justice system which means a disproportionate amount of arrests and convictions for members of these groups. As a result, they will have least access to jobs and economic security." (Sen. Labor & Indust. Relations Com. Analyses, Assem. Bill 1008 (2017-2018 Reg. Sess.) as amended June 20, 2017.) Requiring law enforcement to immediately report school employees merely arrested for a controlled substance offense further contributes to employment disparities and stigmatizes the employee, even if that individual is never actually convicted of the crime.

5) **Argument in Support**:

a) The *Conference of California Bar Associations*, the bill's sponsor, states: "Unlike other criminal registries, such as the sex offender registry, which are made available online for public protection purposes, the narcotics registry is not so promoted – nor is there any move afoot to do so. There is no need; the information included in the registry is readily available to law enforcement through a person's criminal history and arrest record so requiring law enforcement personnel to duplicate the information by creating and maintaining a narcotic offender registry is redundant and wastes valuable law enforcement time and resources on an exercise of little, if any, value.

"The narcotics registry hearkens back to the not-too-distant time of the War on Drugs, when stiff punishment was meted out for non-violent and often victim-less crimes. The voters of California have fundamentally rejected this approach through their approval of initiatives like Proposition 47 of 2014 and Proposition 64 of 2016, which recognize drug use as a condition or illness warranting treatment, not a revolving door of incarceration. AB 2513 reflects this change in public attitude.

"Similarly, under existing law, law enforcement is required to inform the Commission on Teacher Credentialing and the county superintendent of schools when a teacher is arrested of a drug offense – or the local school district if a non-credentialed employee is arrested, even though the charges may be unfounded and eventually dropped. AB 2513 would revise these statutes to require reporting upon conviction rather than arrest, consistent with due process rights.

"AB 2513 is a reasonable bill that removes an outdated requirement that creates far more work and waste than value, and which makes a reasonable modification in the law relating to the reporting of drug offenses by teachers and other school employees by tying it to an actual conviction for the offense, not merely arrest. These are positive changes worthy of enactment."

b) *California Attorneys for Criminal Justice* state, "For many years now there has been a significant shift in paradigm for responding to drug use and addiction. Public health experts have successfully brought to light the efficacy of providing treatment, counseling and rehabilitative services to those battling drug use instead of the overly simplistic notion that punishment and public shame are the pathways to reduced drug use. Those addicted to drugs are more likely to respond to drug treatment, counseling and rehabilitative services than the outdated paradigm of punishment. The registry was premised on the principle that individuals on the registry are dangers to the community that require constant over-sight and monitoring. California's resources are better spent

providing public health services to combat drug addiction."

6) **Related Legislation**: AB 1752 (Low), of the 2017-2018 Legislative Session, would add Schedule V controlled substances to the CURES database, and requires date of sale information. AB 1752 is pending in Assembly Business and Professions Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
California NORML

Opposition

None

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

Date of Hearing: April 3, 2018
Counsel: Matthew Fleming

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

AB 2526 (Rubio) – As Introduced February 14, 2018

SUMMARY: Allows law enforcement officers to orally obtain temporary emergency gun violence restraining orders provided they sign a declaration under oath attesting to the facts supporting the request. Specifically, **this bill**:

1) Allows a judicial officer to issue a temporary emergency gun violence restraining order based upon a law enforcement officer's oral request provided the officer signs a declaration under the penalty of perjury reciting the oral statements provided to the judicial officer and memorializes the order on the form approved by the Judicial Council.

2) Eliminates the requirement that a temporary emergency gun violence restraining order be obtained in writing unless time and circumstances permit.

3) Eliminates the requirement that an orally obtained temporary emergency gun violence restraining order be obtained in the same method as an oral application for a search warrant.

EXISTING LAW:

1) Requires a law enforcement officer seeking a temporary gun violence restraining order to do all of the following:

   a) Memorialize the order of the court on the form approved by the Judicial Council, if the order is obtained orally;

   b) Serve the order on the restrained person, if the restrained person can reasonably be located;

   c) File a copy of the order with the court as soon as practicable after issuance; and

   d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code, § 18140.)

2) States that a petition for a temporary emergency gun violence restraining order shall be obtained by submitting a written petition to the court, except that if time and circumstances do not permit the submission of a written petition, a temporary emergency gun violence restraining order may be issued in accordance with the procedures for obtaining an oral search warrant. (Pen. Code, § 18145 subd. (a).)

3) Establishes that the presiding judge of the superior court of each county shall designate at least one judge, commissioner, or referee who shall be reasonably available to issue

temporary emergency gun violence restraining orders when the court is not in session. (Pen. Code, § 18145 subd. (b).)

4) States that a temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

   a) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm; and

   b) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18125 subd. (a).)

5) State that a temporary emergency gun violence restraining order shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire 21 days from the date the order is issued. (Pen. Code, § 18125 subd. (b).)

6) States that a temporary emergency gun violence restraining order is valid only if it is issued by a judicial officer after making the findings required by law and pursuant to a specific request by a law enforcement officer. (Pen. Code, § 18130.)

7) Requires that a temporary emergency gun violence restraining order include all of the following:

   a) A statement of the grounds supporting the issuance of the order;

   b) The date and time the order expires;

   c) The address of the superior court for the county in which the restrained party resides; and,

   d) The following statement:

> "To the restrained person: This order will last until the date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm or ammunition, while this order is in effect. However, a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order." (Pen. Code, § 18135.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In light of the tragic string of school shootings – most recently in Florida – it is essential that the procedures for obtaining temporary GVRO's are clear. AB 2526 will help prevent gun violence against school children, families, and the public by clarifying that law enforcement may seek those orders orally, saving time when there is an immediate and present danger of gun violence.

   "In practice, officers in the in the field dealing with the immediate and present danger that is the basis for a temporary GVRO generally obtain the order orally because time and circumstances rarely allow the officer to present a written petition to a judicial officer at the courthouse. However, the default procedure under existing law provides that officers must obtain such orders via written petition, unless time and circumstances do not permit preparing and filing the petition. This has caused confusion about whether a written petition is required for the orders, which could result in unnecessary delays. AB 2526 instead aligns the procedures for an officer to obtain the order with the procedures for Domestic Violence Restraining Orders by making oral requests for such orders the default procedure."

2) **The Temporary Emergency Gun Violence Restraining Order**: State law allows for the issuance of a temporary emergency gun violence restraining order (GVRO) where a person exhibits an immediate and present danger of causing harm to him or herself, or others. Once the order has been issued and properly served on the subject, that person is prohibited from possessing or purchasing a firearm in the ensuing 21 days. The process for how an emergency GVRO is obtained is the subject of this bill.

   Although current law contemplates the oral issuance of a GVRO, the default procedure is to submit a written petition. Oral issuance is only allowed if time and circumstances do not permit the filing of a written petition. This bill aims to eliminate the existing law's preference for the written petition, given the fact that the situation in which an emergency GVRO already requires a "immediate and present danger."

   Additionally, this bill would streamline the oral procedure for obtaining a GVRO. Rather than having to comply with the somewhat more rigorous demands that are necessary to obtain a search warrant, an officer can simply recite the reasons needed for the GVRO to the judicial officer over the phone, so long as he later memorializes them in a declaration signed under the penalty of perjury. This process appears to balance the immediacy of the potential threat with the requirements of due process.

3) **Argument in Support**: According to the sponsor of the bill, *the Judicial Council*:"AB 2526 clarifies the process for issuance of temporary emergency gun violence restraining orders and furthers the court's ability to efficiently process and issue emergency orders by making oral requests for temporary GVROs requested by law enforcement the default procedure rather than written petitions for those GVROs.

   "Making the oral procedures the primary procedure in the statute reflects the reality of how these orders are issued: the request is generally made over the phone by a law enforcement officer who is in the field dealing with a situation in which someone poses an *immediate and*

present danger of causing harm to himself or herself, or others. Thus, it is difficult to see how time and circumstances would allow the officer to present a written form to a judicial officer at the courthouse as required by the current default procedure.

"In addition, AB 2526 aligns the temporary GVRO procedures with those for obtaining domestic violence emergency protective orders by adopting requirements similar to those specified by the Legislature for emergency protection orders that law enforcement obtain orally in domestic violence cases (Fam. Code § 6241.) Finally, the bill retains the essential requirements of the original statutes. Specifically, the oral statements that the law enforcement officer seeking the order makes to the judicial officer must be declared under penalty of perjury on the order form eventually filed with the court – a parallel to the requirement of statements under oath for oral issue of search warrants (Pen. Code § 1526(b) (law enforcement officer statement made by telephone and recorded or sent in to court in writing via fax or email).)

4) **Related Legislation**:

a) SB 1200 (Skinner), of the 2017-2018 Legislative Session, would clarify that GVRO require the surrender of firearm parts, firearm components, and magazines, and would also require an officer to verbally ask the person being restrained whether he or she has a firearm, firearm part or component, or magazine in possession. SB 1200 is pending referral by the Senate Rules Committee.

b) AB 2888 (Ting), of the 2017-2018 Legislative Session, would allow persons other than immediate family members and law enforcement, including employers and co-workers to file a petition for a GVRO in a non-emergency situation. AB 2888 is pending in the Assembly Committee on Public Safety.

5) **Prior Legislation**:

a) AB 1014 (Skinner), Chapter 872, Statutes of 2014, establishes GVROs.

b) AB 225 (Melendez) of the 2015-2016 Legislative Session, would have made it a felony to file for a GVRO based on false information. AB 225 failed passage in the Assembly Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council (Sponsor)
California State Sheriffs' Association
Giffords Law Center to Prevent Gun Violence

Opposition

None
Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Consultant: Mureed Rasool

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

AB 2532 (Jones-Sawyer) – As Introduced February 14, 2018

SUMMARY: Requires a court to permit a person convicted of an infraction to perform community service in lieu of paying a fine upon demonstrated financial hardship, and sets an hourly rate for community service. Specifically, **this bill**:

1) Requires the court to permit a person convicted of an infraction to perform community service in lieu of paying a fine upon the defendant demonstrating financial hardship.

2) Clarifies the definition of "total fine."

3) Sets the hourly applicable rate for community service at double the minimum wage set for the applicable calendar year, as specified.

4) Allows courts to adopt a local rule increasing the hourly rate set above.

EXISTING LAW:

1) Separates crimes and public offenses into felonies, misdemeanors, and infractions. (Pen. Code, § 16.)

2) Specifies that an infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a trial by jury and is not entitled to a public defender or other counsel paid for at public expense unless he or she was arrested and not released on written promise to appear, own recognizance, or deposit of bail. (Pen. Code, § 19.6.)

3) Mandates that, except as otherwise provided by law, all laws relating to misdemeanors apply to infractions including, but not limited to, peace officer powers, court jurisdiction, periods for commencing action and for bringing a case to trial, and burden of proof. (Pen. Code, § 19.7.)

4) States that a violation of any code section listed, as specified, is an infraction, when:

   a) The prosecutor files the offense as an infraction unless the defendant elects, after having been arraigned and informed of rights, to have the case proceed as a misdemeanor; or

   b) The defendant allows the court to determine that the offense is an infraction. (Pen. Code, § 17, subd. (d).)

5) States that, except in cases where a different punishment is prescribed, a fine for an infraction shall not exceed two hundred fifty dollars. (Pen. Code, § 19.8.)

6) States that a person convicted of an infraction may, upon demonstrating that paying a fine would result in financial hardship, be sentenced to perform community service instead of paying the total fine which would otherwise be imposed. (Pen. Code, § 1209.5.)

7) Sets the hourly rate applicable to community service work performed by dividing the total fine by the number of hours of community service ordered by the court. (Pen. Code, § 1209.5.)

8) Requires the minimum wage for any employer who employs 25 or fewer employees to be:

   a) $10.50 per hour from January 1, 2018, to December 31, 2018;

   b) $11 per hour from January 1, 2019, to December 31, 2019;

   c) $12 per hour from January 1, 2020, to December 31, 2020;

   d) $13 per hour from January 1, 2021, to December 31, 2021;

   e) $14 per hour from January 1, 2022, to December 31, 2022; and,

   f) $15 per hour from January 1, 2023 until adjusted as specified. (Lab. Code, § 1182.12 subd. (b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Low-income individuals of African American, Latin, Asian, and Native American descent are disproportionately represented in our criminal justice system, and they are also disproportionately burdened by high levels of court ordered debt related to traffic infractions. The court does provide people an opportunity to use community service if paying the court ordered debt is a financial burden, but the current conversion rate for community service is inequitable. AB 2532 addresses this by providing a minimum conversion rate for community service hours equal to double the minimum wage for small businesses.

   "The California court system has made progress in recent years by implementing reforms to address issues in both criminal court and traffic courts. Recent changes by the Legislature have also resulted in a more equitable system of payments through the use of payment plans, and AB 2532 continues these efforts to ensure that our court system is fairer for everyone."

2) **Background**: Before sponsoring AB 2532, the Judicial Council disseminated a proposed draft for public comment. (Judicial Council of California. (2017). *Judicial Council-Sponsored Legislation: Uniform Hourly Rate for Community Service in Lieu of Infraction Fine*.) According to information provided by the Judicial Council of California, "Penal Code section 1209.5 governs the imposition of community service in lieu of fines for infraction

convictions. Section 1209.5 provides that a court may sentence a defendant to perform community service if payment of the total fine would pose a hardship on the defendant or his or her family. Currently, each court determines its own hourly rate for defendants who perform community service, resulting in different rates throughout the state." (*Id.*)

This bill would designate a uniform minimum hourly rate for infraction fines paid off through community service. This would lessen the inequitable results in cases where defendants face similar fines but are sentenced to markedly differing community service hours.

3) **Judicial Council's Public Comment Considerations**: During the circulation period for public comment, the Judicial Council took several notable comments into consideration. (Judicial Council of California. (2017). *Judicial Council-Sponsored Legislation: Uniform Hourly Rate for Community Service in Lieu of Infraction Fine.*)

"Two commenters requested the proposal specify that the rate apply to the base fine rather than the total fine. [One commenter had pointed out that AB 2839 (Thurmond), Chapter 769, Statutes of 2016, changed custody credits under Penal Code sections 1205 and 2900.5 to reduce penalties and assessments imposed on base fines in an amount proportional to the base fine reduction due to community service.]

"The committee considered the requested change but determined the existing proposal would allow defendants to perform fewer hours of community service without creating inequality among infraction defendants. For example, if a defendant committed a violation of speeding less than 15 miles per hour over the speed limit (Veh. Code, § 22349(a)), the base fine would be $35 and the total bail would be approximately $238. If the committee changed the proposal to apply only to the base fine, a defendant could complete one hour of community service to satisfy the base fine, whereas a defendant who paid the fine would owe $238; a defendant working at a minimum wage job might have to work more than 21 hours to pay off the total bail.

"One commenter requested the rate be tied to minimum wage but not doubled, as doubling the minimum wage will put it out of line with the monetary credit defendants receive for each day in custody. As with the previous comment, this commenter is concerned the proposal is out of line with the amount defendants are credited for each day in custody, which is $125.

"The Traffic Advisory Committee initially considered recommending the minimum wage in developing this proposal, but instead elected to propose double the lowest schedule for the state minimum wage to provide defendants with a greater benefit. Also a defendant in jail remains in custody 24 hours a day, whereas a day of labor is based on only eight hours of work. The committee reconsidered its position in light of this comment, but declined to change the proposal." (*Id.*)

4) **Argument in Support**: According to the *Judicial Council of California*, "The Judicial Council is pleased to sponsor and support AB 2532, which would require the court to permit a person to perform community service in lieu of the total fine upon making a specified showing of hardship to the court. This bill would also value the hourly rate for community service at double the minimum wage, based on the schedule for an employer who employs 25 or fewer employees, as specified. The bill would further authorize a court by local rule to

increase the amount that is credited for each hour of community service performed.

"Currently, each court determines its own hourly rate for defendants who perform community service, resulting in different rates throughout the state. This bill is needed to provide a uniform and equitable statewide minimum hourly rate for community service in lieu of payment of infraction fines. By doing so, it would promote access to justice."

5) **Argument in Opposition**: According to the *California Police Chiefs Association*, "The California Police Chiefs Association regrets to inform you of our **opposition** to AB 2532, which would require the court to permit an individual to elect to perform community service in lieu of the total fine upon showing that payment of the total fine would pose a hardship on the defendant or his or her family.

"By eliminating the fine(s) and only requiring community service, this bill would eliminate a revenue source used by the courts to fund their day to day operations. It would also affect the Commission on Peace Officers Standards and Training (POST) by reducing the funds used to provide access to specified training courses to peace officers. Without this source of revenue, POST will not be able to provide the training needed to maintain the level of service the public demands from their local law enforcement."

6) **Prior Legislation**:

   a) AB 2839 (Thurmond), Chapter 769, Statutes of 2016, changed custody credits under Penal Code sections 1205 and 2900.5 to reduce penalties and assessments imposed on base fines in an amount proportional to the base fine reduction caused by community service.

   b) AB 2197 (Washington), Chapter 1061, Statutes of 1998, authorized persons convicted of infractions to perform community service in lieu of the total fine otherwise imposed. Stated that the hourly rate applicable to community service work was to be determined by dividing the total fine by the number of hours of community service ordered by the court.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council of California (Sponsor)
California Public Defenders Association

Opposition

California Police Chiefs Association

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

Date of Hearing: April 3, 2018
Counsel: Liah Burnley

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

AB 2595 (Obernolte) – As Introduced February 15, 2018
As Proposed to be Amended in Committee

SUMMARY: Clarifies that the limitations on the length of the physical confinement of a ward committed to the Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ), do not limit the powers of the Board of Juvenile Hearings (BJH) and the committing juvenile court. Specifically, **this bill:**

1) States that the limitations on the length of the physical confinement of a ward committed to DJJ do not limit the powers of the BJH to order an eligible ward's discharge from commitment.

2) States that the limitations on the length of the physical confinement of a ward committed to DJJ do not limit the powers of the committing juvenile court to retain jurisdiction of the ward and establish the conditions of supervision of a ward eligible for discharge from DJJ.

EXISTING LAW:

1) States that any person under age 18, who violates any law other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, and the juvenile court may adjudge such a person to be a ward of the court. (Welf. & Inst. Code § 602.)

2) States that if the court has found that a minor has violated any law other than an ordinance establishing a curfew based solely on age, it may order and adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 725 subd. (b).)

3) States that a court may, without adjudging the minor a ward of the court, place a minor on supervised probation for six months, and if the minor fails to comply with the conditions of probation, the court may order and adjudge the minor a ward of the court. (Welf. &. Inst. 725 subd. (a).)

4) States that an order adjudging a minor a ward of the court is not a criminal conviction. (Welf. & Inst. Code § 203.)

5) Requires the court to consider the relevant and material evidence, the age of the minor, the circumstances and gravity of the offense committed by the minor, and the minor's previous delinquent history prior to ordering and adjudging the minor a ward of the court. (Welf. & Inst. Code, § 725.5.)

6) States 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, including but not limited to commitment of the minor to DJJ. (Welf. & Inst. Code § 202.)

7) States that the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support, including medical treatment, of a minor or nonminor adjudged a ward of the court. (Welf. & Inst. Code, § 727 subd. (a)(1).)

8) Requires the court to order the care, custody, and control of the minor or nonminor to be under the supervision of the probation officer and in the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer, as specified. (Welf. & Inst. Code, § 727 subd. (a).)

9) States that it is the responsibility of the probation agency to determine the appropriate placement for the ward once the court issues a placement order. (Welf. & Inst. Code, § 727 subd. (a)(4).)

10) States that every minor adjudged a ward of the juvenile court is entitled to participate in age-appropriate extracurricular, enrichment, and social activities. (Welf. & Inst. Code, § 727 subd. (a)(4)(F).)

11) States that the court has no authority to order services unless it has been determined through the administrative process of an agency, that the minor, nonminor, or nonminor dependent is eligible for those services. (Welf. & Inst. Code, § 727 subd., (a)(2).)

12) States that the court shall not discharge any person from its jurisdiction who has been committed to DJJ so long as the person remains under the jurisdiction of DJJ. (Welf. & Inst. Code, § 607 subd. (c).)

13) Allows the court to retain jurisdiction over any person while that person is the subject of a warrant for arrest. (Welf. & Inst. Code, § 607 subd. (e).)

14) State that if a minor is a ward of the court, the court may order treatment, order the ward to make restitution, commit the ward to a sheltered-care facility, order the ward and the ward's family to participate in counseling, and commit the ward to DJJ. (Welf. & Inst. Code, § 731.)

15) Prohibits a ward of juvenile court to be committed to DJJ if the ward is under 11 years old, suffering from a contagious disease, or has not committed a specified violent or sex offense. (Welf. & Inst. Code, § 733.)

16) Specifies that a ward committed to DJJ may not be in physical custody for a period exceeding the maximum length of confinement set by the court, based on the facts and circumstances that brought the ward under the court's jurisdiction. (Welf. & Inst. Code, § 731 subd. (c).)

17) Specifies that a ward committed to DJJ may not be in physical custody for a period exceeding the maximum length of confinement that could be imposed on an adult convicted

of the offense that brought the minor under the jurisdiction of the court. (Welf. & Inst. Code, § 731 subd. (c).)

18) States that the provisions limiting the period of time a ward may be held in physical custody of DJJ do not limit the power of the Board of Parole Hearings to retain the ward on parole status. (Welf. & Inst. Code, § 731 subd. (c).)

19) States that every person committed by the juvenile court to DJJ, shall be discharged upon the expiration of a two-year period, or when the person attains 21 years of age, whichever occurs later, unless an order for further detention has been made by the committing court. (Welf. & Inst. Code, § 1769.)

20) States that every person committed by the juvenile court to DJJ prior to July 1, 2012, for the commission of a specified violent or sex offence, shall be discharged upon the expiration of a two-year period, or when the person attains 23 years of age, whichever occurs later, unless an order for further detention has been made by the committing court. (Welf. & Inst. Code, § 607 subd. (f).)

21) States that every person committed by the juvenile court to DJJ after July 2, 2012, for the commission of a specified violent or sex offence, shall be discharged upon the expiration of a two-year period, or when the person attains 25 years of age, whichever occurs later, unless an order for further detention has been made by the committing court. (Welf. & Inst. Code, § 1769.)

22) Authorizes the BJH to set a date on which a ward shall be discharged from DJJ and supervised under probation and subject to the jurisdiction of the committing court. (Welf. & Inst. Code, § 1766.)

23) Authorizes the BJH to deny discharge of a person committed to DJJ, subject to the limitations of the maximum length of confinement, as specified. (Welf. & Inst. Code, § 1766.)

24) States that the court may retain jurisdiction over any ward who commits a specified violent or sex offence until that person attains 25 years of age, if the person was committed to DJJ. (Welf. & Inst. Code, § 607 subd. (b).)

25) States that the court may retain jurisdiction over any person who commits a specified violent or sex offence, and has been confined in a state hospital or other appropriate public or private mental health facility, until that person attains 25 years of age. (Welf. & Inst. Code, § 607 subd. (d).)

26) States that the court shall retain jurisdiction over any person who has been discharged from the physical custody of DJJ, until the person attains the age of 25 years. (Welf. & Inst. Code, § 607.1.)

27) States that the county of commitment shall supervise the reentry of a ward stull subject to the court's jurisdiction and discharged from DJJ. (Welf. & Inst. Code, § 1766.)

28) States that a ward discharged from DJJ to the jurisdiction of the committing court may be detained by probation if there is probable cause to believe that the ward violated any of the court-ordered conditions of supervision, for the purpose of initiating proceedings to modify the conditions of supervision. (Welf. & Inst. Code, § 1767.35 subd. (a).)

29) Provides that modifications may include an order of confinement of a ward in a juvenile facility, consistent with the limitations on the total length of confinement as specified and that confinement of a ward older than 18 years old in a local adult facility not to exceed a total of 90 days, and confinement of the ward in DJJ for a specified of time no shorter than 90 days and no longer than one year. (Welf. & Inst. Code, § 1767.35.)

30) Confers specified powers and duties to the BJH, including: discharge juveniles committed to DJJ to the jurisdiction of the juvenile court, honorable discharge determinations, initial case reviews, and annual reviews. (Welf. & Inst. Code, § 1719.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2595 clarifies the language in Welfare & Institutions Code §731(c), that a juvenile court has authority to retain jurisdiction and establish conditions for the ward's supervision disposition after a youth's commitment to a term in the Division of Juvenile Justice (DJJ)), as spelled out in Welfare & Institutions Code § 1766, subd. (b)(1) and (6), This reaffirmation is in keeping with Public Safety budget trailer bill A.B. 1628 (2010), which realigned juvenile parole from the State's DJJ to the counties' probation departments and realigned state funds to local probation departments to provide evidence-based rehabilitative services. It will encourage more courts to utilize their discretion in limiting to limit the time youth spend on their initial commitment to DJJ without limiting the court's jurisdiction to retain the youth on probation supervision and update language regarding to Board of Parole Hearings; the correct agency is the Board of Juvenile Hearings."

2) **Need for the Bill**: In the mid-2000s, California began to realign responsibility for juvenile offenders to the counties. In 2007, SB 81, permitted counties to commit only the most serious juvenile offenders to state facilities. In 2010, AB 1628, realigned supervision of juveniles released from DJJ from the Board of Parole Hearings to county probation. Throughout the years, juvenile realignment bills have amended various sections of the Welfare and Institution, Penal, and Government Codes. However, many sections of the codes are outdated, and need to be updated to reflect current law. One such section is Welfare and Institutions Code Section 731 subdivision (c).

   Section 731 subdivision (c) limits the amount of time a juvenile may be held in physical custody at DJJ. Under this subdivision, the committing court may only commit a juvenile for a time period based on the facts and circumstances that brought the juvenile under the jurisdiction of the court. Additionally, a juvenile may only be confined in DJJ for a period not exceeding the maximum time that an adult convicted of the same offense could receive. Other sections of the code specify that, notwithstanding the statutory maximums in Section 731 subdivision (c), the BJH has the authority to discharge an eligible ward from custody of DJJ, and upon discharge, the ward is to remain under the jurisdiction of the committing court, and will be supervised locally by probation.

The court explained this process in *In Re Carlos E.*, under section 731, "the juvenile court must determine the maximum period of confinement to CYA [now, DJJ] based on the facts and circumstances [that brought the youth under the court's jurisdiction], this maximum may not be more than that for a comparable adult, but may be less. The maximum period of confinement set by the court is not a determinate term, it is the ceiling on the amount of time that a minor may be confined in [DJJ], and recognizes that the committing court has an interest in and particularized knowledge of the minors it commits to [DJJ]. The Youth Authority Board [now, BJH] retains the power, subject to the applicable rules and regulations, to determine the actual length of confinement at or below the ceiling set by the juvenile court..." (*In re Carlos E.* (2005) 127 Cal. App. 4th 1529, 1542.) The court further explained that in practice the maximum term of imprisonment rarely determines the actual period of confinement of a ward committed to DJJ. Rather, the minor's actual term is governed by the BJH, within the statutory maximum. The statutory maximum may affect discharge eligibility and the extent to which actual confinement may be prolonged for disciplinary reasons. (*Id.* at 1536.)

Section 731 subdivision (c) reflects an outdated version of this law as it existed prior to juvenile realignment. Specifically, subdivision (c) as it currently exists provides that the limitations on the amount of time a juvenile can be confined in DJJ do not limit the power of the *Board of Parole Hearings* discharge a youth on parole. This language reflects the wrong agency; BPH no longer paroles youth confined in DJJ.

This bill would update subdivision (c) to reflect current law. Specifically, this bill deletes the subdivision's outdated reference to the BPH, and clarifies that the juvenile court may retain jurisdiction of a ward discharged from DJJ. The bill also clarifies that the BJH has the authority to set the release date for wards confined in DJJ, subject to the subdivision's limitations on the maximum time a juvenile can be confined in DJJ. As such, this bill ensures that courts retain their jurisdiction over juveniles that are released from DJJ.

3) **Current Legislation**: AB 2706 (Jones-Sawyer), of the 2017-2018, Legislative Session, would require the probation department and the court of the committing county to participate in the ward's reentry case conference with the DJJ. AB 2706 is pending in Assembly Public Safety Committee.

4) **Prior Legislation**:

   a) SB 81 (Senate Budget and Fiscal Review Committee), Chapter 175, Statutes of 2007, allowed courts to retain jurisdiction to oversee a ward's supervision, as specified.

   b) AB 1628 (Committee on Budget), Chapter 729, Statutes of 2010, realigned juvenile parole from the Division of Juvenile Justice to county probation offices.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

Amendments Mock-up for 2017-2018 AB-2595 (Obernolte (A))

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

Mock-up based on Version Number 99 - Introduced 2/15/18
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

SECTION 1. Section 731 of the Welfare and Institutions Code is amended to read:

731. (a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730 and, in addition, may do any of the following:

(1) Order the ward to make restitution, to pay a fine up to two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs.

(2) Commit the ward to a sheltered-care facility.

(3) Order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(4) **(a)** Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile ~~Facilities~~ ***Justice***, if the ward has committed an offense described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code, and is not otherwise ineligible for commitment to the division under Section 733.

(b) The Division of Juvenile Facilities shall notify the Department of Finance when a county recalls a ward pursuant to Section 731.1. The division shall provide the department with the date the ward was recalled and the number of months the ward has served in a state facility. The division shall provide this information in the format prescribed by the department and within the timeframes established by the department.

(c) ~~A ward committed to the Division of Juvenile Facilities may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court.~~ A ward committed to the Division of Juvenile ~~Facilities~~ ***Justice*** ~~also~~ may not be ***confined*** ~~held in physical confinement for a period of time~~ in excess of the ~~maximum~~ term ~~of physical~~ confinement set by the ***committing*** court. ***The court***

may set a term based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court necessary to achieve rehabilitation. The court shall not commit a ward to the Division of Juvenile Justice for a period that exceeds the maximum term of imprisonment that could be imposed upon an adult convicted of the same offense. ~~based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement.~~ ~~as determined pursuant to this section. This section~~ ~~*subdivision.*~~ *This subdivision* does not limit the power of ~~the Board of Parole Hearings~~ ***the Board of Juvenile Hearings to discharge a ward committed to the Division of Juvenile Justice pursuant to Sections 1719 and 1769.*** ~~to retain the ward on parole status for the period permitted by Section 1769.~~ ~~*The*~~ ***Upon discharge, the*** *committing* ~~*juvenile*~~ *court* ***may*** ~~*to*~~ *retain jurisdiction* ***of the ward*** *pursuant to Section 607.1 and* ~~*to*~~ *establish* ~~*the*~~ *conditions of* ~~*the ward's*~~ *supervision pursuant to subdivision (b) of Section 1766.*

Date of Hearing: April 3, 2018
Chief Counsel: Gregory Pagan

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

AB 2669 (Jones-Sawyer) – As Amended March 23, 2018

SUMMARY: Authorizes any peace officer of the Office of Correctional Safety of the Department of Corrections and Rehabilitation (CDCR), and any peace officer of the Office of Internal Affairs of CDCR acting in the scope of his or her authority, to overhear or record any communication they could lawfully hear prior to the enactment of unauthorized eavesdropping provisions.

EXISTING LAW:

1) Allows the attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General, or any district attorney, any officer of the California Highway Patrol, any chief of police, or police officer of a city or city and county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting at the direction of one of those law enforcement officers acting in the scope of his or her authority, to overhear or record any communication they could lawfully hear prior to the enactment of unauthorized eavesdropping provisions. (Pen. Code, § 633.)

2) Provides that eavesdropping provisions do not prohibit one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to human trafficking, annoying telephone calls, or domestic violence. Eavesdropping prohibitions do not render any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, including, but not limited to human trafficking, annoying telephone calls, or domestic violence. (Pen. Code, § 633.5.)

3) States that the Legislature hereby declares that advances in science and technology have led to the development of new devices and techniques for the purpose of eavesdropping upon private communications and that the invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society. The Legislature by this chapter intends to protect the right of privacy of the people of this state. The Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter. (Pen. Code, § 630.)

4) Provides that every person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has been convicted previously of a violation of specified unauthorized recording sections, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. (Pen. Code, § 632.7.) Exempts the following from these provisions:

   a) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, where the acts otherwise prohibited are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility;

   b) The use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of the public utility; and,

   c) Any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

5) Provides that every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of specified eavesdropping sections, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. (Pen. Code, § 632.)

   a) Specifies that the term "person" includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication; (Pen. Code, § 632, subd. (b).)

   b) States that the term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or

recorded; (Pen. Code, § 632, subd. (c).)

c) Provides that except as proof in an action or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative, or other proceeding; (Pen. Code, § 632, subd. (d).)

d) States that this section does not apply to: (Pen. Code, § 632, subd. (e).)

   i) Any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility; or

   ii) To the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility; or

   iii) To any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

e) Provides that this section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear. (Pen. Code, § 632, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Currently, the Peace Officers of Correctional Safety, (Special Services Unit, SSU) and the Office of Internal Affairs (OIA) within the California Department of Corrections and Rehabilitation (CDCR) is not listed in PC 633 but most peace officer agencies are. Therefore, much of the evidence gathered by SSU is subject to the local District Attorney after the fact the evidence was obtain while undercover or happenstance and therefore not legal evidence because SSU and OIA are not listed in PC 633. Many times evidence comes to these officers while performing their duties and this evidence just happened to be revealed accidently, without pre-planning. Other agencies can use this type of evidence, because they are listed in PC 633. SSU and OIA are restricted from using this evidence because they needed the local District Attorney's warrant prior to gaining the evidence. This problem is why most Peace Officer agencies are listed in PC 633 and why SSU and OIA need to be added."

2) **Argument in Support**: According to the *California Correctional Supervisors Association* states, "Under current law, virtually all front line public safety officers are enumerated in Penal Code Section 633 as being able to directly or with any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority, to overhear or record any communication that they could lawfully overhear or record prior to the effective date of this chapter. Not included among this array of front line law enforcement officers, however, are peace officers of the office of Correctional Safety

(Special Services Unit, SSU). As a result of this exclusion, much of the evidence gathered by peace officers of the office of Correctional Safety cannot be efficiently utilized by local prosecutorial agencies."

3) **Argument in Opposition**: According to the *American Civil Liberties Union* states, "Fifty years ago, California put into place extensive protections for the privacy of its residents against non-consensual eavesdropping on or recording of confidential communications – such as the private conversations we all have every day, in person or by telephone. Many law enforcement officers, including police officers and deputy sheriffs, were expressly allowed under the statute to continue to overhear or record communications that they could lawfully overhear or record prior to the enactment of the new restrictions – but only those officers specified in statute were granted this exemption. (Penal Code §633).

"The right to privacy is fundamental and preserved in both state and federal constitutions. It should not be restricted without a compelling justification. For fifty years, the peace officers of the CDCR's Office of Correctional Safety and Office of Internal Affairs, like many other kinds of peace officers not exempted under Penal Code §633, have been doing their jobs without the power to overhear or record conversations as proposed in this bill. There is simply no reason to chip away at California's statutory privacy protections by newly granting them this power after all this time."

REGISTERED SUPPORT / OPPOSITION:

Support

California Correctional Supervisors (Sponsor)
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotics Officers Association
California Police Chiefs Association

Opposition

American Civil Liberties Union

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

Date of Hearing: April 3, 2018
Consultant: Mureed Rasool

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

AB 2701 (Rubio) – As Introduced February 15, 2018

SUMMARY: Requires the California Victim Compensation Board (VCB) to administer a program evaluating and awarding grants to school-based trauma recovery centers (TRC). Specifically, **this bill**:

1) Finds and declares, among other things, that trauma creates a negative neurobiological response in a youth's brain, that youth in low-income neighborhoods are disproportionately more likely to be exposed to community violence or other traumatic events, that unaddressed trauma can lead youth to criminal activities, and that trauma related symptoms should not be criminalized but effectively addressed at the earliest possible stages in a student's life.

2) States that it is the intent of the Legislature to enact a program, to be administered by the VCB upon appropriation, to evaluate applications and award grants to school-based TRCs.

3) Requires the VCB to only award grants to school-based TRCs that meet all of the following:

   a) The school-based TRC provides a whole-school systemic approach to students impacted by trauma;

   b) Any related criteria required by the VCB; and,

   c) The school-based TRCs adhere to core elements, as established.

4) Establishes core elements that every school-based TRC must follow. Each school-based TRC must do all of the following:

   a) Provide outreach and services to students who are typically unable to access traditional services, including, students who are low income, members of immigrant or refugee groups, disabled, interact with child protective systems, and those who have had contact with the juvenile justice system;

   b) Provide school-wide intervention and prevention work through a three-tiered intervention model, which includes fostering the emotional well-being of all students through safe and supportive environments, having preventative support services that enable schools to minimize escalation of identified behavioral health symptoms, and maintaining intensive services for students demonstrating significant needs;

   c) Offer training and support for adult members of the caregiving system;

d) Collaborate with school and district personnel to improve and implement trauma-informed policies;

e) Not exclude any student solely on the basis of emotional or behavioral issues resulting from trauma;

f) Use established, evidence-based and evidence-informed practices; and,

g) Not exclude a student from service based on immigration status.

5) Gives preference to school-based TRCs that meet all of the following criteria:

a) Serve chronically traumatized neighborhoods where community violence is prevalent;

b) Demonstrate a track record of collaborating with schools to create school environments that are trauma informed and sensitive; and,

c) Demonstrate a track record of serving youth who are involved with child protective services.

6) Requires all school-based TRCs awarded grants to annually report on, among other things, how fund were spent, clients served, treatment outcomes, and patient flow.

7) Requires all school-based TRCs awarded grants to submit data requested by the VCB in order to receive applicable federal funds.

8) States that, for the purposes of this section, school-based TRCs provide services to students less than 21 years of age and to the parents or caregivers of students receiving services.

9) Prevents all TRC grants from receiving continuously appropriated proceeds from the Restitution Fund.

EXISTING LAW:

1) Creates the VCB, to reimburse victims of crime for pecuniary losses suffered as a result of criminal acts. Indemnification is made from the Restitution Fund, a fund continuously appropriated for the aforementioned purposes. (Gov. Code, §13950 et seq.)

2) Provides that the VCB shall enter into an interagency agreement with the UCSF to establish a recovery center for victims of crime at the San Francisco General Hospital for comprehensive and integrated services to victims of crime, subject to conditions set by the board. (Gov. Code, § 13974.5.)

3) Requires the VCB to "administer a program to evaluate applications and award grants to trauma recovery centers." (Gov. Code, § 13963.1, subd. (b).)

4) Mandates that grants shall only be awarded to TRCs that meet all of the following criteria:

a) The TRC must show it serves the community by, among other things, providing training to law enforcement, community-based agencies, and healthcare providers on identifying violent crime and its effects;

b) A showing that the TRC uses the core elements as developed by the State Pilot Trauma Recovery Center in San Francisco; and,

c) Any related criteria required by VCB. (Gov. Code, § 13963.1, subds. (b)(1)- (3).)

5) Gives preference to TRCs that conduct outreach and serve both crime victims who typically are unable to access traditional services and victims of a wide range of crimes including sexual assault, shootings, and human trafficking. (Gov. Code, § 13963.1, subds. (e)(1) & (2).)

6) Requires all TRCs awarded grants to report annually on how funds were spent, the amount of clients served, treatment outcomes, and as otherwise specified. Also, such TRCs must submit any forms requested by the VCB for federal funding. (Gov. Code, § 13963.1, subd. (g)(1) & (2).)

7) States that, for the purpose of giving grants to TRCs, TRCs must provide mental health services, community based outreach and clinical case management, services to homicide victims' families and friends, and a multidisciplinary staff of clinicians, as specified. (Gov. Code, § 13963.1, subd. (h)(1)-(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Last year, I was the proud author of AB 752 which was signed by the governor and now prohibits California State Preschool Programs from expelling or unenrolling children who exhibit problem behavior in the classroom. As a follow-up to that bill, I have introduced AB 2701. As a previous school teacher, I recognize that some students are harder to work with than others. However, I also know that more often than not, when students do poorly in the classroom it is because they are dealing with deeper underlining problems that are occurring in their lives. It is time we stop seeing kids who lash out as, 'problematic,' or, 'bad,' and we start doing more to address some of those deeper issues they may be dealing with on their own. By encouraging schools to develop trauma informed practices on their campuses we are ensuring students receive the support they need to be successful in their academics."

2) **TRCs in California:** The California Legislature's first venture into trauma recovery centers was at San Francisco General Hospital. AB 2491 (Jackson, Chapter 1016, Statutes of 2000), required the VCB to enter into an interagency agreement with the University of California, San Francisco, to establish a victims of crime recovery center at San Francisco General Hospital. It was created as a four year pilot project to test the effectiveness of providing comprehensive and integrated services to victims of crime, as opposed to the usual fee-for-service care reimbursed by the Victim Restitution funds. The goals of the TRC included improving the process of care for victims of crime by enhancing medical services for acute victims of sexual assault, linking victims to other services to facilitate recovery, and improving access to victim compensation funds.

In May 2004, the VCB published a report to the Legislature on the effectiveness of the victims of crime recovery center. The report concluded that the TRC model provides a wider, more effective, range of services at a lower cost for trauma victims that the traditional fee-for-service mental health treatment programs.

The report's conclusions were based on a study conducted by the TRC. The study randomly selected a group of patients and enrolled part of them in the TRC model of care. It then gave the remaining participants "usual care," which included emergency department treatment and referral to resources such as the San Francisco Victim Witness Assistance Center.

Among some of its findings, the study found that 48 percent more TRC group victims cooperated with the DA's office and 29 percent more with police than the "usual care" group. It also found that the TRC group who had been sexually assaulted allowed medical collection of evidence 38 percent of the time more than the usual care group, and 29 percent more agreed to file a police report. TRC patients also had a 67 percent reduced homelessness rate than the usual care group at 12 months post-trauma. Furthermore, the report found that, of those with significant substance abuse problems, 56 percent decreased or stopped drinking, 54 percent decreased or stopped using drugs, and 89 percent reported being able to deal with their substance abuse problems better.

In terms of costs, the study found that the TRC group's unit of cost for each patient was $2,015 whereas the usual care group's cost was $2,079 per patient, for a total of $64 saved per patient. (VCB. (2004). *San Francisco Trauma Recovery Center: Report to the Legislature*. <https://victims.ca.gov/docs/reports/UCSFTRCreport.pdf> [Mar. 25, 2018].)

Due to the program's success, the Legislature directed the VCB to implement more TRC programs throughout the state. (Gov. Code, § 13963.1.) Currently, VCB funds 12 TRCs across California. (VCB. (2018). *CalVCB Announces Funding Availability for Trauma Recovery Centers*. <https://victims.ca.gov/media/pressrelease/2018/2018-03-2/> [Mar. 25, 2018].)

This bill would take the core elements of the TRC model of care and expand its coverage to reach schools. Numerous studies have linked traumatic childhood experiences to increased mental health issues later on in life. (Centers for Disease Control and Prevention. *Adverse Childhood Experiences Journal Articles by Topic Area*. <https://www.cdc.gov/violenceprevention/acestudy/journal.html> [Mar. 26, 2018].)

In 2015, approximately 60 percent of children had reported experiencing exposure to physical assault, sexual victimization, maltreatment, property victimization, or witnessing violence. (US Office of Juvenile Justice and Delinquency Prevention. (2015). *Children's Exposure to Violence, Crime, and Abuse: An Update*. <https://www.ojjdp.gov/pubs/248547.pdf> [Mar. 27, 2018].) Exposure to certain trauma has been "connected to developmental difficulties, problem behavior, and physical and mental health effects extending throughout the lifespan." (*Id.*)

This bill could potentially catch trauma related issues at an earlier stage of an individual's life, before trauma related mental health problems aggrandize.

3) **Results from Schools with Trauma Informed Practices**: In 1998, the Los Angeles Unified School District (LAUSD), teamed up with UCLA and the Research and Development Corporation (RAND), to determine the extent of violence exposure and post-traumatic stress symptoms among LAUSD students and to implement a program designed to address such issues.

Of the eligible participants, two randomly assigned groups were created. One group started the program immediately and the other received treatment later on in the year. RAND and mental health clinicians from LAUSD developed an intervention program named "Cognitive-Behavioral Intervention for Trauma in School" (CBITS). The CBITS program consisted of, among other things, individual sessions with clinicians, activities training such as relaxation methods, ways of dealing with negative thoughts, and coping with violent events through talking, drawing or writing.

Within three months, the students receiving CBITS intervention showed a greater substantial decrease in their Post-Traumatic Stress and Depressive symptoms than the students who had not yet received any intervention. After the three month period, the study stopped treating the group which had previously been helped, and began the CBITS program for the second group. After another three month period, the results were that the group that had received CBITS after the waiting period also showed substantial improvement, while the group that had initially received CBITS maintained their improvements. The data in figures 1 and 2 provide an overview of this information.

Figure 1
Post-Traumatic Stress Symptoms at Baseline, Three Months, and Six Months

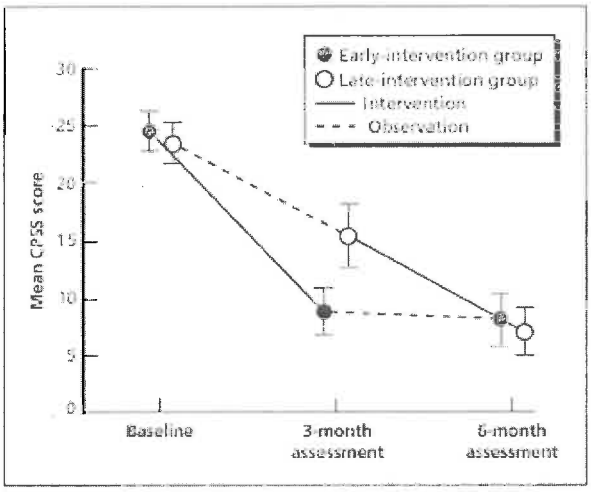
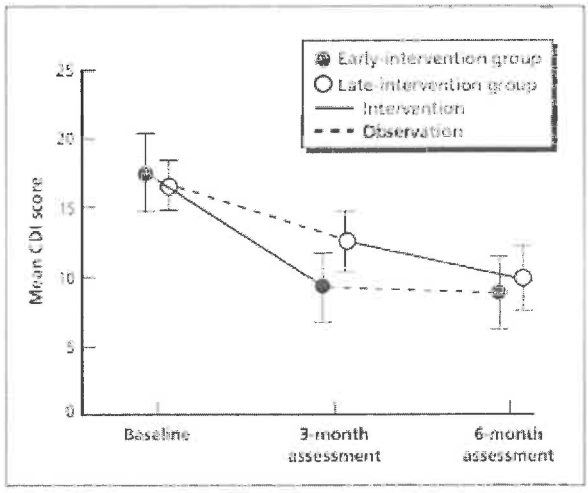


Figure 2
Depressive Symptoms at Baseline, Three Months, and Six Months



SOURCE: Stein BD, Jaycox LH, Kataoka SH, Wong M, Tu W, Elliott MN, and Fink A. "A Mental Health Intervention for School Children Exposed to Violence," *Journal of the American Medical Association*, Vol. 290, No. 6, August 6, 2003, pp. 603–611. Copyright © 2003, American Medical Association. All rights reserved.

NOTE: CDI = Children's Depression Inventory, an assessment tool and scale for measuring child depression.

After the study, an adaptation, named "Support for Students Exposed to Trauma" (SSET), was created to streamline the services so that teachers and other school staff could administer the program without the need for extensive clinical worker oversight. The modified approach showed similar positive results, although they were not as substantial. (RAND Organization. (2011). *Helping Children Cope with Violence and Trauma: A School-Based Program That*

Works. <file:///C:/Users/rasoolmu/Downloads/RAND_RB4557-2.pdf> [Mar. 26, 2018].)

CBITS and SSET have since been replicated several times. The Substance Abuse and Mental Health Services Administration, an agency within the US Department of Health and Human Services, listed in its National Registry of Evidence-based Programs and Practices that CBITS, "yielded strong evidence of a favorable effect," and stated that SSET "yielded sufficient evidence of a favorable effect." (<https://nrepp.samhsa.gov/ProgramProfile.aspx?id=205#hide1> [Mar. 26, 2018]; <https://nrepp.samhsa.gov/ProgramProfile.aspx?id=170#hide1> [Mar. 26, 2018].)

A related trauma informed program utilized by a California school district has yielded similar results; seeing a drop in referrals from 674 in 2008-09, to 50 in 2014, and a suspension rate decrease of 89 percent during the same time period. (ACEs Too High. (2014). *San Francisco's El Dorado Elementary Uses Trauma-Informed & Restorative Practices; Suspensions Drop 89%.* <https://acestoohigh.com/2014/01/28/hearts-el-dorado-elementary/> [Mar. 26, 2018].)

Other states have either included resources on trauma informed care, or implemented it in some form, including, Massachusetts, Washington, Illinois, and Wisconsin. (County Health Rankings & Roadmaps. <http://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/policies/trauma-informed-schools> [Mar. 27, 2018].)

4) **California Schools' Trauma Recovery Litigation**: On May 18, 2015, students from the Compton Unified School District (CUSD) filed a complaint in the United States Central District Court against CUSD. (*P.P., et al. v. Compton Unified School District*, (C.D.Cal. 2015) 135 F.Supp.3d 1038, 1103.) The complaint alleged that the school district failed to properly accommodate students whose access to education had been fundamentally impaired by certain types of trauma they had experienced. (*Id.* at 1106.) The complaint mentioned, among other things, that CUSD's policies failed to provide teachers and administrative personnel with training in regards to evidence-based trauma programs that have been demonstrated to reduce the effects of trauma. (*Id.*) In part, it asserted that certain forms of traumas were "disabilities" under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and that failure by CUSD to accommodate such disabilities violated those laws. (*Id.*)

   In denying CUSD's motion to dismiss, the court made it clear that it was not making a final decision as to whether exposure to traumatic events, without more, is a legally cognizable disability under either Act. (*Id.* at 1103.) However, the court stated that it acknowledged the allegations that certain traumatic experiences might cause physical or mental impairments could possibly be cognizable as disabilities under the two Acts. (*Id.*) The federal court's docket indicates that proceedings will resume on April 2, 2018, upon expiration of a Joint Stipulation to Stay Litigation. (*Id.*at dock. 2:15CV03726.)

   If the Central District Court were to issue a final opinion that classified certain types of trauma as a disability, it could potentially affect a large number of school districts within California.

5) **Argument in Support**: According to *Californians for Safety and Justice*, "Medical research establishes that trauma creates a negative neurobiological response in a young person's

developing brain. Children and youth who face chronic toxic stress and exposure to traumatic events and circumstances are constantly placed in fight, flight or freeze mode. Young trauma victims suffer reduced ability to focus, organize, and process information, leading to lower academic achievement, decreased reading ability, and increased school absences

"AB 2701 will create a funding stream and state monitoring and evaluation for school-based TRCs providing outreach and services to students who are typically underserved, including but not limited to, students who are low-income or homeless, display symptoms of post-traumatic stress disorder or severe-trauma related symptoms, members of immigrant and refugee groups, students with disabilities, disabled students, students who interact with child protective systems and/or have had contact with the juvenile justice system.

"Under AB 2701, school-based TRCs will collaborate with school-level and district-level personnel to help improve trauma-informed policies and procedures. TRCs will utilize established, evidence-based and evidence-informed practices in treatment and will put policies into place to ensure that no person is excluded from services solely on the basis of immigration status, or emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety. The bill will also make possible programs to train and support adult members of the caregiving system. Examples include, but are not limited to, psychoeducation and skill-building workshops for parents and caregivers, as wells as training and consultation in complex trauma and trauma-sensitive practices for teachers, administrators, paraprofessionals, and school mental health staff."

6) **Prior Legislation**:

a) AB 1384 (Weber), Chapter 587, Statutes of 2017, required the VCB to disburse grants to TRCs and required that such TRCs follow the model developed at the San Francisco General Hospital Trauma Recovery Center.

b) SB 518 (Leno), of the 2015-2016 Legislative Session, would have required the VCB to use a specified evidence-based model when giving a grant to a TRC, as specified. SB 518 was held in the Assembly Appropriations Committee.

c) SB 1404 (Leno), of the 2015-2016 Legislative Session, would have recognized the Trauma Recovery Center at San Francisco General Hospital as the State Pilot Trauma Recovery Center, and required the VCB to use the model developed by this center when it awards grants to establish additional trauma recovery centers pursuant to new funding made available from Proposition 47. SB 1401 died in the Assembly Appropriations Committee.

d) SB 71 (Budget and Fiscal Review), Chapter 28, Statutes of 2013, authorized the VCB to administer a program to award, upon appropriation by the Legislature, up to $2,000,000 in grants, annually, to trauma recovery centers, as defined, funded from the Restitution Fund.

e) SB 733 (Leno), of the 2009-2010 Legislative session, would have authorized the VCB to evaluate applications and award grants totaling up to $3 million, up to $1.7 million per center, to multi-disciplinary TRCs that provide specified services to and resources for

crime victims. SB 733 failed passage on the Senate Floor.

f) AB 1669 (Leno), of the 2007-08 Legislative Session, would have appropriated $1.5 million for the TRC at the San Francisco General Hospital. AB 1669 was vetoed.

g) AB 50 (Leno), Chapter 884, Statutes of 2006, appropriated $1.3 million for the TRC at the San Francisco General Hospital.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
California Catholic Conference, Inc.

Opposition

None

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

Date of Hearing: April 3, 2018
Counsel: Matthew Fleming

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

AB 2715 (Limón) – As Amended April 2, 2018

SUMMARY: Expands 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 simultaneously reduces the amount of personal information available to those agencies when evaluating potential employees who are not in those sensitive roles. 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 apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders;

   b) The collection, storage, dissemination, or usage of criminal offender record information; or,

   c) The collection or analysis of evidence or property.

2) Allows a criminal justice agency to release 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 apprehension, prosecution adjudication, incarceration, or correction of criminal offenders;

   b) The collection, storage, dissemination or usage of criminal offender record information; or,

   c) The collection or analysis of evidence or property.

3) Prohibits criminal justice agencies from inquiring about, requesting, and utilizing 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 judicially dismissed or ordered sealed pursuant to law for persons

who are seeking employment or employed in criminal justice agencies and whose duties do not directly relate to apprehension, prosecution, incarceration, or correction of criminal offenders, or the collection, storage, dissemination or usage of criminal offender record information, or the collection or analysis of evidence or property.

EXISTING LAW:

1) Precludes an employers 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; but 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).)

2) 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).)

3) 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).)

4) Defines "criminal justice agencies" as 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.)

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) 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).)

8) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Non-sworn employees have sensitive and important roles, including forensic technicians, crime analysts, correctional staff, and victim service providers. These positions are critical to the health and integrity of our criminal justice system.

   "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 is appropriate to make arrest information available to criminal justice 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. They are also prohibited from using arrest information in hiring or promotion decisions.

One reason for this policy is probably 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 definitely 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.) Furthermore, 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).) It is therefore entirely possible that an innocent person may have been arrested due to a mistake. For that reason, it makes sense to restrict an employer's ability to obtain and utilize information about an arrest where there was no finding of guilt.

3) **Exemption for Peace Officers**: Despite the general restriction on the use of arrest information, 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, 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 tremendous 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 employees who work in sensitive roles that fall short of being a peace officer. 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 inquires and requests regarding arrest information at the time the person is seeking 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.

   The author has specifically identified positions such as forensic technicians, crime analysts, and correctional staff as the kinds of employees who would be the subject of the criminal justice agencies' expanded ability to look into arrest information. These positions have important duties that include handling and analyzing evidence. Furthermore, these positions have a significant likelihood of being called to testify in a criminal case. It therefore makes sense that the persons employed in these positions should be subjected to a heightened level of scrutiny.

At the same time this bill seeks to expand the accessibility of information pertaining to employees whose functions are of a sensitive nature, it also narrows the circumstances in which the agency can inquire or request information about its employees who are not engaged in those roles. Under current law, a criminal justice agency is allowed to obtain information regarding arrests for *any* potential employee. That is to say that even if an applicant's only duties are to include answering phones or inputting data, current law allows the employer to investigate the circumstances of an arrest even if that arrest resulted in an acquittal or dismissal of charges. This bill would prevent the employer from obtaining arrest information from employees in non-sensitive roles even at the time they make the application for employment.

4) **Argument in Support**: According to the bill's sponsor, *The California State Sheriffs' Association*: "An 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 are appropriately held accountable, and can sustain a trustworthy relationship 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."

5) **Argument in Opposition**: According to *The Laborer's International Union of North America*: "AB 2715 seeks to allow criminal justice agency employers to consider arrests or detentions not resulting in convictions, when considering employment matters, for non-sworn employees, including those whose primary job functions are the handling, maintenance, or dissemination of information via computer; and accordingly, would not be in the employee classifications intended to be included under this measure.

"Accordingly, should the bill continue to move forward, we respectfully request the author amend the bill further, to clarify that 'however, such employees shall not be interpreted to include those whose usual and primary functions are administrative, information technology, or clerical, in nature.'"

6) **Prior Legislation**:

   a) 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.

   b) 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.

   c) 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)
California State Association of Counties
California Public Defenders Association
Chief Probation Officers
Peace Officers Research Association of California

Opposition

LIUNA Local 792
SEIU California

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

Date of Hearing: April 3, 2018
Chief Counsel: Gregory Pagan

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

AB 2733 (Harper) – As Introduced February 15, 2018

SUMMARY: Deletes the requirement that a firearm be designed and equipped with microscopic characters that leave an imprint, as specified, on each cartridge when the firearm is fired in order to be listed on the roster of not unsafe handguns.

EXISTING LAW:

1) Requires commencing January 1, 2010 for all semiautomatic pistols that are not already listed on the roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice (DOJ) certifies that the technology is available to more than one manufacturer unencumbered by any patent restrictions. (Pen. Code, § 31910, subd. (b)(7)(A).)

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

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

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

   c) Firearms listed as curios or relics, as defined in federal law; and

   d) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b) The material from which the grips are made;

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

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

11) Requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following::

a) The model designation of the listed firearm;

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The microstamping requirement chills market forces and limits the pool of technologically superior firearms to Californians. This bill will reverse this; the removal of the microstamping mandate will expand the availability of affordable, reliable handguns while preserving current safe handgun certifications as provided under California statute.

2) **Attorney General Certification**: AB 1427 (Feuer) of the 2007 Legislative Session required, effective January 1, 2010, semiautomatic pistols not already designated as a safe handgun, to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired in order for the firearm to be placed on the roster of not unsafe handguns. The implementation of AB 1427 was delayed until the AG certified that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.

   On May 17, 2013, the DOJ certified the microstamping technology required by AB 1407 (2013-BOF-03). The DOJ stated, "The purpose of this bulletin is to inform California licensed firearms dealers, California DOJ certified laboratories, firearm manufacturers with firearms listed on the Roster of Handguns Certified for Sale in California, and all other interested persons/entities of the DOJ's certification on May 17, 2013 pursuant to Penal Code Section 31910, subd. (b)(7)(A) that the microstamping technology is available to more than one manufacturer unencumbered by any patent restrictions."

3) **Argument in Support**: According to the *Gun Owners of California*, "As you know, the Department of Justice (DOJ) maintains a roster of handguns certified for sale in the state. According to the DOJ, there are currently 791 guns are on this list; this is, however, a sharp reduction from a high of approximately 1,400. In 2007, legislation required new semi-automatic pistols be equipped with microstamping, but first, DOJ was required to certify "that the technology used to create the microstamp imprint is available to more than one manufacturer unencumbered by any patent restrictions". This certification did not happen until 2013.

   "Not surprisingly, however, since the certification, no manufacturer has attempted to implement the technology due to basic, yet dramatic inconsistencies that defeat microstamping's intended purpose. This technology is unreliable at best and can be easily manipulated with something as common as a drug store emery board, which is why Gun Owners of California has been a consistent opponent of such a requirement. What's more, forensic science confirms that marks left by the internal components of a gun are altered after *normal* use which can render the microstamp defective. Your legislation recognizes such flaws.

   "The intent of the original microstamping mandate was to reduce/aid in the solving of firearm related crimes, yet this has not occurred. And, microstamping has no bearing whatsoever on the safety of a firearm and as such, should not be a requirement to be included on the safe handgun roster. There is no logical reason to limit the number of handguns - particularly if they are technologically sound and safe - to law abiding citizens of our state. AB 2733 seeks to remove this unnecessary barrier."

4) **Argument in Opposition**: According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Existing law requires new models of semiautomatic handguns to be

equipped with 'microstamping' technology. This technology consists of engraving microscopic characters onto the firing pin and other interior surfaces, which would be transferred onto the cartridge casing when the handgun is fired. Microstamping technology would substantially enhance law enforcement's ability to rapidly identify and link shell casings found at a crime scene to the individual semi-automatic handgun from which it was fired and to the gun's last lawful possessor. AB 2733 would repeal this requirement.

"California Brady Chapter members were instrumental in the enactment of the microstamping law in 2007. We know that nearly half of the homicides in California are unsolved and new tools for finding and apprehending armed criminals are needed. We also know that microstamping could help enforcement solve murders and other handgun crimes as the information provided by a microstamped cartridge casing can give crucial early leads. In fact, sixty-five individual chiefs and sheriffs as well as the California Police Chiefs Association and Police Officers Research Association of CA supported AB 1471 (microstamping) in 2007.

'In protest of the microstamping requirement, as well as other requirements added to the Unsafe Handgun Act in 2003, the gun industry has refused to submit new models for testing and certification in California. Further, they claim microstamping cannot be done. We believe otherwise but, in the end, the courts will decide."

5) **Prior Legislation**: AB 1471 (Feuer), Chapter 572, Statutes of 2007, required semiautomatic pistols not already designated as a safe handgun, to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired in order for the firearm to be placed on the roster of not unsafe handguns.

REGISTERED SUPPORT / OPPOSITION:

Support

Gun Owners of California
National Rifle Association
National Shooting Sports Foundation

Opposition

American Academy of Pediatrics
California Chapters of the Brady Campaign to Prevent Gun Violence
Giffords Law Center

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

Date of Hearing: April 3, 2018
Counsel: Sandra Uribe

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

AB 2801 (Salas) – As Amended March 23, 2018
As Proposed to be Amended in Committee

SUMMARY: Expands the crime of maliciously destroying or defacing law enforcement and firefighter memorials to include veterans' memorials. Specifically, **this bill**:

1) Adds veterans' memorials to the protected memorials.

2) Punishes the malicious destruction or defacing of a veteran's memorial as either a misdemeanor with imprisonment in the county jail for less than one year or as a felony with imprisonment in the county jail pursuant to realignment.

3) States that nothing in this section shall preclude prosecution under any other provision of law.

EXISTING LAW:

1) Makes it a crime to maliciously destroy, cut, mutilate, deface, or otherwise injure, tear down, or remove any tomb, monument, memorial, or marker in a cemetery. (Pen. Code, § 594.35.)

2) Punishes the malicious defacement or destruction of cemetery property as a misdemeanor with imprisonment in the county jail not exceeding one year, or as a felony with imprisonment in the county jail pursuant to realignment. (Pen. Code, § 594.35.)

3) Provides that every person who maliciously destroys or vandalizes any law enforcement or firefighter memorial is guilty of a crime punishable either as a misdemeanor with imprisonment in the county jail for less than one year, or as a felony with imprisonment in the county jail pursuant to realignment. (Pen. Code, § 621.)

4) Provides that every person who willfully destroys or vandalizes any municipal monument, work of art, ornamental improvement, or tree or plant, whether on private or public property, is guilty of a misdemeanor. (Pen. Code, § 622.)

5) Provides that every person who maliciously destroys, mutilates, or otherwise vandalizes or removes any veterans' memorial constructed or established as specified is guilty of a crime punishable either as a misdemeanor with imprisonment in the county jail for less than one year, or as a felony with imprisonment in the county jail pursuant to realignment. (Mil. & Vet. Code, § 1318.)

6) States that every person who defaces with graffiti, damages, or destroys real property which is not his or her own is guilty of vandalism. (Pen. Code, § 594, subd. (a).)

7) Punishes an act of vandalism based on the amount of defacement, damage or destruction, as follows:

   a) If the damage caused is $400 or more, then the offense is punishable by imprisonment in the county jail under realignment, or in a county jail not exceeding one year, or by a fine of up to $10,000, or both the fine and imprisonment. However, if the damage is $10,000 or more, the fine imposed can be up to $50,000.

   b) If the damage caused if less than $400, then the offense is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than $1,000, or by both that fine and imprisonment. However, if the defendant has a prior vandalism or graffiti conviction, then the fine imposed can be up to $5,000. (Pen. Code, § 594, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Veterans, like peace officers and firefighters, are held to a special esteem because of the dangerous and selfless nature of their work protecting our communities, our state, and the nation. Although any act of vandalism to another's property is unacceptable, when vandalism is directed at memorials erected in the memory of veterans, peace officers, or firefighters those crimes are particularly appalling and should not be tolerated. Penal Code Section 621 makes it a crime to maliciously vandalize or tear down any law enforcement memorial or firefighter memorial, however veterans memorials are not included in the statute as written. In order to deter such behavior, and to provide an appropriate level of punishment when such crimes are committed, this bill would add 'veterans memorials' to Penal Code Section 621 and authorize the court to impose additional punishments."

2) **Argument in Support**: According to the *American GI Forum Department of California*, "Veterans, law enforcement, and firefighters risk their lives to protect their communities, California, and the nation. Vandalism of their memorials impact the community due to the high regard to which these men and women are held. For example, when the Mexican-American Soldier Memorial in Sacramento was vandalized in 2015, the community was outraged at the vandalism of an iconic memorial to the war efforts of these Mexican-American soldiers for which the memorial was established. The statute was commissioned by a group of Mexican-American mothers whose sons died during World War II. AB 2801 intends to discourage the vandalism of such memorials."

3) **Prior Legislation**:

   a) SB 1080 (Morrell), of the 2015-2016 legislative session, would have made it a crime to damage, deface, destroy, mutilate, or remove any veteran's grave marker or object or structure set to memorialize a veteran. SB 1080 failed passage in the Senate Public Safety Committee.

b) AB 2739 (La Malfa) of the 2005-2006 legislative session, would have increased penalties for vandalism to any veterans' memorial. AB 2739 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American GI Forum Department of California (Sponsor)
American Legion- Department of California
California State Commanders Veterans Council
California Police Chiefs Association
Chief Probation Officers of California
Los Angeles County Professional Peace Officers Association
Military Officers Association of America- California Council of Chapters
Peace Officers Research Association of California
Vietnam Veterans Association

Opposition

None

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

Amended Mock-up for 2017-2018 AB-2801 (Salas (A))

Mock-up based on Version Number 98 - Amended Assembly 3/23/18
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 621 of the Penal Code is amended to read:

621. (a) Every person who maliciously destroys, cuts, breaks, mutilates, effaces, or otherwise injures, tears down, or removes any veteran's memorial, law enforcement memorial, or firefighter's memorial is guilty of a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 or by imprisonment in a county jail for less than one year ~~and a fine of not more than two thousand five hundred dollars ($2,500) and a minimum of 48 hours of community service for a total time not to exceed 200 hours over a period not to exceed 180 days, during a time other than his or her hours of school attendance or employment~~.

(b) Nothing in this section shall preclude prosecution under any other provision of law.

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

Date of Hearing: April 3, 2018
Counsel: David Billingsley

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

AB 3112 (Grayson) – As Introduced February 16, 2018

SUMMARY: Makes it unlawful for a manufacturer, wholesaler, reseller, or retailer, to sell non-odorized butane to a customer, but would exempt from the prohibition certain consumer items such as lighters and small containers of non-odorized butane used to refill these items. This bill would authorize a civil penalty to be assessed for the violations specified. Specifically, **this bill**:

1) Specifies that it is unlawful for a manufacturer, wholesaler, reseller, retailer, or other person or entity to sell to any customer any quantity of non-odorized butane, except as otherwise provided in this bill.

2) States that the prohibition on the sale of non-odorized butane shall not apply to any of the following transactions:

    a) Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;

    b) Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed as specified, or a medical cannabis collective or cooperative, operating in compliance with all applicable state licensing requirements and local regulations governing that type of business;

    c) The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges, or other products that contain or use non-odorized butane and contain less than 150 milliliters of butane; and,

    d) The sale of any product in which butane is used as an aerosol propellant.

3) Provides that any person or business that violates the provisions of this bill is subject to a civil penalty of $2,500.

4) States that the Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

5) Specifies where the civil penalty shall be deposited, depending on which organization brings the civil action.

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

a) "Customer" means "any person or entity other than those exempted from this bill, that purchases or acquires non-odorized butane from a seller during a transaction";

b) "Non-odorized butane" means "iso-butane, n-butane, butane, or a mixture of butane and propane of any power that may also use the words "refined," "pure," "purified," "premium," or "filtered," to describe the butane or butane mixture, which does not contain ethyl mercaptan or a similar odorant";

c) "Sell" or "sale" means "to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration"; and,

d) "Seller" means "any person, business entity, or employee thereof that sells non-odorized butane to any customer within this state."

EXISTING LAW:

1) Requires any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, palladium black, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride to do the following:

   a) In any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of sale, method of payment, the specific items and quantities purchased and the proper purchaser identification information, all of which shall be entered onto the bill of sale; (Health & Saf. Code, § 11107.1, subd. (a)(1)(A).)

   b) Requires the seller to retain the original bill of sale containing the purchaser identification information for five years, and present the bill of sale upon demand by any law enforcement officer; and (Health & Saf. Code, § 11107.1, subd. (a)(1)(C).)

   c) Specifies that "proper purchaser identification" includes a valid driver's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the address of the purchaser, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, and other specified information. (Health & Saf. Code, § 11107.1, subd. (a)(1)(B).).

2) Specifies that notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information. (Health & Saf. Code, § 11107.1, subd. (a)(2)(A).)

3) Requires the seller, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner. (Health & Saf. Code, § 11107.1, subd. (a)(1)(C).)

4) Requires, if a common carrier is used, the seller maintain a manifest regarding the delivery in for a period of five years. (Health & Saf. Code, § 11107.1, subd. (a)(1)(D).)

5) Requires any manufacturer, wholesaler, retailer, or other person or entity in this state that purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

   a) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased; and (Health & Saf. Code, § 11107.1, subd. (b)(1).)

   b) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General. (Health & Saf. Code, § 11107.1, subd. (b)(2).)

6) Specifies that a first violation for failing to record and maintain the required information is a misdemeanor. (Health & Saf. Code, § 11107.1, subd. (c)(1).)

7) States that a person who has previously been convicted of such a violation shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or both the fine and imprisonment. (Health & Saf. Code, § 11107.1, subd. (c)(2).)

8) Provides that any person or entity that sells or transfers one of a list of specified chemical precursors, including pseudoephedrine, must obtain the purchaser's proper identification, as specified, and a letter of authorization from the purchaser which includes the purchaser's business license number or Drug Enforcement Agency (DEA) registration, the address of the business and a description of how the chemical is to be used. The information must be retained "in a readily available manner" for three years. (Health & Saf. Code, § 11100, subd. (c).)

9) Requires any person or entity that sells, transfers, or otherwise furnishes a specified chemical precursor to another person or entity must submit a report to DOJ, generally within 21 days, of each transaction. The report must include the identification information about the purchaser. (Health & Saf. Code, § 11100, subd. (d).)

10) Provides that violation of restricted chemical reporting requirements (for transferring or obtaining restricted chemicals) is a misdemeanor. A first-time violation is punishable by a county jail term of up to six months, a fine of up to $5,000, or both. A subsequent violation is an alternate felony-misdemeanor, punishable by a prison term of 16 months, two years or three years for a felony, a county jail term of up to one year, a fine of up to $100,000, or both such fine and imprisonment. (Health & Saf. Code, § 11100, subd. (f).)

11) Requires specified recording and tracking of transactions involving laboratory glassware, apparatus and chemical reagents where the value of the material exceeds $100. The purchaser must present valid identification. The bill of sale must be retained for three years, as specified. The document must be presented to law enforcement upon request A violation of these provisions is a misdemeanor punishable by imprisonment in a county jail not

exceeding 6 months, by a fine not exceeding $1,000, or both. (Health & Saf. Code, § 11107.)

12) Provides that it is unlawful for a retailer to sell in a single transaction more than three packages, or nine grams, of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine. This offense is a misdemeanor, punishable by a county jail term of up to six months, a fine of up to $1,000, or both. (Health and Saf. Code, § 11100, subd. (g)(3).)

13) States that except as otherwise provided by law, every person who manufactures, produces, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance as specified, including marijuana, shall be punished by imprisonment pursuant to realignment for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000). (Health & Saf. Code, § 11379.6, subd. (a).)

14) States that the fact that a person under 16 years of age resided in a structure in which a violation of this section involving methamphetamine occurred shall be considered a factor in aggravation by the sentencing court. (Health & Saf. Code, § 11379.6, subd. (b).)

15) Specifies that any person who has under his or her management or control any building, room, space, or enclosure, who knowingly rents, leases, or makes available for use, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or up to three years in the county jail pursuant to realignment. (Health & Saf. Code, § 11366.5, subd. (a.)

16) States that subject to certain qualifications, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products. (Health and Saf. Code, § 11362.1, subd. (a)(1).)

17) Provides that it is crime to manufacture concentrated cannabis using a volatile solvent punishable by imprisonment for three, five, or seven years, unless done in accordance with a specified license. (Health and Saf. Code, § 11362.3, subd. (a)(6) and § 11362.4, subd. (d))

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Last year, this committee heard AB 1120 by our colleague Assemblyman Cooper. That bill required an odorant to butane canisters over 150 milliliters and also required that retailers provide recordkeeping of all butane sales and the creation of a statewide data tracking system for butane sales. Governor Brown's veto included his concern over the costs associated with the data tracking system and that the bill needs to be more narrowly tailored. This legislation addresses these concerns by removing the state wide data tracking system and the retailer's record keeping requirement. However, my bill continues to require the biggest deterrent to the illegal use of butane, the adding of an

odorant to butane canisters over 150 milliliters. The addition of an odorant will be a disincentive to people who want to use butane canisters for criminal activity of making marijuana honey oil. Finally, this legislation continues the protections that were contained in AB 1120 by providing exemptions for business to business sale and the use of butane already contained in consumer products like lighters, utility lighters, and camping appliances, among other products."

2) **Commercial Uses of Butane:** Butane is commonly used as a fuel. Butane is a gas at room temperature. Butane is colorless, flammable, and easily liquefied. Its common uses include lighter fluid, butane torches (crème brulee), and fuel for camping stoves. In camping sizes the fuel canisters are frequently 8 ounces (236 milliliters) in size.

3) **Butane Honey Oil or Butane Hash Oil:** Butane honey oil (BHO) is a waxy concentrated cannabis extract made by pushing liquid butane (which liquefies easily) through a tube packed with marijuana. Butane is a chemical solvent made from petroleum and natural gas. Liquid butane quickly dissolves the cannabinoids in marijuana. A solution of cannabinoids, waxes, and oil dissolved in butane comes out the other end. The butane/cannabis wax solution is evaporated, and the remaining BHO has a texture that varies from glass-like to oily. Post extraction treatments include washing with alcohol, whipping, and other steps to remove the butane smell, remove the plant waxes, and alter the appearance. (www.medicalmarijuana.com/what-is-bho-and-is-it-safe/)

   Butane honey oil is the end product of the process of using butane to extract THC and other cannabinoids from marijuana leaves and flowers. The process typically involves placing raw plant material into a tube, usually glass, stainless steel or PVC. The tube is open at one end and has some type of filter at the other. A solvent, typically butane, is then shot through the top of the tube and collected as it filters through the bottom. The result is a liquid that's collected in a container. The butane is then removed from the mixture using heat and sometimes a vacuum pump or vacuum oven. The substance, usually golden amber, hardens into a thin layer that can be broken into pieces smaller than a pea, heated and consumed using a specially designed bong, a portable device called a hash pen or an e-cigarette that's been outfitted for hash. (http://www.oregonlive.com/marijuana/index.ssf/2014/05/butane_hash_oil_glossary_of_te.html) Manufacturers of butane honey oil generally use non-odorized butane as a solvent in order to avoid a smell associated with odorized butane.

4) **Dangers of Home Production of Butane Honey Oil:** BHO production can result in explosions and fires because of the volatile nature of butane. Large quantities of butane, ranging from a few dozen to over a thousand pressurized 400-mL canisters have been found inside of BHO labs.

   Butane is odorless, colorless, heavier than air, and it has a flammable range of 1.8–8.4 percent. Common ignition sources are open flame (cigarette lighters, pilot lights, gas stovetops, etc.) and electrical arcing. Butane can escape from a BHO lab, migrate low to the ground toward a distant ignition source, and flash back to the BHO lab. The associated flash fire and subsequent explosion can cause significant structural damage. Sheetrock can be lifted from ceilings, windows and doors can be blown out of their frames, and load-bearing walls can be blown off of foundations, resulting in structural collapse.

Exploding butane canisters can contribute to fire intensity, and crews fighting these fires report they are difficult to extinguish. There is also the potential for a boiling liquid expanding vapor explosion as these smaller canisters or larger cylinders are exposed to fire. (www.firehouse.com/safety-health/article/12318268/butane-hash-labsan-explosive-threat-firefighter-training)

5) **Concentrated Cannabis and Proposition 64:** In November 2016, California voters approved Proposition 64. Proposition 64 provides, among other things, that individuals over 21 can possess less than one ounce of marijuana and less than 4 grams of concentrated cannabis. Butane Honey Oil is a form of concentrated cannabis. After the passage of Proposition 64, it is no longer illegal for an individual to possess less than 4 grams of butane honey oil. However, it is still illegal for individuals to manufacture butane honey oil. Under California law, producing concentrated cannabis is a form of drug "manufacturing." Even after Proposition 64, it is a felony for an individual to manufacture concentrated cannabis, including butane honey oil. An individual convicted of manufacturing butane honey oil faces three, five, or seven years of imprisonment. Because Proposition 64 allows individuals to possess concentrated cannabis, it also provides an exception to the prohibition on manufacturing concentrated cannabis for manufacturers that are licensed by the state. Such manufacturers are able to produce concentrated cannabis in controlled environments to ensure that the production process is safe.

6) **AB 1120 (Cooper) and Governor's Veto:** AB 1120 (Cooper), would have required a person or business to record specified information about the sale of non-odorized butane, including the identity of the customer and to maintain that information for 2 years. AB 1120 would have required, subject to available funds, that the Department of Justice create a database of butane. After the database system described above was operational, it would have made it unlawful to sell to any one customer more than 600 milliliters of non-odorized butane in a 30-day period or to sell any quantity of non-odorized butane to a customer that would cause the customer to exceed 600 milliliters of non-odorized butane purchased from all sellers in a 30-day period.

   Governor Brown vetoed AB 1120. Governor Brown's veto message stated, *"I empathize with the author's intent to address the tragic explosions that can occur at illegal butane hash-oil production sites. Unfortunately, I believe this bill takes a very expansive approach that may not ultimately solve the problem. The Department of Public Health is currently working on regulations that will be finalized at the end of this year that move this type of production out of the shadows and into a safe and regulated environment. I believe any additional legislation aimed at curbing illegal butane use should be more narrowly tailored, and not place a uniform limit on an industry that has many other legitimate uses."*

7) **This Bill Allows the Sale of Non-Odorized Butane for Legal Commercial Activity for the following transactions:**

   a) Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;

   b) Butane sold to a person for use in a lawful commercial enterprise, including, but not limited to, a volatile solvent extraction activity licensed as specified, or a medical cannabis collective or cooperative, operating in compliance with all applicable state

licensing requirements and local regulations governing that type of business; and,

c) The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges, or other products that contain or use non-odorized butane and contain less than 150 milliliters of butane; and

d) The sale of any product in which butane is used as an aerosol propellant.

8) **Argument in Support**: According to the *Lighter Association*, "AB 3112, narrows the scope of AB 1120 (Cooper) of last year that was requested by Governor Brown in his veto message of that bill.

"Specifically, AB 3112 will require the sale of butane refillable canisters of 150 milliliters to contain an odorant while providing exemptions for business to business ales and for consumer products that are already sold with internal butane fuel including, lighters, torchers, appliances, etc. In addition, the Governor's veto message also raised the expensive nature of AB 1120. AB 3112 eliminates most of the costs associated with AB 1120 by removing the record keeping and reporting requirements for retail establishments and eliminating the establishment of a statewide data base for all butane sales. This change also addresses and resolves the concerns of collecting and personal information of consumers by the retailers.

"AB 3112 will help reduce the illegal use of butane while still preserving the lawful sale for use in consumer products."

9) **Prior Legislation**:

a) AB 1120 (Cooper), would have required a person or entity that sells of nonodorized butane to a customer, to record specified information about the transaction, including the identity of the customer and to maintain that information for two years. AB 1120 was vetoed by the Governor.

b) AB 1244 (Voepel), would have prohibited the sale of butane, unless odor was added. AB 1244 was never heard in the Assembly Privacy and Consumer Protection Committee.

c) AB 772 (Baker), of the 2015-2016 Legislative Session, would have added butane to the list of substances for which sellers are required to record the date of sale and purchaser's information and retain that information for five years. AB 772 was never heard in the Assembly Public Safety Committee.

d) AB 849 (Bonilla), of the 2015-2016 Legislative Session, would have provided that a person who recklessly causes an explosion is guilty of a felony punishable by imprisonment for two, four, or six years, if the explosion caused great bodily injury, or a misdemeanor punishable by imprisonment in a county jail for up to one year.

e) SB 212 (Mendoza), Chapter 141, Statutes of 2015, authorized the sentencing court to consider the fact that a violation involving methamphetamine occurred within 200 feet of an occupied residence as a factor in aggravation, except when a specified enhancement is pled and proved. SB 212 specifically authorized the sentencing court to consider the fact that a violation of this section involving the use of a volatile solvent to chemically extract concentrated cannabis occurred within 300 feet of an occupied residence as a factor in

aggravation.

f) SB 276 (Vasconcellos), Chapter 369, Statutes of 2003, added red phosphorous to the list of chemical substances for which a report to the Department of Justice (DOJ) is required. Required that information regarding the letter of authorization and identification, as well as the manifest of any common carrier used, must be retained/maintained in a readily available manner for three years.

REGISTERED SUPPORT / OPPOSITION:

Support

Lighter Association (Sponsor)
California Retailers Association
Rural County Representatives of California

Opposition

None

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