California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, April 6, 2021
1:30 p.m. -- State Capitol, Room 4202

REGULAR ORDER OF BUSINESS

HEARD IN FILE ORDER

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

TWO WITNESSES PER SIDE - FIVE MINUTES TOTAL

1.	AB 600	Arambula	Hate crimes: immigration status.
2.	AB 779	Bigelow	Peace officers: deputy sheriffs.
3.	AB 937	Carrillo	Immigration enforcement.
4.	AB 1007	Carrillo	Forced or Involuntary Sterilization Compensation Program.
5.	AB 38	Cooper	Statewide bail schedule.
6.	AB 268	Irwin	Courts: sealing records: autopsy reports.
7.	AB 667	Irwin	Firearms: Armed Prohibited Persons System.
8.	AB 89	Jones-Sawyer	Peace officers: minimum qualifications.
9.	AB 655	Kalra	California Law Enforcement Accountability Reform Act.
10.	AB 333	Kamlager	Participation in a criminal street gang: enhanced sentence.
11.	AB 282	Lackey	Misdemeanor diversion.
12.	AB 669	Lackey	Firearms: unsafe handguns.
13.	AB 998	Lackey	Incarcerated persons: health records.
14.	AB 898	Lee	Criminal records: automatic conviction record relief.
15.	AB 1223	Levine	Firearms and ammunition: excise tax.
16.	AB 659	Mathis	Dumping.
17.	AB 603	McCarty	Law enforcement settlements and judgments: reporting.
18.	AB 582	Patterson	Vehicle accidents: fleeing the scene of an accident.
19.	AB 673	Salas	Domestic violence.
20.	AB 644	Waldron	California MAT Re-Entry Incentive Program.
21.	AB 653	Waldron	Medication-Assisted Treatment Grant Program.
22.	AB 311	Ward	Firearms: gun shows.

SUBJECT: **COVID FOOTER**

We encourage the public to provide written testimony before the hearing by visiting the committee website at https://apsf.assembly.ca.gov/. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

Due to ongoing COVID-19 safety considerations, including guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal, Remote Testimony Station or phone. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building. We encourage the public to monitor the committee's website for updates.

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

AB 600 (Arambula) – As Introduced February 11, 2021

As Proposed to be Amended in Committee

SUMMARY: Clarifies that "immigration status" is included in the scope of a "hate crime" based on "nationality," and provides that this is declarative of existing law.

EXISTING LAW:

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

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

   e) Religion;

   f) Sexual orientation; and,

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

2) Defines "nationality" to include "citizenship, country of origin, and national origin." (Pen. Code, § 422.56, subd. (e).)

3) Provides that it is a hate crime to violate or interfere with the exercise of civil rights, or knowingly deface, destroy, or damage property because of actual or perceived characteristics of the victim that fit the hate crime definition. (Pen. Code, § 422.6, subds. (a) and (b).)

4) Provides that a conviction for violating or interfering with the civil rights of another of the basis of actual or perceived characteristics of the victim that fit the hate crime definition shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars ($5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. (Pen. Code, § 422.6, subd. (c).)

5) Provides that a person who commits a felony that is a hate crime by virtue of the fact it was committed in whole or in part because of actual or perceived characteristics that fit the hate crime definition, or attempts to do so, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (a).)

6) Provides that a person who commits a felony that is a hate crime by virtue of the fact it was committed in whole or in part because of actual or perceived characteristics that fit the hate crime definition, or attempts to do so, except as specified, and who voluntarily acted in concert with another person in the commission of the crime shall receive an additional term of two, three, or four years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (b).)

7) Provides that "No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration status, in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid." (Educ. Code, § 66270.)

8) Establishes the Unruh Civil Rights Act, which prohibits bias based on "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status." (Civ. Code, 51, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The call for equality and the protection of civil rights is deeply rooted in our nation's and our state's history, and has been since the proclamation of the Declaration of Independence. Our federal and state Constitutions protect us from civil or criminal interference in the exercise of our civil rights. Specifically, our laws prohibit discrimination on the basis of a number of protected classes, including national origin.

"However, despite this protection, discrimination against immigrants and other protected classes persists. It is not a new phenomenon in California. The Chinese Exclusion Act of 1882 and the internment of Japanese Americans during World War II are two such examples. In the 1930s, repatriation drives supported by the Hoover Administration subjected citizens and non-citizens of Mexican ancestry to indiscriminate mass deportations.

"Recently, a pandemic that has taken the lives of more than 500,000 Americans sparked a backlash against Asian Americans who have been blamed for the spread of coronavirus, resulting in a marked uptick in hate crimes in Asian American communities in the United States. Hate crimes have increased in California by 11% since 2016. Latinos have been impacted the most with an increase of more than 50%. This trend is consistent with reports in

Los Angeles County, which reported an increase of hate crime of 36% between 2013 and 2019.

"Approximately 44 million immigrants live and work in the United States, making up 13.7% of the nation's population. Of them, 19.8 million are naturalized citizens, 11.9 million are Legal Permanent Residents, and 2.1 million have temporary legal status, including 689,800 with Deferred Action for Childhood Arrivals (DACA) and 300,000 with Temporary Protection Status (TPS). Despite clear protections for these immigrant populations from hate crime in state, federal and international law, these protections are not always interpreted properly. Ensuring these immigrant populations do not face hate-based discrimination without reprisal is a key step to supporting those already shouldering disproportionate impacts from the pandemic."

2) **Whether Immigration is Status Encompassed by Nationality**: Under existing law, it is a "hate crime" to commit a criminal act based on a person's actual or perceived nationality. The Penal Code defines nationality in this context to mean "citizenship, country of origin, and national origin." Other laws—in the Education Code, and the Unruh Civil Rights Act—also include "immigration status" in similar contexts as inclusive of "nationality" in defining classes of persons against whom it is unlawful to discriminate.

   This bill provides that, declarative of existing law, the Penal Code definition of hate crime based on nationality also includes "immigration status." There is no legal authority in case law that supports this conclusion. Typically, hate crime categories focus on a person's "immutable characteristics," and a person's immigration status may change over the course of their life. However, because a hate crime based on a person's immigration status emanates from their actual or perceived nationality, this status is arguably encompassed by existing law.

3) **Argument in Support**: According to the *San Diego County District Attorney's Office,* "Our office considers hate crimes to be very serious and is committed to prosecute hate crimes aggressively through vertical prosecution by the Hate Crimes Unit, within the Special Operations Division. The San Diego's District Attorney's Office estimates that 50 to 60 percent of the county's hate crimes are race-based crimes, but these estimates continue to rise as the number of hate crimes against Asian Americans have escalated since the outbreak of COVID-19. AB 600 will help combat this growing crime.

   "The legislative proposal simply adds 'immigration status' to the definition of 'nationality' under Section 422.56 of the Penal Code. This small, but significant amendment provides another layer of protection for the vulnerable population in our busy cross-border region. As you may know, the populace of the San Diego–Tijuana is cosmopolitan in that many cultures and ethnic groups are present, and we welcome any tool to help us combat the growing hate crimes trend."

4) **Related Legislation**:

   a) AB 57 (Gabriel), would require the Department of Justice (DOJ) to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported, and requires the basic peace officer course curriculum to

include on the topic of hate crimes a specified hate crimes video developed by the Commission on Peace Officer Standards and Training (POST). AB 57 is currently pending before the Assembly Appropriations Committee.

b) AB 557 (Muratsuchi), would establish a hotline telephone number for the reporting of hate crimes, and for the dissemination of information about the characteristics of hate crimes, protected classes, civil remedies, and reporting options. AB 557 is currently pending before this committee.

c) AB 485 (Nguyen), would require local law enforcement agencies to post the information sent to the DOJ related to hate crimes on their internet website on a monthly basis. AB 282 is currently pending before this committee.

d) AB 282 (Lackey), would prohibit misdemeanor diversion from being granted in specified cases, including hate crimes. AB 282 is currently pending before this committee.

e) AB 266 (Cooper), would classify a hate crime as a violent felony. AB 266 is currently pending before this committee.

5) **Prior Legislation**:

a) AB 887 (Atkins), Chapter 719, Statutes of 2011, defined a hate crime based on "gender" to mean sex, which includes a person's gender identity and gender expression.

b) AB 1422 (Gipson), Statutes of 2019-2020, would have included homeless status as a category of persons against whom a hate crime could be committed. The measure failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teachers Association
Californiahealth+ Advocates
Carecen
Clergy and Laity United for Economic Justice
San Diego County District Attorney's Office

Opposition

None

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

AMENDMENT TO ASSEMBLY BILL NO. 600

Amendment 1
On page 3, in line 2, after the period insert:

This definition is declaratory of existing law.

- 0 -

Date of Hearing: April 6, 2021
Chief Counsel: Gregory Pagan

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

AB 779 (Bigelow) – As Introduced February 16, 2021

SUMMARY: Adds the counties of Del Norte, Madera, Mono, and San Mateo to the list of specified counties that employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments, including the custody, care, supervision, security, movement, and transportation of inmates, and are peace officers whose authority extends to any place in the state only while engaged in the performance of duties related to his or her employment.

EXISTING LAW:

1) Provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, § 830.1 subd. (c).)

2) Provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers under this section do not have the right to carry or possess firearms in the performance of his or her duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831.)

3) Provides that notwithstanding existing law, law enforcement agencies in counties with a population of 425,000 or less and the Counties of San Diego, Fresno, Kern, Napa, Riverside, Santa Clara, and Stanislaus may employ custodial officers with enhanced powers. The enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody. (Pen. Code, § 831.5, subd. (a).)

4) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the Commission on Peace Officers Standards and Training (POST) course. (Pen. Code, § 832 subd. (b).)

5) Provides that the enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties such as while assigned as a court bailiff, transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, escapes, or rescues. (Pen. Code, § 831.5 subd. (b).)

6) Provides that enhanced powers custodial officers may also make warrantless arrests within the facility. (Pen. Code, § 831.5 subd. (f).)

7) Requires a peace officer to be present in a supervisorial capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5 subd. (d).)

8) Provides that custodial officers employed by the Santa Clara County, Napa County, and Madera DOC's are authorized to perform the following additional duties in the facility:

   a) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

   b) Search property, cells, prisoners, or visitors;

   c) Conduct strip or body cavity searches of prisoners as specified;

   d) Conduct searches and seizures pursuant to a duly issued warrant;

   e) Segregate prisoners; and,

   f) Classify prisoners for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5 subds. (g), (h) & (i).)

9) States that it is the intent of the Legislature, as it relates to Santa Clara, Madera, and Napa Counties, to enumerate specific duties of custodial officers and to clarify the relationship of correctional officers and deputy sheriffs in Santa Clara County. And, that it is the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process. The language is, additionally, clear that it should not be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs or to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs. (Pen. Code, § 831.5 subd. (j).)

10) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by POST and that, after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code, § 832 subd. (a).)

11) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832 subd. (b).)

12) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832 subd.(c).)

13) Provides that any person completing the POST training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of powers as a peace officer. This requirement does not apply to any person who meets any of the following requirements (Pen. Code, § 832 subd. (e)(1).):

   a) Is returning to a management position that is at the second level of supervision or higher (Pen. Code, § 832 subd. (e)(2)(A).);

   b) Has successfully requalified for a basic course through POST (Pen. Code, § 832 subd. (e)(2)(B).);

   c) Has maintained proficiency through teaching the POST course (Pen. Code, § 832 subd (e)(2)(C).);

   d) During the break in California service, was continuously employed as a peace officer in another state or at the federal level (Pen. Code, § 832 subd. (e)(2)(D).); and,

   e) Has previously met the testing requirement, has been appointed a peace officer under Penal Code Section 830.1(c), and has continuously been employed as a custodial officer as defined in Penal Code Section 831 or 831.5 since completing the POST course. (Pen. Code, § 832 subd. (e)(2)(E).).

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Allowing a limited number of correctional officers to be included in the definition of peace officer in Del Norte, Madera, Mono, and San Mateo counties will lead to increasing effectiveness of public safety in these communities. The number of deputy sheriffs' in certain regions of the state have been decreasing, and AB 779 will help add to the number of qualified individuals to perform these tasks."

2) **Benefits Granted to Those Designated as Custodial Deputy Sheriffs**: Penal Code § 830.1 subd. (c) custodial deputy sheriffs classification is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code §§ 831 and 831.5 are not peace officers, whereas a Penal Code § 830.1 subd. (c) custodial deputy sheriff is a peace officer, "who is employed to perform duties exclusively or initially relating to custodial assignments." (Penal Code § 830.1 subd. (c).) One of the most significant differences between the Penal Code § 830.1 subd. (c) custodial deputy sheriffs and Penal Code §§ 831 and 831.5 custodial officers is that as "peace officers" the Penal Code Section 830.1(c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights Act. (Government Code § 3301 et seq.)

Madera and Yuba – and all counties – may utilize Penal Code § 831 non-peace officer custodial officers; however, these officers may not carry firearms. (Penal Code § 831 subd. (b).) However, there are limitations on the authority and use of Penal Code Section 831.5 custodial officers. For example, Penal Code § 831.5 custodial officers may not perform strip searches (unless they are employed in Santa Clara County, Napa County, or Madera County), have limited arrest powers, and are limited in their "armed duty" roles. Another limitation on the use of both Penal Code § 831 and 831.5 non-peace officer custodial officers is that whenever 20 or more of such officers are on duty there must be at least one Penal Code § 830.1 peace officer, who has received the full 664-plus hour basic training for Penal Code § 830.1(a) deputy sheriffs, on duty at the same time to supervise the custodial officers. (Penal Code §§ 831 subd. (d) and 831.5 subd, (d).)

3) **Governor's Veto**: AB 524 (Bigelow), of the 2019-2020 Legislative Session, was almost identical to this bill, but did not include Del Norte county. The Governor in his veto message stated, "This bill would add Mono, San Mateo, and Del Norte Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to custodial assignments are also considered peace officers whose authority extends generally to any place in the California while engaged in the performance of their duties.

   "I understand these counties desire to add additional capacity to their law enforcement efforts, but these discussions merit additional scrutiny in a more comprehensive manner. A number of bills have been enacted over recent decades-and several in recent years-applying this bill's provisions to specific counties, but this is a piecemeal approach that I cannot support."

4) **Prior Legislation**:

   a) AB 2340 (Bigelow), of the 2019-2020 Legislative Session, added Del Norte, Mono and San Mateo Counties to the list of counties where deputy sheriffs assigned to custodial duty are peace officers while performing those duties. AB 2340 was held on the Senate Appropriations suspense file.

   b) AB 524 (Bigelow), of the 2019-2020 Legislative Session, added Del Norte, Mono and San Mateo Counties to the list of counties where deputy sheriffs assigned to custodial duty are peace officers while performing those duties. AB 524 was vetoed by the Governor.

5) **Argument in Support**: According to the *Madera County Sheriff*, "Penal Code 830.1(c) authorizes peace officer status to correctional officers of specified counties while on-duty and engaged in the performance of their duties, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. This important policy would be an added tool for Madera County. It would allow correctional officers to be armed while performing corrections-related tasks, such as transportation of inmates locally and throughout the State of California. It would also allow the Sheriff to deploy correctional officers during a local state of emergency such as floods and fires, as well as increasing available resources to assist emergency management.

6) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, " 'Being a peace officer … confers a special status under several Penal Code provisions, e.g.

> ... any peace officer listed in ... Sections 830.1, 830.2, is allowed to carry firearms concealed in public while off-duty, even if that person's employing agency does not allow the officer to carry a firearm while on-duty. Orange County Employees Assn., Inc. v. County of Orange (1993) 14 Cal. Appl. 4th 575, 582. AB 779 would loosely expand the reach of Penal Code section 830.1 to enable unfettered concealed carry privileges to custodial peace officers from Del Norte, Madera, Mono, and San Mateo counties without any assurance that these officers are safely trained to carry concealed or to use deadly force in self-defense under off-duty / non-uniformed circumstances and in many densely crowded civilian environments where on-duty uniformed officers can't tell a "good guy" from a "bad guy". This is reckless."

REGISTERED SUPPORT / OPPOSITION:

Support

San Mateo County Sheriff's Office (Sponsor)
California State Sheriffs' Association
Del Norte County Board of Supervisors
Del Norte County Sheriff's Employee Association
Del Norte County Sheriff's Office
Madera County
Madera County Board of Supervisors
Madera County Correctional Officers Association
Madera County Deputy Sheriff's Association
Madera County Sheriff's Office
Mono County Board of Supervisors
Mono County Deputy Sheriffs Association (MCDSA)
Mono County Public Safety Officers Association (MCPSOA)
Mono County Sheriff's Office
Peace Officers Research Association of California (PORAC)
San Mateo County Board of Supervisors
San Mateo County Deputy Sheriff's Association

Oppose

California Attorneys for Criminal Justice

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3747

Date of Hearing: April 6, 2021
Counsel: David Billingsley

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

AB 937 (Carrillo) – As Amended March 22, 2021

SUMMARY: Eliminates the existing ability under the Values Act for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate transfers. Prohibits all state and local agencies from assisting, in any manner, the detention, deportation, interrogation, of an individual by immigration enforcement. Specifically, **this bill:**

1) Specifies that a state or local agency shall not arrest or assist with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purpose in any manner including, but not limited to, by notifying another agency or subcontractor thereof regarding the release date and time of an individual, releasing or transferring an individual into the custody of another agency or subcontractor thereof, or disclosing personal information, as specified, about an individual, including, but not limited to, an individual's date of birth, work address, home address, or parole or probation check in date and time to another agency or subcontractor thereof.

2) States that the prohibition described above shall apply notwithstanding any contrary provisions in the California Values Act, as specified, which allowed law enforcement to cooperate with immigration authorities in limited circumstances.

3) Specifies that this bill does not prohibit compliance with a criminal judicial warrant.

4) Prohibits a state or local agency or court from using immigration status as a factor to deny or to recommend denial of probation or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

5) Clarifies the following terms for purposes of this bill:

   a) "Immigration enforcement" includes "any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States."

   b) "State or local agency" includes, but is not limited to, "local and state law enforcement agencies, parole or probation agencies, the Department of Juvenile Justice, and the Department of Corrections and Rehabilitation."

6) "Transfer" includes "custodial transfers, informal transfers in which a person's arrest is facilitated through the physical hand-off of that person in a nonpublic area of the state or local agency, or any coordination between the state or local agency and the receiving agency about an individual's release to effectuate an arrest for immigration enforcement purposes upon or following their release from the state or local agency's custody."

7) States that in addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a state or local agency or state or local official that violates the provisions of this bill.

8) Specifies that a state or local agency or official that violates the provisions of this bill is also liable for actual and general damages and reasonable attorney's fees.

9) Repeals statutory provisions directing California Department of Corrections and Rehabilitation to implement and maintain procedures to identify inmates serving terms in state prison who are undocumented aliens subject to deportation.

10) Repeals statutory provisions directing CDCR and California Youth Authority to implement and maintain procedures to identify, within 90 days of assuming custody, inmates who are undocumented felons subject to deportation and refer them to the United States Immigration and Naturalization Service.

11) Repeals statutory provisions directing CDCR to cooperate with the United States Immigration and Naturalization Service by providing the use of prison facilities, transportation, and general support, as needed, for the purposes of conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented aliens who are incarcerated in state prison.

12) Repeals the statutory directive to include place of birth (state or country)-in state or local criminal offender record information systems.

13) Makes Legislative findings and declarations.

EXISTING FEDERAL LAW:

1) Provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. (8 CFR Section 287.7(a).)

2) States that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit

assumption of custody by the DHS. (8 CFR Section 287.7(d).)

3) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. Section 1357(g).)

4) States that notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual. (8 U.S.C. 1373, subd. (a).)

5) States that notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8 U.S.C. 1644.)

EXISTING LAW:

1) Defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests that the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual." (Gov. Code, § 7282, subd. (c).)

2) Defines "Notification request" as an Immigration and Customs Enforcement request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Form I-247N. (Gov. Code, § 7283, subd. (f).)

3) Defines "Transfer request" as an Immigration and Customs Enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to ICE, and includes, but is not limited to, DHS Form I-247X. (Gov. Code, § 7283, subd. (f).)

4) Prohibits law enforcement agencies (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. These provisions are commonly known as the Values Act. Restrictions include:

   a) Inquiring into an individual's immigration status;

   b) Detaining a person based on a hold request from ICE;

   c) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public;

d) Providing personal information, as specified, including, but not limited to, name, social security number, home or work addresses, unless that information is "available to the public;"

e) Arresting a person based on a civil immigration warrant;

f) Participating in border patrol activities, including warrantless searches;

g) Performing the functions of an immigration agent whether through agreements known as 287(g) agreements, or any program that deputizes police as immigration agents;

h) Using ICE agents as interpreters;

i) Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or except as otherwise specified;

j) Providing office space exclusively for immigration authorities in a city or county law enforcement facility; and,

k) Entering into a contract, after June 15, 2017, with the federal government to house or detain adult or minor non-citizens in a locked detention facility for purposes of immigration custody. (Gov. Code, § 7284.6, subd. (a).)

5) Describes the circumstances under which a law enforcement agency has discretion to respond to transfer and notification requests from immigration authorities. These provisions are known as the TRUST Act. Law enforcement agencies cannot honor transfer and notification requests unless one of the following apply:

a) The individual has been convicted of a serious or violent felony, as specified;

b) The individual has been convicted of any felony which is punishable by imprisonment in state prison;

c) The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable either as a felony or misdemeanor (a wobbler);

d) The individual has been convicted within the past 15 years for any one of a list of specified felonies;

e) The individual is a current registrant on the California Sex and Arson Registry;

f) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified in the federal Immigration and Nationality Act; or,

g) The individual is identified by ICE as the subject of an outstanding federal felony arrest warrant for any federal crime; or,

h) The individual is arrested on a charge involving a serious or violent felony, as specified, or a felony that is punishable by imprisonment in state prison, and a magistrate makes a finding of probable cause as to that charge. (Gov. Code, § 7282.5.)

6) Provides that law enforcement agencies are able to participate in joint taskforces with the federal government only if the primary purpose of the joint task force is not immigration enforcement. Participating agencies must annually report to the California Department of Justice (DOJ) if there were immigration arrests as a result of task force operations. (Gov. Code, § 7284.6, subds. (b) & (c).)

7) Allows law enforcement agencies to respond to a request from immigration authorities for information about a person's criminal history. (Gov. Code, § 7284.6, subd. (b)(2).)

8) Allows law enforcement agencies to make inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa. (Gov. Code, § 7284.6, subds. (b)(4).)

9) Allows law enforcement agencies to give immigration authorities access to interview an individual in agency custody if such access complies with the TRUTH Act. (Gov. Code, § 7284.6, subds. (b)(5).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "AB 937 helps California realize its promise of protecting immigrant rights and reforming our criminal justice system. Under current law many individuals that have completed their sentence or have been deemed eligible for release from a California jail or prison can face a second punishment in the immigration detention system, solely because of where they were born. AB 937 will stop this arbitrary second punishment where one has no right to legal representation, pretrial release, or a hearing from a jury of their peers. Immigration Detainees can find themselves housed in county jails and even private facilities anywhere in America, facilities beyond the oversight and accountability of the state of California where abuse and neglect is well documented. All Californians, regardless of citizenship status, should get the chance to reintegrate back into their communities and reunite with their families when they have paid their debt to society."

2) **California Values Act**: The Values Act, which became effective on January 1, 2018, limits the involvement of state and local law enforcement agencies in federal immigration enforcement. It prohibits law enforcement agencies (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. It also places limitations on the ways in which law enforcement agencies can collaborate with federal task forces that involve elements of immigration enforcement. Under the Values Act, CDCR is not considered a law enforcement agency.

   The Values Act was an expansion of prior state law, the TRUST Act which prohibited law enforcement from honoring federal immigration holds unless the detainee had a criminal history involving a serious or violent felony.

   The Values Act contains some exceptions that allows law enforcement agencies to cooperate with immigration authorities. Under the Values Act law enforcement is allowed to engage

with immigration authorities in the following circumstances:

a) Provide a person's release date or personal information, as specified, if such information is available to the public;

b) Respond to notification and transfer requests when the individual had been convicted of specified crimes which reflected a higher public safety danger and are on the serious end of the criminal spectrum. Specifically, those crimes included serious and violent felonies, as well as offenses requiring an individual to register as a sex offender;

c) Make inquiries into information necessary to certify an individual for a visa for a victim of domestic violence and human trafficking;

d) Respond to a request from immigration authorities for information about a person's criminal history;

e) Participate with a joint law enforcement task force, as long as the primary purpose of the task force is not immigration enforcement; or,

f) Give immigration authorities access to interview an individual in agency custody as long as the interview access complied with the requirements of the TRUTH Act.

This bill would eliminate those exceptions for law enforcement to the extent that such exceptions would constitute assistance in immigration enforcement, in any manner.

The prohibitions in this bill on assisting immigration enforcement in any manner are broader in scope than the prohibitions described in the Values Act. The scope of this bill is also broader than the Values Act because the prohibition on assistance applies to all state and local agencies, as opposed to being directed toward law enforcement agencies.

This bill would prohibit any state of local agency, including law enforcement agencies, from engaging in conduct which assists, in any manner, the arrest, detention, interrogation, or deportation of an individual for immigration purposes. To the extent those broader prohibitions might create a conflict with the Values Act, it is not clear which language would control.

3) **Reenactment Clause of the California Constitution:**

"A section of a statute may not be amended unless the section is re-enacted as amended." California Const., Art. IV, § 9.

Under this provision of the State Constitution, the Legislature is required to reenact a code section when passing legislation which amends that particular code section. This is intended to ensure that legislators understand the scope and effect of the bill they are voting on. In reviewing the contents of a bill that amends a code section, this rule allows that the bill reader to easily identify amendments to existing law because the bill will set forth the changes within the context of the current statute(s). One purpose of this constitutional provision "is to make sure legislators are not operating in the blind when they amend legislation, and to make sure the public can become apprised of changes in the law." *The*

Gillette Company, et. al., v. Franchise Tax Board (2015) 62 Cal.4th 468,483.

This bill would amend the Values Act by repealing the portions of the Values Act which allow law enforcement to cooperate under certain circumstances. Rather than amend the Values Act, this bill creates a new statute and the repeals the portions of the Values Act by cross reference. By failing to amend the Values Act, it creates confusion about how this bill will change current law. To the extent that the provisions of this bill conflict with the Values Act, it is not clear which statute would control.

One example of a potential conflict involves the directive in the Values Act for the Attorney General to develop model policies. The Values Act required that the Attorney General to publish model polices limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state, courthouses, division of Labor Standards Enforcement facilities, the Agricultural Labor Relations Board, the Division of Workers Compensation, and shelters. Under the Values Act, certain agencies are required to adopt those policies, and the other entities are encouraged to adopt them. Would the provisions of this bill take precedence over compliance with the policies generated by the Attorney General if there was a conflict between the policies developed by the Attorney General and the provisions of this bill?

Expressly amending the Values Act would provide legislators and the public clarity about how the provisions of this bill are intended to interact with current law.

4) **The Language in This Bill Prohibiting a State or Local Agency From Assisting Immigration Enforcement is Quite Broad:** This bill specifies that a "state or local agency shall not arrest or assist with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purpose in any manner, . . ."

To "assist an immigration enforcement purpose in any manner" covers a wide range of behavior, including making information available. That language is broad enough that a state and local agency will need to evaluate whether any action it engages in might assist in immigration enforcement, regardless of whether the action might have a policy purpose unconnected to immigration enforcement. Any information that a state or local agency shares with a federal entity makes it likely that such information would be accessible by federal immigration authorities. It could be difficult for a state or local agency determine if any information shared with federal agency might "assist" an immigration enforcement purpose leading to an interrogation, detention, or ultimately deportation. State and local agencies would face a similar problem with information that is available to the public either via a website or through a public records request. If such information could assist with immigration enforcement, should the state or local agency release such information? This bill would expose any state or local agency to civil liability if the agency assists immigration enforcement in any manner.

5) **Lawsuit Challenging the Values ACT (U.S. v. California):** The federal government filed suit in federal court to challenge the Values Act asserting that the Values Act was preempted and violated the supremacy clause of the U.S. Constitution because the Values Act constituted an "obstacle" to federal immigration enforcement.

A 2019 decision by the 9th Circuit Court of Appeal upheld the legitimacy of the Values act. (*US v. California* (2019) 921 F.3d 865.) The U.S. Supreme Court subsequently declined the opportunity to review the case. The case was first heard in federal district court. The District Court held that the Values Act was not preempted by federal law:

> "California's decision not to assist federal immigration enforcement in its endeavors is not an 'obstacle' to that enforcement effort. [The United States'] argument that SB 54 makes immigration enforcement far more burdensome begs the question: more burdensome than what? The laws make enforcement more burdensome than it would be if state and local law enforcement provided immigration officers with their assistance. But refusing to help is not the same as impeding. If such were the rule, obstacle preemption could be used to commandeer state resources and subvert Tenth Amendment principles." (*California I,* 314 F. Supp. 3d at 1104.)

The case was appealed to the 9th District Court of Appeal which upheld the decision of the district court regarding the Values Act. The 9th District Court of Appeal stated, "Even if SB 54 obstructs federal immigration enforcement, the United States' position that such obstruction is unlawful runs directly afoul of the Tenth Amendment and the anticommandeering rule." (*U.S. v. California*, at 888.)

The United States' primary argument against SB 54 was that it forces federal authorities to expend greater resources to enforce immigration laws. However, the 9th District Court of Appeal found that would be the case regardless of SB 54, since California would still retain the ability to decline to administer the federal program under the anticommandeering rule. Under the anticommandeering rule Congress cannot issue direct orders to state legislatures and permits a state to refuse to adopt federal policies. The court held that even in the absence of SB 54, Congress could not "impress into its service—and at no cost to itself—the police officers of the 50 States." (*Id.* at 889.)

The 9th District Court of Appeal noted that:

> "Federal schemes are inevitably frustrated when states opt not to participate in federal programs or enforcement efforts. But the choice of a state to refrain from participation cannot be invalid under the doctrine of obstacle preemption where, as here, it retains the right of refusal. Extending conflict or obstacle preemption to SB 54 would, in effect, 'dictate[] what a state legislature may and may not do,' *Murphy*, 138 S. Ct. at 1478, because it would imply that a state's otherwise lawful decision *not* to assist federal authorities is made unlawful when it is codified as state law." *(Id.* at 890.)

This bill would expand on the scope of the Values Act by extending the prohibition on cooperation with immigration authorities to all state and local agencies. The reasoning behind the 9th District's holding in *U.S. v. California* would likely continue to apply to the expansion in scope. However, this bill potentially conflicts with existing federal statutes require specific types of communication on immigration status to be exchanged between immigration authorities and state and local entities.

The Values Act specifically allowed law enforcement to comply with two federal statutes related to immigration enforcement. (8 U.S.C. 1373, subd. (a), and 8 U.S.C. 1644.) These statutes prohibit a state and local government from in any way restricting, any government

entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status of any individual.

As part of its challenge to the Values Act, the United States contended that 8 U.S.C. 1373 directly prohibits the information-sharing restrictions of the Values Act. The 9th Circuit Court of appeal disagreed and noted that the Values Act expressly *permits* the sharing of such information, and so does not appear to conflict with Section 1373.

This bill does not specifically reference those federal statutes or the sections of the Values Act concerning those statutes. Therefore, to the extent the Values Act continues to have effect beyond the enactment of this bill, perhaps law enforcement agencies would still be allowed to comply with those federal statutes. This bill does not provide an exception allowing state and local agencies (including law enforcement) to comply with those federal statutes if such compliance would otherwise be prohibited by this bill.

The prohibitions in this bill on state and local agencies actions that assist in immigration enforcement would seem to include a prohibition on sending any information to immigration authorities if it would assist in immigration enforcement. Without express provisions allowing state and local agencies to comply with those federal statutes, it does seem more likely that a court could find that this bill is in conflict with, and preempted by, federal law.

6) **Argument in Support**: According to the *Initiate Justice,* "When California's jails and prisons voluntarily and unnecessarily transfer immigrant and refugee community members eligible for release from state or local custody to ICE for immigration detention and deportation purposes, they subject these community members to double punishment and perpetual trauma. Community members can be incarcerated by ICE, often for prolonged periods and with no right to bail, and deported--permanently banishing them from the country, from their families, their homes, their livelihoods.

"As the state with the largest immigrant community in the country, California has an ethical and moral obligation to step up our leadership and take action to protect the rights of all refugees and immigrants who call California home, including those eligible for release from our local jails and state prisons. If we fail to end the cruel practice of ICE transfers, California will continue to actively participate in the separation of immigrant and refugee families, and inflict irreparable harm to those who came here fleeing war and genocide or to simply build a better life for themselves and their children.

"Moreover, state and local participation in federal immigration enforcement programs has raised constitutional concerns, including arrests and detentions that violate the Fourth Amendment to the United States Constitution, and that target immigrants on the basis of race or ethnicity in violation of the Equal Protection Clause.

"Transferring California residents to ICE custody is costly. By ending voluntary ICE transfers, California stands to save state resources that can be invested in mental health, housing, youth development, and access to living wages-- all of which have been proven to reduce crime and stabilize communities.

"In conclusion, California should not subject community members to double punishment, and disregard their record of rehabilitation, stable reentry plans, and community support,

purely because they are refugees or immigrants. Ending ICE transfers in California is a necessary step in fulfilling the state's commitment to ending racial injustice and mass incarceration."

7) **Argument in Opposition:** According to the *Peace Officers Research Association of California*, "AB 937 would prohibit any state or local agency from arresting or assisting with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual for an immigration enforcement purposes. The bill would additionally prohibit state or local agencies or courts from using immigration status as a factor to deny or to recommend denial of probation or participation in any diversion, rehabilitation, mental health program, or placement in a credit-earning program or class, or to determine custodial classification level, to deny mandatory supervision, or to lengthen the portion of supervision served in custody.

   "Congress defined our nation's immigration laws in the Immigration and Nationality Act (INA), which contains both criminal and civil enforcement measures. PORAC cannot support a State bill that forces our States public safety officers to stand by while our federal counterparts are injured or killed in the performance of their duties. In addition, if the federal government requires our involvement, such as temporarily housing an undocumented arrestee, then it is our responsibility to adhere to the needs of the federal government. This proposed legislation puts local law enforcement in a no-win situation, having to choose between state and federal laws."

8) **Related Legislation**: AB 263 (Bonta), would specify that private detention centers are subject to state and local health orders. AB 263 is on the Assembly Floor.

9) **Prior Legislation**:

   a) AB 2596 (Bonta), of the 2019-2020 Legislative Session, would have eliminated the existing ability for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate transfers. AB 2596 was never heard in Assembly Public Safety.

   b) AB 2948 (Allen), of the 2017-2018 Legislative Session, would have repealed the California Values Act SB 54, which defines the circumstances under which law enforcement agencies may assist in the enforcement of federal immigration laws and participate in joint law enforcement task forces. AB 2948 failed passage in the Assembly Public Safety Committee.

   c) AB 2931 (Patterson), of the 2017-2018 Legislative Session, would have expanded the list of qualifying criminal convictions which permit law enforcement to cooperate with federal immigration authorities. AB 2931 failed passage in the Assembly Public Safety Committee.

   d) AB 298 (Gallagher), of the 2017-2018 Legislative Session, would have repealed the TRUST Act and required law enforcement to cooperate with federal immigration by detaining an individual convicted of a felony for up to 48 hours on an immigration hold, as specified, after the person became eligible for release from custody. AB 298 failed passage in this committee.

e) AB 1252 (Allen), of the 2017-2018 Legislative Session, would have repealed the TRUST Act and prohibited state grants to county and local "sanctuary jurisdictions." AB 1252 failed passage in this committee.

f) SB 54 (De Leon), Chapter 495, Statutes of 2017, limited the involvement of state and local law enforcement agencies in federal immigration enforcement.

g) AB 2792 (Bonta), Chapter 768, Statutes of 2016, requires local law enforcement agencies to provide copies of specified documentation received from ICE to the individual in custody and to notify the individual regarding the intent of the agency to comply with ICE requests.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Boys and Men of Color (Co-Sponsor)
Alliance San Diego (Co-Sponsor)
Asian Americans Advancing Justice - California (Co-Sponsor)
Asian Prisoner Support Committee (Co-Sponsor)
California Coalition for Women Prisoners (Co-Sponsor)
California Immigrant Policy Center (Co-Sponsor)
Center for Empowering Refugees and Immigrants (Co-Sponsor)
Communities United for Restorative Youth Justice (CURYJ) (Co-Sponsor)
Community United Against Violence (Co-Sponsor)
Freedom for Immigrants (Co-Sponsor)
Ice Out of Marin (Co-Sponsor)
Immigrant Legal Resource Center (Co-Sponsor)
Inland Coalition for Immigrant Justice (Co-Sponsor)
Interfaith Movement for Human Integrity (Co-Sponsor)
Legal Services for Prisoners With Children (Co-Sponsor)
Long Beach Immigrant Rights Coalition (Co-Sponsor)
Orange County Rapid Response Network (Co-Sponsor)
Re:store Justice (Co-Sponsor)
Santa Barbara County Action Network (Co-Sponsor)
Secure Justice (Co-Sponsor)
South Bay People Power (Co-Sponsor)
The Orange County Justice Fund (Co-Sponsor)
Vietrise (Co-Sponsor)
Young Women's Freedom Center (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
Alianza
Alliance of Californians for Community Empowerment (ACCE) Action
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Asian Solidarity Collective
Buen Vecino
Buena Vista United Methodist Church Immigration Committee

California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
Californiahealth+ Advocates
Californians for Safety and Justice
Church World Service
Community Justice Exchange
Community Legal Services in East Palo Alto
Contra Costa Immigrant Rights Alliance
Courage California
Critical Resistance
Drug Policy Alliance
East Yard Communities for Environmental Justice
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Equal Rights Advocates
Filipino Migrant Center
Friends Committee on Legislation of California
Hope for All: Helping Others Prosper Economically
Human Impact Partners
Human Rights Watch
Immigrant Defenders Law Center
Immigrant Defense Advocates
Indivisible Sausalito
Initiate Justice
Irvine United Congregational Church -- Advocates for Peace and Justice
Kehilla Community Synagogue
Khmer Girls in Action
Lakeshore Avenue Baptist Church
Long Beach Southeast Asian Anti-deportation Collective
Mixteco Indigena Community Organizing Project (MICOP)
Network in Solidarity With the People of Guatemala
New Bridges Presbyterian Church
Nikkei Progressives
No New Sf Jail Coalition
Norcal Resist
Oakland Privacy
Or Shalom Jewish Community
Orange County Equality Coalition
Pangea Legal Services
Pico California
Pillars of The Community
San Diego; County of
San Francisco Peninsula People Power
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County
Southeast Asia Resource Action Center
Surj Contra Costa County
Surj San Mateo

Survived and Punished
Team Justice
Think Dignity
UC Berkeley's Underground Scholars Initiative (USI)
Uncommon Law
Unitarian Universalist Fellowship of Redwood City, Social Action Committee
Viet Rainbow of Orange County
We the People - San Diego
Woman INC
Women for American Values and Ethics Action Fund
Women For: Orange County

Oppose

California Police Chiefs Association
California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)

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

Date of Hearing: April 6, 2021
Counsel: David Billingsley

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

AB 1007 (Carrillo) – As Introduced February 18, 2021

SUMMARY: Establishes the Forced or Involuntary Sterilization Compensation Program to provide compensation to those who were forcibly sterilized under California's eugenic laws, as well as those sterilized without medical necessity or demonstrated informed consent while incarcerated. Specifically, **this bill**:

1) Makes Legislative findings and declarations about California's eugenics laws and sterilization program.

2) Establishes the Forced or Involuntary Sterilization Compensation Program to be administered by the California Victims Compensation Board (the board).

3) States that the purpose of the program is to provide compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenic laws that existed in the State of California between 1909 and 1979.

4) Defines the following terms:

   a) "Board" means the California Victim Compensation Board;

   b) "Program" means the Forced or Involuntary Sterilization Compensation Program; and,

   c) "Qualified recipient" means:

      i) An individual who was sterilized pursuant to eugenics laws that existed in the State of California between 1909 and 1979; the individual was sterilized while he or she was a patient at a specified state institution; and the individual is alive as of January 1, 2020; or,

      ii) An the individual who was sterilized while under the custody and control of the Department of Corrections and Rehabilitation (CDCR), county jail, or any other institution in which they were involuntarily confined or detained under a civil or criminal statute; the sterilization was not medically necessary to preserve the person's life or was not pursuant to a chemical sterilization program administered to convicted sex offenders; and the sterilization meets one of several other circumstances, including sterilization that was not medically necessary, or performed for purposes of birth control, or performed without demonstrated informed consent.

5) Requires CDCR to post notice of the program, qualifications, and claim process in all parole and probation offices, as well as in all state prison yards.

6) Requires the board to do all of the following to implement the program:

   a) Develop an outreach plan within six months of enactment, and conduct outreach to locate qualified recipients, as specified;

   b) Develop and implement procedures to review and process applications within six months of enactment;

   c) Review and verify all applications for victim compensation;

   d) Consult the eugenic sterilization database at the University of Michigan, and records of specified agencies, including the State Department of State Hospitals (DSH), the State Department of Developmental Services (DDS), CDCR, to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws or while under the custody of CDCR;

   e) Disclose coercive sterilizations that occurred in California prisons; and,

   f) Oversee an appeal process.

7) Requires DHS and DDS to share data with the board pertaining to individuals sterilized in state institutions.

8) Requires the board use a preponderance of the evidence standard to determine whether it is more likely than not that the applicant is a qualified recipient.

9) Prohibits the board from denying compensation to any claimant who is a qualified recipient.

10) Requires the board to keep confidential any record pertaining to either an individual's application for victim compensation or the board's verification of the application, but allows disclosure of aggregate claimant information.

11) Requires the board to annually submit a report to the Legislature that includes the number of applications submitted, the number of applications approved, the number of applications denied, and the number of claimants paid, the number of appeals submitted the result of those appeals, and the total amount paid in compensation. The report shall also include data on demographic information of the applicants, as well as data on outreach methods or processes used by the board to reach potential claimants.

12) States that these provisions shall become operative only upon an appropriation to the board, DSH, DDS, and CDCR for the purposes of implementing this bill.

13) Requires the board to hold any appropriated funds in a separate account, and only those funds shall be used for the purpose of implementing the program.

14) States that an individual seeking compensation under the program shall submit an application to the board beginning six months after the start date of the program and no later than two years and six months after its start date.

15) Establishes a payment schedule for qualified applicants with initial payment within 60 days of approval and final payment after the filing window when all eligible applicants have been determined.

16) Allows a recipient to assign his or her compensation to a trust established for his or her benefit and to designate a beneficiary for his or her compensation.

17) Provides that a payment made to a qualified recipient shall not be considered taxable income for state tax purposes, or income or resources for determining eligibility for benefits or assistance under any state or local means-tested program; community property for the purpose of determining property rights, and exempts payments from collection from various kinds of debt, such as child support and court-ordered fines and fees.

EXISTING LAW:

1) States that a person sentenced to imprisonment in the state prison or in county jail is under the protection of the law, and any injury to the person not authorized by law is punishable in the same manner as if the inmate were not convicted or sentenced. (Pen. Code, § 2650.)

2) Makes it unlawful to use any cruel, corporal or unusual punishment in prisons, or to inflict any treatment or allow any lack of care which would injure or impair the health of the confined person. (Pen. Code, § 2652.)

3) Prohibits sterilization for the purpose of birth control of an individual under the control of the California Department of Corrections and Rehabilitation (CDCR) or a county correctional facility, except as specified. (Pen. Code, § 3440.)

4) Requires CDCR to only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical care. (Cal. Code Regs., tit. 15, § 3350, subd. (a).)

5) Establishes the board to operate the California Victim Compensation Program. Also tasks the board with the administration of claims of erroneously convicted persons. (Gov. Code, § 13950 et seq. & Pen. Code, § 4900.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1007 will rightfully compensate people who were involuntarily sterilized under California's previous eugenics law and in women's state prisons after 1979, by creating the Forced Sterilization Compensation Program."

2) **California's Eugenics Laws**: From 1909 to 1979, state law allowed the sterilization of people who had a "mental disease."

In an NPR interview, University of Michigan professor Alex Stern stated: "It's very important to take that terminology with many historic grains of salt. If we go back in time and look at what the terms meant, it often meant people who were not conforming to societal norms, people who were poor, people who lacked education, perhaps didn't speak sufficient English to make it through school, and so on.

"But what it meant for those who were enacting the law were people who were determined to have poor IQs, people with certain psychiatric disorders. But generally, often the way it was used was much more as a catch-all category - so people who just didn't fit, kind of like the misfits of society, so to speak. That's the way they looked at them.

"Looking back on it, I would say that those who were institutionalized - because many more people where institutionalized than actually sterilized - was because maybe they had a psychiatric condition and they were sent to an institution as was the policy at the time in the mid-20th century. ...

"But for the most part, this program of eugenics ... the idea of sterilization was to eradicate certain genes from the population." (NPR (2016) On A 'Eugenics Registry,' A Record of California's Thousands of Sterilizations.)

In recognition of this historic injustice, this bill would create an opportunity for California to compensate those who were subject to state-sponsored sterilization.

3) **Sterilization of Female Inmates**: In 2014, sterilization of female inmates for purposes of birth control was prohibited. (Pen. Code, § 3440.)

The Joint Legislative Audit Committee asked the California State Auditor to review female inmate sterilizations at CDCR facilities. The Auditor conducted an audit of female inmate sterilizations occurring between fiscal years 2005–06 and 2012–13. (See *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed*, June 2014, available at: (https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf)

The Auditor's office mainly focused on bilateral tubal ligations, which is not a medically necessary procedure, and whose sole purpose is to sterilize a woman. The focus was not on other procedures, such as a hysterectomies, which are intended to treat cancer or address other health problems but which also result in sterilization. From fiscal year 2005–06 through 2012–13, data from the Receiver's Office show that 794 female inmates had various procedures that could have resulted in sterilization, out of those the Auditor determined that 144 of these inmates underwent a bilateral tubal ligation. (*Id.* at p. 13.)

State regulations impose certain requirements that must be met before such a procedure is performed. The Auditor found that the state entities responsible for providing medical care to these inmates— CDCR and the Receiver's Office—sometimes failed to ensure that inmates' consent for sterilization was lawfully obtained. (*Id.* at p. 19.)

This bill would allow such inmates to file a claim for compensation. It would also provide

the same recourse for female county inmates that were sterilized without proper consent.

4) **Argument in Support**: According to the *Disability Rights Education and Defense Fund*, "Between 1909 and 1979, California law directed the administrators of state institutions to forcibly sterilize individuals who they deemed 'unfit' for reproduction. Based on inaccurate and misguided assumptions about disability, people were labeled 'moron,' 'imbecile,' or 'mentally defective,' and they were summarily sterilized. California had the most aggressive sterilization program in the country, sterilizing 20,000 out of 60,000 people nationwide.

"The State of California now has the opportunity to denounce eugenics and coercive prison sterilizations for what they were: a flagrant human rights abuse. In recognition of the lasting harms that thousands of Californians endured, AB 1007willprovide surviving individuals with monetary compensation, and it will raise public awareness about the discriminatory harms that they faced. With this bill, California will become the third state in the nation to provide reparations to survivors of state-sponsored sterilization, following successful eugenics compensation programs in North Carolina (2013) and Virginia (2015).It will become the first to provide reparations to survivors of prison sterilizations.

"At a time when the COVID-19 pandemic has brought to the forefront deep-seeded racial, disability, gender, and income-based health inequities in our communities, and as racial justice movements across the country call for an end to white supremacy, this bill provides California with a powerful opportunity to confront its shameful history and take a bold stand against the racist, ableist, and sexist practices that continue to perpetuate health inequities to this day. By providing reparations for its reproductive violence, California can lead the nation in eradicating vestiges of eugenics, and allow our communities to start to heal."

5) **Prior Legislation**:

   a) AB 3052 (Carrillo), of the 2019-2020 Legislative Session, contained the same provisions as this bill. AB 3052 was held in the Assembly Appropriations Committee.

   b) AB 1764 (Carrillo), of the 2019-2020 Legislative Session, contained the same provisions as this bill. AB 1764 was held in the Assembly Appropriations Committee.

   c) SB 1190 (Skinner), of the 2017-2018 Legislative Session, would have established the Eugenics Sterilization Compensation Program to provide compensation for those who were forcibly sterilized under California's eugenic laws. SB 1190 was held in the Assembly Appropriations Committee.

   d) SB 1135 (Jackson), Chapter 558, Statutes of 2014, prohibits sterilization for the purpose of birth control of an individual under the control of the CDCR or a county correctional facility, and prohibits any means of sterilization of an inmate, except when required for the immediate preservation of life in an emergency medical situation or when medically necessary, as specified, and certain requirements are satisfied, including that a patient consents.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Women Prisoners (Co-Sponsor)
California Latinas for Reproductive Justice (Co-Sponsor)
Disability Rights Education and Defense Fund (Co-Sponsor)
A New Path
Access Reproductive Justice
American Association of University Women - California
Asian Americans Advancing Justice - California
Association of Regional Center Agencies
Black Women Birthing Justice
Breastfeedla
Business & Professional Women of Nevada County
California Pan - Ethnic Health Network
California Prison Focus
California Public Defenders Association (CPDA)
California Women's Law Center
Center for Genetics and Society
Center for Reproductive Rights
Citizens for Choice
Courage California
Critical Resistance
Dignity and Power Now
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
End Solitary Santa Cruz County
Fair Chance Project
Fairview Families and Friends, INC
Felony Murder Elimination Project
Feminist Majority Foundation
Fresno Barrios Unidos
Guerrilla Food Not Bombs
If/when/how: Lawyering for Reproductive Justice
Initiate Justice
Justice in Aging
Kern County Participatory Defense
Life on Earth Art
Naral Pro-choice California
National Association of Social Workers, California Chapter
National Center for Youth Law
National Health Law Program
National Women's Health Network
No Justice Under Capitalism
Plan C
Planned Parenthood Affiliates of California
Positive Women's Network-usa
Public Health Justice Collective
Re:store Justice

Religious Coalition for Reproductive Choice California
Represent Justice
Reproductive Health Access Project
Root & Rebound
San Francisco Public Defender
Time for Change Foundation
Training in Early Abortion for Comprehensive Healthcare
Transitions Clinic Network
Truth and Reconciliation Committee of Neighborhood Uu Church
Uncommon Law
US Prostitutes Collective
Women's Foundation California
Young Women's Freedom Center

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

Date of Hearing: April 6, 2021
Counsel: Matthew Fleming

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

AB 38 (Cooper) – As Amended January 14, 2021

SUMMARY: Requires the Judicial Council, on or before January 1, 2022, to prepare, adopt, and annually revise a statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. Specifically, **this bill**:

1) Requires the Judicial Council shall appoint a group of judges, deemed by the council sufficient to adequately represent counties varying in size from throughout the state, to develop and approve the statewide bail schedule.

2) Requires the Judicial council to consult with the following representatives in preparing, adopting, and annually revising the statewide bail schedule:

   a) A representative appointed by the California District Attorneys Association;

   b) A representative appointed by the California Public Defenders Association; and,

   c) A representative appointed by the California State Sheriffs' Association.

3) Requires the Judicial Council to receive and consider input regarding the statewide bail schedule from other interested parties.

4) Requires the Judicial Council, for all bailable felony offenses, to consider the seriousness of the offense charged, and in doing so assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts that would bring a person within specified sentencing enhancements.

5) Requires the Judicial Council, in assigning bail for controlled substance offenses, to assign an additional amount of required bail for offenses involving large quantities of controlled substances.

6) Requires the Judicial Council, in adopting the statewide bail schedule for all offenses, to do all of the following:

   a) If a person is booked for or charged with two or more offenses, require bail to be the amount computed under the bail schedule for the charge having the highest amount of bail, including applicable amounts for enhancements and prior convictions;

b) If a person is booked for or charged with two or more offenses and the offenses were alleged to be committed against separate victims or on separate dates, or separate sex acts were alleged to be committed on the same victim and each may be punished separately, require bail to be the sum of the amounts listed for each offense, including applicable amounts for enhancements and prior convictions.

c) When determining the amount of bail for persons charged with two or more offenses, as stated above, require that amounts for applicable enhancements be added only one time per person and that amounts for prior convictions, if applicable, be added only one time per prior case.

7) Provides that the statewide bail schedule shall contain a list of the offenses and the amounts of bail applicable for each as the Judicial Council determines to be appropriate, and that if the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the Judicial Council determines to be appropriate for all the offenses not specifically listed in the schedule.

8) Provides that the statewide bail schedule shall not reduce the bail amount for an offense listed in any county's bail schedule to less than half of what it was prior to January 1, 2022.

9) Provides that the Judicial Council shall adopt California Rules of Court consistent with these provisions.

EXISTING LAW:

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

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

a) Capital crimes;

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

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

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

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

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

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

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

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

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

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

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

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

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

subd. (a).)

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

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

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

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

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

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

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

21) Requires the Judicial Council to annually adopt a uniform traffic penalty schedule which shall be applicable to all nonparking infractions specified in the Vehicle Code, unless in a particular case before the court the judge or authorized hearing officer specifies a different penalty. In establishing a uniform traffic penalty schedule, the Judicial Council shall classify the offenses into four or fewer penalty categories, according to the severity of offenses, so as to permit convenient notice and payment of the scheduled penalty. (Veh. Code, § 40310.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Bail schedules are set by each individual county which has led to many of the same offenses having different bail amounts from county to county. Furthermore, the practice of bail 'stacking' can lead to excessive bail and make it nearly impossible for some to post bail while awaiting trial.

   "AB 38 intends to fix both of these problems by creating a statewide bail schedule and limiting the practice of bail stacking for most pre-trial defendants. AB 38 will fix inconsistencies and confusion while providing fairness for individuals seeking to post bail."

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

   Courts require many defendants to deposit monetary bail in order to be released from custody. Bail is intended to act as a financial guarantee to the court that the defendant will appear for all required court hearings. An arrestee may post bail with his or her own cash, or may post bail using a bail bond. Another function of the bail system is protection of the community. Arguably, the current bail system does not actually address community safety concerns because there is no assessment of risk, at least when bail is posted before the arrestee appears before the court.

3) **Bail Schedules**: Currently, Judicial Council is responsible for annually revising and adopting a statewide bail schedule for certain vehicle code, non-parking offenses. (Vehicle Code 40310.) Bail amounts for all other felony, misdemeanor and infraction offenses are set by individual counties in a countywide bail schedule. County bail schedules are set by the presiding judge of the superior court in each county. These schedules usually list the offense by code section and description, and indicate the recommended amount of bail. The schedules also specify additional amounts for cases in which sentence-enhancing allegations or extraordinary facts exist.

   The county jails have a copy of the bail schedule so that a defendant may post bail to effect his or her release prior to the initial court appearance. The court will also set bail at the defendant's initial court appearance. The judge may set bail at any amount he or she deems sufficient to ensure the defendant's appearance in court. The practice is typical case, however, is to adhere to the amount set in the county's bail schedule. The court may depart from the bail schedule based on aggravating factors to increase bail, or mitigating factors to decrease it.

   In countywide bail schedules, the amount of bail is determined exclusively on the charged offense and any penalty enhancements that could be applied to the case at the time of sentencing. The amount of bail roughly corresponds to the amount of time in custody the person will have to serve if they are found guilty and convicted of the charged offense(s). The bail schedule is used by the arresting officer to allow an arrestee to post bail before his or her court appearance. Once a defendant is brought before the court, there must be an individualized determination of the appropriate amount of bail.

This bill would require the Judicial Council of California to create a uniform, statewide bail schedule. It would further require the Judicial Council to adopt California Rules of Court consistent with the bill's provisions. It is not entirely clear, based on the current language of the bill, how the statewide bail schedule would interact with the requirement in existing law that counties adopt their own bail schedule. Because the California Constitution grants the Judicial Council the power to adopt mandatory, statewide rules of Court, the statewide bail schedule envisioned by this bill is likely to supplant and supersede the existing, countywide schedules. In 2014, AB 2388 (Hagman) was introduced, which had similar provisions to this bill. AB 2388 was amended to include a declaration of legislative intent that the statewide bail schedule in its provisions was meant to be advisory, not mandatory. AB 2388 was held in the Assembly Appropriations Committee.

4) **Setting Bail on Multiple Charges, Bail "Stacking"**: In some counties, bail amounts for multiple offenses can be "stacked" together, meaning that bail is computed by adding the amounts for each charged offense together. Each county adopts its own bail stacking rules. Some counties provide for more stacking, and others for less.

   Santa Barbara County does not permit bail stacking (Santa Barbara Felony Bail Schedule, 2020, at page 2, available at: https://www.sbcourts.org/dv/bail/FelonyBailSchedule.pdf, [as of March 25, 2021]). The County of Los Angeles allows stacking where the offenses are committed against separate victims or on separate dates; where separate sex acts are committed on the same victims; or when offenses committed in a single occurrence are of a separate class of crimes. Enhancements and prior convictions that increase the bail amount are added one time per person arrested, per defendant, or per case. (Los Angeles Felony Bail Schedule, 2021, available at: https://www.lacourt.org/division/criminal/pdf/felony.pdf, [as of March 29, 2021].) San Diego County favors the practice of bail stacking, and requires bail to be stacked with limited exceptions. (San Diego Bail Schedule, 2021, at p. iii, available at: http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/CRIMINAL2/CRIMINALRESOURCES/BAIL_SCHEDULE.PDF, [as of April 1, 2021].)

   Currently each County is free to adopt its own approach to stacking bail amounts. This bill would require the Judicial Council to adopt the Los Angeles County approach to stacking for purposes of creating a statewide bail schedule. That approach represents a sort of middle ground, allowing bail amounts to be aggregated for multiple victims, different dates, or different sex crimes committed against a lone victim.

5) **Challenges Presented by the Money Bail System**: There are a number of challenges that the bail system faces. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. In short, those who have money have the ability to confront their criminal charges while free from confinement in county jail. Those who are too poor to post bail are forced to remain incarcerated, are unable to fully assist in the preparation of their defense, and are more likely to plead guilty in order to get out of custody. Prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on how much money the person has available, and not whether they are a present danger to the community or whether they will return to court.

   The ability to be out of custody while facing criminal charges carries a number of inherent

advantages. A defendant who is released on bail is able to carry on with his or her life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are not only able to maintain employment but they are also encouraged to do so. Out of custody defendants are also better positioned able to meet with their attorneys with greater frequency and convenience, and have a greater ability to track down witnesses and potentially exculpatory evidence.

Although current law requires an individualized hearing to determine the amount of bail a person most post in order to be released before trial, there is widespread concern that bail is often simply imposed based on what is written in the bail schedule, rather than truly taking into consideration the defendant's ability to pay, the threat they pose to the public, or their chance of absconding. (*See e.g. (In re HUMPHREY*, (Supreme Court of California) No. S247278, p. 2, available at: https://www.courts.ca.gov/opinions/documents/S247278.PDF, [as of March 25, 2021].) As recently noted by the California Supreme Court "[w]hether an accused person is detained pending trial often does not depend on a careful, individualized determination of the need to protect public safety" and instead rests on "the accused's ability to post the sum provided in a county's uniform bail schedule." (*Id.* at pp. 2-3.)

The Department of Insurance regulates the bail bond business through the Insurance Code. In January, 2017, the California Department of Insurance held a public hearing on California's bail system. One of the concepts discussed at the hearing was that California needs to address its inequitable bail system that detains people who are unable to afford bail while releasing wealthier people who are able to pay bail. Subsequent to that public hearing, then - Insurance Commissioner Dave Jones published a report entitled "Recommendations for California's Bail System." (California Department of Insurance, February, 2018, available at: https://www.insurance.ca.gov/01-consumers/170-bail-bonds/upload/CDI-Bail-Report-Draft-2-8-18.pdf, [as of March 25, 2021].) The report made three recommendations pertaining to the bail system: 1) increase the use of pretrial services and "own recognizance" release, 2) make bail hearings more available, and 3) reexamine the bail schedules. (*Id.* at 4 – 5.) The report further suggested "California should provide a statewide bail schedule guideline or advisory that can be used by judges as part of their considerations when setting, reducing, or denying bail. Such a guideline could also include several tiers to account for the varied demographics and policies across California's counties." (*Id.* at 5.) This bill addresses the third recommendation, that the bail schedule be reexamined, but instead of creating an advisory bail schedule, it mandates a new one.

Bail amounts vary greatly among counties. In 2013, the Public Policy Institute of California published a report entitled "Assessing the Impact of Bail on California's Jail Population." (Tafoya, PPIC, June 2013, available at: https://www.sfdph.org/dph/files/jrp/31-PPICImpactOfBailOnJailPopulations2013Study.pdf, [as of March 30, 2021].) That report found that at the time of its publication, bail amounts varied greatly by county. (*Id.*) The report included a county by county comparison for some of the most common felony offenses. At the narrowest range, the PPIC report found a difference of $5,000 and $25,000. (*Id.* at pp. 16-17). The largest discrepancy identified a bail range between $5,000 and $150,000 for the exact same felony offense (*Ibid.*) In addition, the Insurance Commissioner's report noted that the bail amount for petty theft with a petty theft prior was $5,000 in Kern County, $10,000 in Sacramento County, $15,000 in Alameda County, and $50,000 in San Bernardino County. (*Ibid.*) Materials submitted by the author indicate that

the offense of child neglect has a bail amount of $100,000 in San Luis Obispo County, but only $5,000 in Stanislaus County.

Under the provisions of this bill, the Judicial Council would be required to set a bail amount that is no lower than half the amount for that offense in any county in the state. Although these changes to the bail schedule would lower the bail for the county with the high amount, it would be a fairly dramatic increase for various other counties. Any one county may have a particularly high bail amount for a given offense, and that amount would then become the guidepost for setting the minimum bail amount for the proposed statewide bail schedule. It therefore appears that a consequence of this bill is likely to be that bail amounts generally increase across the State. For some offenses, such as petty theft with a prior, child neglect, or felony criminal threats, there may be a dramatic increase in bail amount. That could exacerbate the problems cited by critics of California's current bail schedule, namely that people from poorer communities in the State remain locked up pending trial, regardless of the facts that they may not present a danger to the public and may be trusted to show up for their court date.

6) **SB 10 (Hertzberg) and Subsequent Referendum**: SB 10 (Hertzburg) was signed into law on August 28, 2018. SB 10 eliminated cash bail in California. In its place, SB 10 created a risk-based, non-monetary, prearraignment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person's determined to be too high a risk to assure public safety if released.

   A veto referendum to overturn the bill was filed on August 29. On January 16, 2019, the California Secretary of State reported that the estimated number of valid signatures exceeded 110 percent of the 365,880 required signatures, putting the targeted law, SB 10, on hold until voters the November 2020 election. The referendum was identified as Proposition 25 on the ballot. A "Yes" vote indicated a preference to uphold the statutory changes made by SB 10 and end the use of cash bail in California. Voters adopted Proposition 25, thereby rejecting SB 10 by a margin of 55% to 45%. The voters' veto of SB 10 maintained the existing structure of cash bail for criminal defendants in California.

7) **Decision of the California Supreme Court, *In re HUMPHREY***: On March 25, 2021, the Supreme Court of California decided *In re HUMPHREY*, a decision pertaining to the setting of monetary bail for defendants without considering their ability to pay the bail amount or alternative conditions of release. The Court unanimously decided it is unconstitutional to require defendants to remain behind bars simply because they cannot afford to post bail. Although the decision did not invalidate California's existing bail schedules as applied to arrestees who have not yet had a formal bail hearing, it did clearly state that "[t]he common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." (*In re HUMPHREY*, (Supreme Court of California) No. S247278, p. 2, available at: https://www.courts.ca.gov/opinions/documents/S247278.PDF, [as of March 25, 2021].) In doing so, the Court criticized the common practice of setting bail based solely on the uniform bail schedule. (*Id.* at 1-2.) The Court continued, "[o]ther conditions of release - such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment - can in many cases protect public and victim safety as well as assure the arrestee's appearance at trial." (*Id.*)

It therefore appears that bail schedules may continue to function as a starting point for how

an arrestee may be able to post bail prior to an initial hearing. However, at the time of a court determination on bail, adherence to the bail schedule without consideration of a defendant's ability to pay, or the availability of other conditions of release, is unlikely to pass constitutional muster.

Californian citizens are in the midst of a discussion about how to address a bail system that many have criticized as unjust. This bill would reform the bail schedule in every county. Because this bill sets a minimum amount for each offense based on the highest amount in any one county it would likely result in bail amounts going up across the state. The bill does not address the concerns expressed by the California Supreme Court in *Humphrey*, namely that "the court must consider the arrestee's ability to pay the stated amount of bail — and may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail." (*Id.* at 2, *citing Bearden v. Georgia* (1983) 461 U.S. 660, pp. 667, 668.)

8) **Jail Overcrowding and COVID-19 Considerations**: 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.

   COVID-19 has exacerbated the state's existing concerns with jail overcrowding. On April 6, 2020, the Judicial Council issued an emergency rule on the bail schedule. That rule contained provisions making most offenses eligible for a bail amount of $0. The $0 provisions are the same as the $0 bail provisions of this bill with respect to arrests on new offenses and contained the same list of crimes that were exempted from the $0 bail directive.

   The emergency rule also addressed bail for post conviction violations (probation, parole, mandatory supervision). Under the statewide Emergency Bail Schedule, bail for all violations of misdemeanor probation, whether the arrest is with or without a bench warrant, were directed to be set at $0. Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, were directed to be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court's countywide schedule of bail for charges of conviction listed in exceptions including any enhancements.

   Although the long term impacts of the pandemic on county jail systems are unknown, there is no doubt that the pandemic has created a number of unique challenges. Local governments have directed law enforcement avoid arrests and bookings. (Martin, "California's County Jails," PPIC, February, 2021, available at: http://www.ppic.org/publication/californias-county-jails/, [as of March 18, 2021].) In addition, an emergency statewide zero-bail order was put in place to reduce the number of individuals coming into jails. (*Id.*) According to the PPIC "Statewide data on jail bookings support this notion, as the number of weekly bookings dropped from about 17,000 in February 2020 to roughly 12,000 in September 2020. However, given crowded conditions in some jails and jail systems' limited health care infrastructure, it has been hard to prevent outbreaks among inmates and staff. In addition, the state prison system has not allowed transfers of jail inmates with prison sentences throughout most of the pandemic, requiring these inmates to be held in county jails until the state has the ability to safely place them in state prisons." (*Id.*).

According to PPIC data, as of September 2020, more than 74% of all jail inmates were awaiting either arraignment, trial, or sentencing. (*Id.*) In other words, the vast majority of California's jail population is not serving a sentence for a conviction, but is instead being detained pending the conclusion of their court case. Any increase in the amount of bail is likely to make that number go up. It may behoove the Legislature to closely examine legislation that might impact the already-crowded jail population.

9) **Argument in Support**: According to the *California District Attorneys Association*: "AB 38 establishes a committee of judges, selected by the judicial council, to establish an annual state-wide bail schedule. This committee would be required to consult with a representative of the California Public Defenders Association, the California District Attorneys Association, and the California State Sheriffs Association. This bill would also require that any other interested parties be allowed to provide input as well. Further, this bill would advance fairness and equity by establishing the same bail schedule for all, replacing the current patchwork of bail schedules individually set by California's fifty-eight counties. Lastly, by requiring consultation with the three chief criminal justice partners, it provides a regular opportunity for the thoughtful and thorough re-examination of the bail schedule, by those well positioned to advance the concerns of victims, public safety, and the accused.

"Recently, the California Supreme Court in In Re Humphrey upheld the use of bail, but mandated that procedural safeguards be in place so that no person should ever be held solely for their inability to afford bail. The court stated that in setting bail, a judge must consider the defendant's ability to afford bail and whether other conditions of release can reasonably protect the public and the victim. These guidelines will assure that whenever bail is imposed under AB 38 that it would be done only after a reasoned judicial inquiry and only in cases when necessary to protect public safety and assure court attendance.

"Finally, this bill respects the will of California voters who recently rejected eliminating all bail, while still achieving meaningful bail reform. AB 38 preserves the necessary latitude to confront the widely varied circumstances that come before a court and it does not prevent a court from departing down from scheduled bail, imposing non-financial conditions of release, or simply releasing an accused if appropriate and safe to do so."

10) **Argument in Opposition**: According to the *American Civil Liberties Union of California*: "Bail schedules, and money bail in general, have long been used in California as a tool to keep low income Californians in jail, while allowing their wealthier counterparts to go free. Just a week ago, in the long-awaited decision in In re Humphrey, S247278 (3/25/2021), the California Supreme Court unanimously ruled that California's money bail system is unconstitutional. The court was clear that unlike the current bail scheme, "[w]hen making any bail determination, a superior court must undertake an individualized consideration of the relevant factors. These factors include the protection of the public as well as the victim, the seriousness of the charged offense, the arrestee's previous criminal record and history of compliance with court orders, and the likelihood that the arrestee will appear at future court proceedings." (Id. at 18.) Relying on principles of due process and equal protection, the court's central holding was that, "[a]n arrestee may not be held in custody pending trial unless the court has made an individualized determination that (1) the arrestee has the financial ability to pay, but nonetheless failed to pay, the amount of bail the court finds reasonably necessary to protect compelling government interests; or (2) detention is

necessary to protect victim or public safety, or ensure the defendant's appearance, and there is clear and convincing evidence that no less restrictive alternative will reasonably vindicate those interests." (Id. at 24.)

"Bail schedules – with the exception of those that set bail at $0 – are antithetical to the Supreme Court's ruling in In re Humphrey. As the court noted, "[w]hether an accused person is detained pending trial often does not depend on a careful, individualized determination of the need to protect public safety, but merely…on the accused's ability to post the sum provided in a county's uniform bail schedule." (Id. at 1-2 citing Karnow, Setting Bail for Public Safety (2008) 13 Berkeley J. Crim. L. 1, 16–17.) For that very reason, a federal district court recently held unconstitutional San Francisco's use of a bail schedule. (Buffin v. San Francisco, No. 15-cv-04959-YGR, 2019 WL 1017537 (N.D. Cal. Mar. 4, 2019).) As the court in that case found, "[t]he Bail Schedule… is arbitrary in that it sets amounts without regard to any objective measurement and thus bears no relation to the government's interests in enhancing public safety and ensuring court appearance. It merely provides a "Get Out of Jail" card for anyone with sufficient means to afford it. (Id. at *23.)

"AB 38 seeks to breathe new life into a failed and dying system. In California and across the country, criminal legal system actors, scholars, and advocates have denounced the use of bail schedules, and the money bail system in general, both because they are poor public safety tools and because they enhance existing racial and economic disparities already plaguing the criminal legal system. Low income Black and Brown people are not only policed more heavily and charged more harshly than their wealthy and white counterparts, they are also more likely to remain in jail due to their inability to afford bail. Bail schedules like the one proposed by AB 38 only exacerbate this disparity."

11) **Related Legislation**:

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

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

12) **Prior Legislation**:

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

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

c) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff

for the purpose of recommending whether a defendant should be released on his/her own recognizance.

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

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

f) SB 210 (Hancock), of the 2011-12 Legislative Session, would have required a court to determine, with public safety as the primary consideration, whether a defendant charged with a jail felony is eligible for release on his or her own recognizance (OR). SB 210 failed passage on the Assembly Floor.

g) SB 1180 (Hancock) of the 2011-12 Legislative Session, was substantially similar to SB 210. SB 1180 was ordered to the Senate Inactive File.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Narcotic Officers' Association

1 Private Individual

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Anti-recidivism Coalition
California Public Defenders Association (CPDA)
Californians for Safety and Justice
San Francisco Public Defender
Western Center on Law & Poverty

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

Date of Hearing: April 6, 2021
Chief Counsel: Gregory Pagan

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

AB 268 (Irwin) – As Amended February 25, 2021

SUMMARY: Requires the Court, upon the request of a qualifying family member, to seal and not disclose the autopsy report and evidence associated with the examination of a victim who has been killed as a result of a criminal act, as specified. Specifically, **this bill**:

1) Requires the Court, upon the request of a qualifying family member, to seal and not disclose the autopsy report, and evidence associated with the examination of a victim in possession of a public agency, as defined, when the victim is killed as a result of a criminal act and any of the following apply:

   a) A person has been convicted and sentenced for the commission of that act;

   b) A person has been found to have committed the offense by the juvenile court and has been adjudged a ward of the juvenile court; or,

   c) The prosecution has concluded all persons who could have been prosecuted for the criminal act have died.

2) Provides that an autopsy report and evidence associated with the examination of the victim that has been sealed by the court may be disclosed as follows:

   a) To law enforcement, prosecutorial agencies and experts hired by those agencies, public social service agencies, child death review teams, or the hospital that treated the person immediately prior to death, to be used solely for investigative, prosecutorial, or review purposes, and may not be disseminated further;

   b) To the defendant and the defense team in the course of criminal proceedings or related habeas proceedings, to be used solely for investigative, criminal defense, and review purposes, including review for the purpose of initiating a criminal proceeding or related habeas proceeding, and may not be disseminated further. The "defense team" includes, but is not limited to, all of the following: attorneys, investigators, experts, paralegals, support staff, interns, students, and state and privately funded legal assistance projects hired or consulted for the purposes of investigation, defense, appeal, or writ of habeas corpus on behalf of the person accused of killing the victim; and,

   c) To civil litigants in a cause of action related to the victim's death with a court order and proper legal notice, to be used solely to be used solely to pursue the cause of action.

3) States that nothing in this section prohibits the use of autopsy reports and evidence in relation to court proceedings.

4) Provides that a qualifying family member may not request the sealing of an autopsy who has been charged with an act in furtherance of the victim's death.

5) Provides that if an autopsy report and the evidence associated with the examination of the victim has been sealed, a qualifying family member may request that the seal be removed, and the request shall be adjudicated, as specified.

6) Provides that this section does not apply if a public agency has independently determined that under the Public Records Act (PRA) the autopsy report may not be disclosed because it is an investigative file. In that instance a person seeking disclosure may seek injunctive or declaratory relief or a writ of mandate in any incompetent court to enforced his or her right to inspect or receive a copy of the public record he or she is seeking, as specified

7) States that this section does not limit the public access to information contained in the death certificate, including name, age, gender, race, date, time and location of death, the name of the physician reporting a death in the hospital, the name of the certifying pathologist, date of certification, burial information, and cause of death.

8) Defines a "qualifying family member" as the next of kin, personal representative, biological or adoptive parent, grandparent, sibling, spouse, domestic partner, or legal guardian.

EXISTING LAW:

1) Provides that, when a child under 18 years of age is killed as a result of a criminal act and a person has been convicted and sentenced for committing that criminal act, or a person has been has found to have committed the offense by the juvenile court and adjudged a ward of the juvenile court, upon the request of a qualifying family member of the deceased child, the autopsy report and the evidence associated with the examination of the victim in the possession of a public agency, as defined, shall not be disclosed, except as specified. (Code (Civ. Proc., § 130, subd. (a).)

2) Defines "qualifying family member", for the purpose of the above provision means the biological or adoptive parent, spouse, or legal guardian. (Code Civ. Proc., § 130, subd. (j)(3).)

3) Prohibits any copy or reproduction to be made of any photograph, negative, or print, including video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy. This prohibition does not apply to use in a criminal action or proceeding that relates to the death of that person, or except as a court permits, by order after good cause has been shown and after written notification of the request for the court order has been served to the district attorney, as specified. (Code Civ. Proc. § 129.)

4) Provides, under the Public Records Act (PRA), that public records of state and local agencies are open to inspection, unless exempt. (Government Code Section 6250 *et seq.*) The PRA provides that it shall not be construed to require disclosure of personnel, medical, or similar files, "the disclosure of which would constitute an unwarranted invasion or personal

privacy." (Government Code Section 6254(c).) Records of investigations conducted by any state or local police agency or investigatory files of those agencies are also exempt from disclosure. (Gov. Code. § Section 6254, subd. (f).)

5) Provides that public records may be exempt from disclosure by express provisions of state or federal law. (Government Code Section 6254(k).) Existing law provides that an agency shall justify withholding any record by demonstrating that it is exempt from disclosure under express provisions of law, as specified, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure. (Gov. Code, § 6255.)

6) Provides that the people have the right of access to information concerning the conduct of the people's business and, therefore, the writings of public officials and agencies shall be open to public scrutiny. The California Constitution also provides that a statute shall be broadly construed if it furthers the people's right of access and narrowly construed if it limits that right of access. (California Constitution, Article 1, Section 3.)

7) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (California Constitution, Article 1, Section 1.)

8) Provides that in order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to be treated with fairness and respect for his/her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process. (California Constitution, Article 1, Section 28(b)(1).)

9) Under existing case law, provides that coroner and autopsy reports are public records and may be exempt from disclosure under Government Code Section 6254(f) when they "constitute investigations of a suspected homicide death." (Dixon v. Superior Court, 170 Cal.App.4th 1271; Rev. denied, 2009 Cal. LEXIS 4729 (May 13, 2009).)

10) Under existing case law, provides that the intent of the PRA is to hold government accountable while still protecting individual privacy. (Rackauckas v. Superior Court (2002) 104 Cal.App.4th 169; California State University, Fresno Association v. Superior Court (2001) 90 Cal.App.4th 810.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 268 gives the grieving families of victims of crime the ability to maintain basic privacy protections for the autopsy records that result from investigations into a their loved one's cause of death. In California, if someone passes away in an unsuspicious way they will likely not have their death investigated, and their medical information remains confidential forever. However if a person's death is investigated by law enforcement, the public has the ability to access private information contained in government records that often intrudes on the deceased and surviving family members' privacy. Existing law addressed this for minors who lost their life to a criminal act, but still leaves exposed the records of adult victims of crime. No victim gets to choose the age at which they are violently murdered, their privacy rights and those of their family should

not expire.

"Following the Borderline Mass Shooting in Ventura County that claimed 12 lives, the County Medical Examiner was flooded with requests to access the autopsy reports of the many victims. These reports detail sensitive information, including descriptions and drawings of the crime scene including the location of victim's bodies, a complete medical history, toxicology reports, descriptions and drawings of victim's bodies, and other pieces of extremely personal information. Many of these requests were filed by individuals without any connection whatsoever to the victims, following a common tactic of conspiracy theorists or potential 'copycats' who may use the information as a blueprint for their own acts of violence. This bill strikes a balance between the public's right to information and a crime victim's privacy by allowing families to petition a court to seal the records while preserving access to the coroners' records for specific requestors with a demonstrated need to know, all while keeping death certificate information like the cause and manner of death available to all."

2) **Autopsy Reports are Public Records**: The Public Records Act's (PRA) declares that, "mindful of the right of privacy," "access to information concerning the conduct of the people's business is a fundamental and necessary right" of the public. (Gov. Code, § 6250.) In addition, the California Constitution underscores the people's right of access to information. Under Proposition 59, which voters approved in 2004, the constitution states that a statute shall be broadly construed if it furthers the people's right of access and narrowly construed if it limits access.

The PRA sets forth the procedure for disclosure of public records. The law vests in public agencies the duty to make determinations regarding whether records should be disclosed, and states that an agency shall not outsource that determination. (Gov. Code, § 6253.3.)

Autopsy and coroner reports are public records that have long been disclosed in California. They are the official government death record and are typically disclosed to the public upon request. In 2018, the Legislature passed SB 1421 (Skinner), Chapter 998, Statutes of 2018, to specifically mandate the disclosure of autopsy reports, and the time of disclosure, when there is an incident involving a peace officer's use of force. (Pen. Code, § 832.7, subd. (b)(2).) SB 1421 specifically stated that its provisions applied "notwithstanding any other law," including the investigatory records exemption in Gov. Code Section 6254, subd. (f). Previous court cases have recognized that a police agency may withhold an autopsy report as an investigatory record, if the exemption applies. However, the investigatory records exemption does not permit withhold an autopsy report when Penal Code Section 832.7 mandates disclosure.

When the law does not specifically mandate disclosure of records, a public agency has the discretionary power to deny access to, or require redaction of, those records. This includes an autopsy report; an agency can withhold some or all of an autopsy report if nondisclosure is clearly in the public interest. (Gov. Code, §§ 6253, 6255.) The PRA also provides that it shall not be construed to require the disclosure of personnel, medical, or similar files, "the disclosure of which would constitute an unwarranted invasion or personal privacy." (Gov. Code, § 6254, subd. (c).) While such information may be withheld from disclosure by an agency, the PRA "requires public agencies to use the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions." (L.A. Cty.

Bd. of Supervisors v. Superior Court, 2 Cal. 5th 282, 292 (2016).) Thus, if an autopsy report includes information that the agency believes should not be made public, it has the ability to redact those portions of the record, and produce the rest. Wholesale nondisclosure of factual death information, however, likely does not comport with the law.

3) **Recent Cases where Autopsy Reports were Disclosed**: Autopsy reports are regularly critical records in the public's understanding of various events resulting in death. In the majority of cases, the public interest mandates the disclosure of death reports because the reports reveal the cause of death of a person. This is particularly vital when the incident involves a police use of force.

   Autopsy reports were disclosed in the following incidents: in police shootings such the killing of Ezell Ford in 2014, Stephon Clark in 2018 in Sacramento, and Andres Guardado, who had five gunshot wounds in 2020. In other high-profile incidents including when John Zawahri killed five people in Santa Monica in 2013; when Elliot Roger killed six individuals in 2014 in Isla Vista; after the San Bernardino terrorism attacks in 2016; after the killings of 49 people in 2016 at the Pulse Nightclub in Florida; and after the 2019 Conception boat fire. Additionally, autopsy reports have been relevant to the public's understanding of the timeline of the spread of COVID-19 and information about resulting deaths.

4) **Right of Privacy**: Since 1968, California has limited the reproduction and distribution of death photos taken by a coroner or medical investigator. (Code of Civ. Proc., 129.) The law was passed to protect "individuals and families against unconscionable invasions of their privacy" and that "reproduction, for unrelated and improper purposes, of any photograph of the body of a deceased person taken in the course of a post mortem examination or autopsy is contrary to such a policy." Legislation in 2013 and 2016 modernized these provisions and specifically prohibited not just the reproduction, but also the distribution, of death images.

   The right of privacy is a personal right that extinguishes at death. In narrow circumstances, California law has acknowledged a family member's right of privacy is implicated by the distribution of death photos. In Catsouras v. Department of California Highway Patrol (2010) 181 Cal.App.4th 856, an 18-year old woman was killed in an automobile accident. Images of the scene were taken by two California Highway Patrol officers and posted to the internet. The survivors of the woman filed claims against the officers. A California Court of Appeal determined that the family's privacy interests were violated by the distribution of the gruesome photos because "there [was] no indication that any issue of public interest...was involved" and that the public dissemination of the photograph was a case of "pure morbidity and sensationalism without legitimate public interest or law enforcement purpose." (Id. at 874.)

   This holding is consistent with longstanding California law limiting distribution of death photos. Additionally, last year California passed AB 2655 (Gipson), Chapter 219, Statutes of 2020, prohibiting first responders, including peace officers, from capturing images of a deceased person without a legitimate law enforcement purpose. This bill was introduced after news reports that members of the Los Angeles County Sheriff's Department took and distributed photographs of bodies at the scene of the helicopter crash that killed Kobe Bryant. There were intense public outcry at the capture and distribution of these photos. However, disclosure of the autopsy report was not viewed as a privacy violation, and the reports disclosed important facts about the crash. (See Nicholas Bogel-Burroughs, Kobe Bryant

Helicopter Crash Autopsies Say Pilot Tested Negative for Drugs, New York Times, May 15, 2020, available at https://www.nytimes.com/2020/05/15/us/kobe-bryant-autopsy-report-crash.html.)

The Deceased Child Victims' Protection and Privacy Act (DCVPPA), enacted in 2011, does provide a narrow exception to the rule that autopsy reports be disclosed. It permits the family of a minor victim who is killed to ask a court to seal the minor's death report. However, after the passage of SB 1421 in 2018, the DCVPPA would not apply in a police use of force incident which resulted in the death of a minor, based on the principle that a later enacted law controls when conflicting with an earlier enacted law.

5) **Current Litigation**: In 2018, there was a mass shooting at a bar in Thousand Oaks resulting in 13 deaths, including the gunman and one officer. The autopsy reports of the gunman and officer were disclosed to the public. The County of Ventura prepared to disclose the autopsy reports of the 11 other people to the public, based on requests from local media and other for access. The County said that the records were required to be produced under existing law. Prior to the County's release of the records, the families of the 11 people filed a lawsuit to enjoin disclosure of the autopsy reports, citing a privacy interest as the basis for the lawsuit.

A trial court issued a preliminary injunction, ordering the County to refrain from producing the autopsy reports. The court said it was making its temporary ruling based on the introduction of this bill, AB 268:

"Counsel for plaintiffs has represented that Assemblywoman Irwin has introduced legislation that would amend Government Code 6250, et. seq., so as to provide plaintiffs with the relief they are seeking here. If that were to occur, it would provide plaintiffs with a more secure form of the relief they are seeking than would a judicial interpretation of the Government Code in its present form. Furthermore, if the court were to find against plaintiffs and allow the release of the autopsy reports, and then the legislature were to act in their favor, the damage would be done. Privacy once invaded cannot retroactively be again made private.

"If the legislature does not act to enact the Irwin legislation, the court will issue a ruling on the merits of the dispute. Legislation enacted by the legislature expresses a legislative intent. Failure to enact legislation does not necessarily express a legislative intent. That, however, is a discussion for another day."

This case has been appealed by the Los Angeles Times and the Ventura County Star, and is currently before the Second District Court of Appeal. (Los Angeles Times Communications LLC et l. v. Housley et al., B310585.)

6) **Argument in Support**: According to the *Ventura County Board of Supervisors*, "The County of Ventura affirmatively supports efforts to maintain the privacy of individuals after death by enhancing privacy protections for medical examiner and coroner records. Currently, a person's privacy rights under state and federal law are inconsistent. The law strongly protects the privacy of living individuals, while privacy protections for those who have died are lacking. When an autopsy is called for, the death investigation records include extensive private information, including an individual's medical and social history and often contains details about a person's financial and legal history. Not unlike medical records, a medical examiner or coroner's death investigation report contain detailed descriptions of the

decedent's body, including scars, tattoos, genitalia, in addition to the results of various medical tests. Additionally, a death investigation report will detail a person's social activities, drug use, and psychiatric history, as well as other relevant aspects of a decedent's private life. While this information is considered confidential and is protected if requested directly from medical records while the person is living, it does not have the same protections when included in a death investigation or autopsy report prepared after a person dies. The County believe this disparate treatment of records is deserving of closer examination. AB 268 offers a thoughtful yet reasonable expansion to Section 130 by including a new yet narrowly defined group of crime victims for whom a qualifying family member may request that a court seal the associated autopsy report and records. Under current law, the ability of families to request records sealing applies in cases in which the victim is under the age of 18 and where the perpetrator either has been convicted and sentenced in adult court or found to have committed the offense and subsequently adjudged a ward of the juvenile court. Under the provisions of AB 268, the avenue to enhanced privacy protections would be expanded to include cases in which persons who – irrespective of their age – are killed as the result of a criminal act, and the individual or individuals responsible for the criminal act have died. The measure continues to assure that those with a legitimate need, as defined, will have access to these records. Further, AB 268 leaves untouched the public's access to the medical examiner or coroner's findings with respect to the cause and manner of death, among other vital information, as specified."

7) **Argument in Opposition**: According to the *California News Publishers Association*, "I am writing on behalf of the California News Publishers Association to express our strong opposition to AB 268, as amended on February 25, 2021, which would prevent the public from being able to exercise their critical right to access autopsy records to report on issues that impact our communities. AB 268 would give the right to seal these critical investigative tools to family members, rather than the agencies and courts, which are properly equipped to address the competing interest for and against disclosure.

"Autopsy records are well established public records that rely on when it comes to reporting on a number of critical issues including police involved shootings, mass shootings, deaths of individuals in custody, overdoses, murders, horrific car accidents, COVID-19 deaths, and any other death where the manner and circumstances involve a matter of public concern. For example, the Ventura County Star, and other publications, regularly report on every homicide because of the impact on the community. This has led to more in depth investigation on issues ranging from the treatment of those with mental illness in police custody to dangers of underage drinking and driving to laying rumors around the deaths of celebrities to rest.

...

"We understand that the intent of this legislation is to protect the privacy of decedent and their loved ones. However, under the existing structure already provides safeguards to protect those interests. Under the current structure a report that contains information that should be withheld the holder of those records, such as the coroner, can withhold portions of the report. These types of redactions are common and provide an appropriate balance between the public's right to know and other competing interests.

"The request for records of the victims in the Borderline shooting, which are the catalyst for this bill, is making its way through the courts. The Legislature should allow this case to be

resolved in the proper forum, a court of law.

"Additionally, the Legislature specifically rejected confidentiality of autopsy reports with the enactment of SB 1421, which included the requirement for the release of autopsy reports in officer involved shootings or caused great bodily injury.

...

"While family members may not request to seal autopsies from police involved shootings or other specific, the importance of access to these records is too great to justify placing their fate in the hands of loved ones. However, the courts have held that privacy rights do not extend to surviving family members.

"In *Castouras v. Department of California Highway Patrol* (2010) 181Cal.App.4th 856, 896, the court made this distinction very clear:

"'California law clearly provides that surviving family members have no right of privacy in the context of written media discussing, or pictorial media portraying the life of a decedent. Any cause of action for invasion or privacy in that context belongs to the decedent and expires along with him or her. (*Flynn v. Higham* (1983) 149 Cal.App3d 667) The publication of death images is another matter.'

"While family member may have an interest in the disclosure of postmortem photos, those are treated distinctly from the written contents of autopsy reports. Existing law already prevents autopsy photos from being released, thus this interest has already been addressed.

...

"In conclusion, AB 268 seeks to limit access to records that are essential for reporting on issues ranging from mass shootings to overdose, when there is already a system in existing law to balance privacy and the public's constitutional right to access public records. For all these reasons, CNPA strongly opposes AB 268."

8) **Prior Legislation**:

a) SB 1421 (Skinner), Chapter 998, Statutes of 2018, established a right to access specified police records, including video or audio footage of an incident regarding police use of force that includes the discharge of a firearm or results in great bodily injury or death.

b) SB 5 (Hollingsworth), Chapter 302, Statutes of 2010, enacted the Deceased Child Victim's Protection and Privacy Act, providing that the autopsy report and evidence associated with the examination of a minor victim may be sealed upon request of a qualifying family member of the deceased minor.

REGISTERED SUPPORT / OPPOSITION:

Support

Borderline Families
Brady Campaign
Brady Campaign California
California State Coroners' Association
California State Sheriffs' Association
Ventura; County of

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
C.n.p.a. Services, INC.
California Broadcasters Association
California Public Defenders Association (CPDA)
First Amendment Coalition

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

Date of Hearing: April 6, 2021
Chief Counsel: Gregory Pagan

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

AB 667 (Irwin) – As Amended April 5, 2021

SUMMARY: Requires the Department of Justice (DOJ) to develop and implement an electronic database system that enables local law enforcement real time access to information regarding armed prohibited persons and renames the Armed Prohibited Persons File the Armed Prohibited Persons System (APPS). Specifically, **this bill**,

1) Requires the DOJ to provide all investigative notes, reports, and investigative materials to law enforcement on individuals listed to APPS to local law enforcement to assist them in the investigation of individuals who are armed and prohibited from possessing a firearm.

2) Prohibits the DOJ from requiring local law enforcement agency to enter into a memorandum of understanding, cost sharing agreement, or any other contract in order to receive information regarding armed prohibited persons.

3) Requires the DOJ, by January 1, 2023, to develop and implement an electronic database system that enables local law enforcement real time access to information regarding armed prohibited persons using third-party information software.

4) Requires DOJ, by April 1 of each year, to report to the Joint Legislative Budget Committee and the fiscal committees of each house the following:

   a) A summary of efforts of local law enforcement on reducing the APPS file or backlog, using information reported to DOJ, with a comparison of statistics between the department, local law enforcement, and joint task force efforts; and

   b) For pending cases, the DOJ shall separately report the number of cases that are unable to be cleared, unable to be located, related to out of state individuals, related to only federal firearms prohibitions, or related to incarcerated individuals.

5) States that no later than February 1of each year, every local law enforcement that receives funds from the state or DOJ specifically for APPS investigations and enforcement activities shall report to DOJ, for the immediately preceding year, the total number of individuals in the APPS within their jurisdiction and the number of cases that our active and pending, as follows:

   a) For active cases, the agency shall report the status of each case for which the agency has initiated an investigation. This information shall include, at a minimum, the number of cases that have not been investigated for 12 months or longer, along with a breakdown of the time that has elapsed since a case was added to the system;

b) Defines "investigation" to mean any work conducted by sworn or nonsworn staff to determine whether a prohibited possesses one or more firearms, whether to remove the person from the database, or shift the person to the pending case load;

c) The number of individuals within their jurisdiction added to the APPS database;

d) The number of individuals within their jurisdiction removed from the APPS database, including a breakdown of the basis on which they were removed. At a minimum, this information shall separately report those cases that were removed because the individual is deceased, had prohibitions expire or removed, or had their cases resolved as a result of agency firearm seizure activities;

e) The degree to which the backlog in the APPS has been reduced or eliminated within their jurisdiction. For purposes of this section, "backlog" means the number of cases for which the agency did not initiate an investigation within six months of the case being added to the APPS or has not completed investigatory work within six months of initiating an investigation on the case.

f) The number of individuals within their jurisdiction in the APPS before and after the relevant reporting period, including a breakdown of why each individual in the APPS is prohibited from possessing a firearm;

g) The number of agents and other staff hired for the enforcement of the APPS;

h) The number of firearms recovered due to enforcement of the APPS; and,

i) The number of contacts made during the APPS enforcement efforts.

6) Renames that the Prohibited Armed Persons File as the Armed Prohibited Persons System.

7) Deletes obsolete provisions of law.

8) Requires the DOJ, effective July 1, 2020, if a firearm precursor parts transaction is denied because the purchaser or transferee is prohibited from owning or possessing a firearm, the DOJ shall immediately notify the sheriff of the county in which the purchase or transaction was attempted.

EXISTING LAW:

1) Requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File; the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code § 30000, subd. (a).)

2) Limits access to the information contained in the Prohibited Armed Persons File to certain entities specified by law, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing

firearms. (Pen. Code § 30000, subd. (b).)

3) Requires that upon entry into the Automated Criminal History System of a disposition for a specified conviction or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System (NICS), the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (a).)

4) Requires that upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (b).)

5) Establishes the Prohibited Armed Persons File which requires the DOJ, once it has a determination that a subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration, to enter the following information into the file:

   a) The subject's name;

   b) The subject's date of birth;

   c) The subject's physical description;

   d) Any other identifying information regarding the subject that is deemed necessary by the Attorney General;

   e) The basis of the firearms possession prohibition; and,

   f) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System. (Pen. Code § 30005, subd. (c).)

6) Requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number; California identification card number; or, military identification number. A copy of the DROS, containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, and 28215.)

7) Appropriates $24,000,000 from the Dealers' Record of Sale (DROS) Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons.

(Pen. Code § 30015, subd. (a).)

8) Requires the DOJ to submit an annual report to the Joint Legislative Budget Committee from March 1, 2015 until March 1, 2019 with all of the following information:
   a) The degree to which the backlog in the APPS has been reduced or eliminated;

   b) The number of agents hired for enforcement of the APPS;

   c) The number of people cleared from the APPS;

   d) The number of people added to the APPS;

   e) The number of people in the APPS before and after the relevant reporting period, including a breakdown of why each person in the APPS is prohibited from possessing a firearm;

   f) The number of firearms recovered due to enforcement of the APPS;

   g) The number of contacts made during the APPS enforcement efforts; and,

h) Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog. (Pen. Code § 30015, subds. (b) and (c).)

9) Requires the Attorney General to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm. (Pen. Code § 30010.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In recent years, more subjects were removed from the Armed Prohibited Persons System (APPS) due to death or their prohibition expiring than have been removed by the DOJ. Despite receiving millions of dollars in additional funding in recent years, high rates of vacancies and turnover among special agents have prevented the Department from keeping pace with the growing number of prohibited possessors resulting from increased firearm sales.

   "This downward trend over the last several years underlines the need for a new approach and is why, in the 2019-2020 Budget Act, the state appropriated $3 million to fund pilot programs that enable local law enforcement agencies to conduct APPS investigations in four jurisdictions. Through frequent contact with members of the community, local peace officers possess valuable, on-the-ground knowledge that will aid in the investigation of APPS subjects and are already showing promising results in their ability to confiscate guns from dangerous individuals.

   "AB 667 will enhance the pilot counties' ability to conduct investigations by mandating DOJ share their investigative notes, reports, and other materials which will enable the pilot counties to identify failed prior attempts and adjust their investigations accordingly. The bill

also requires by 2023 for the DOJ to implement an electronic database for this information, to ease access on local law enforcement and lessen the burden on DOJ of sending individual records.

"The bill also requires counties to report their APPS related activity to DOJ for inclusion in their annual report. This data will allow for a comparison of effort between statewide and local enforcement, and provide a full picture of the State's progress towards disarming dangerous prohibited individuals."

2) **Background on APPS**: Existing law requires the DOJ to maintain a "Prohibited Armed Persons File," also known as the Armed and Prohibited Persons System (APPS) program. APPS went into effect in December 2006. California is the only state in the nation with an automated system for tracking firearm owners who might fall into a prohibited status.

   APPS is maintained and enforced by the Bureau of Firearms (BOF) within DOJ. BOF is responsible for education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. The purpose of APPS is to disarm individuals who are legally prohibited from possessing a firearm. These individuals include convicted felons and persons convicted of certain misdemeanor offenses for domestic violence, individuals suffering from mental illness, and others. APPS tracks subjects who lawfully purchased firearms, but then illegally retained their firearms after falling into a prohibited category. APPS cross-references firearms owners across the state against criminal history records, mental health records, and restraining orders to identify individuals who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. This is a proactive way to prevent crime and reduce violence, including incidents of domestic violence.

3) **Prior Legislation**.

   a) AB 340 (Irwin), of the 2019 Legislative Session, authorized a county or counties to establish and implement a Disarming Prohibited Persons Taskforce (DPPT) program, for the purpose of investigating and assisting in the prosecution of individuals who are armed and prohibited from possessing a firearm; also required the DOJ to award grants to jurisdictions that establish DPPT teams upon appropriation by the Legislature. AB 340 was vetoed by the Governor

   b) AB 1999 (Achadjian), Chapter 638, Statutes of 2016 required the DOJ to both complete an initial review of a match in the APPS within seven days of the match being placed in the queue, and periodically reassess whether the department can complete reviews of APPS matches more efficiently.

   c) SB 580 (Jackson), of the 2013-2014 Legislative Session, would have would appropriated the sum of $5,000,000 from the FSESF to the DOJ to contract with local law enforcement agencies to reduce the backlog of individuals who are identified by APPS as illegally possessing firearms. This bill died in the Assembly Committee on Appropriations.

   d) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated $24 million from the DROS Special Account to the DOJ for costs associated with regulatory and enforcement of illegal possession of firearms by prohibited persons.

4) **Argument in Support:** According to the *County of Ventura*, "AB 667 takes additional steps to improve and ensure that weapons stay out of the hands of individuals with prohibited status. It would harmonize statutory references to the Armed Prohibited Persons System (APPS) and, importantly, would require the DOJ to share additional investigative information, as specified, with local law enforcement with respect to individuals listed in the APPS. Further, AB 667 would require that by January 1, 2023 establish an online database to give local law enforcement agencies real-time access to APPS information. Finally this measure would recast APPS reporting requirements to the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Ventura

Opposition

None

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

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

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

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

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

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

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

4) Makes legislative findings and declarations.

EXISTING LAW:

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

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

   b) Be at least 18 years of age.

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

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

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

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

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

3) Requires the following evaluations:

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

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

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

Date of Hearing: April 6, 2021
Counsel: Matthew Fleming

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

AB 655 (Kalra) – As Amended March 25, 2021

SUMMARY: Requires public agencies employing peace officers to investigate current and prospective peace officers regarding engagement in hate groups, participation in hate group activities, or public expressions of hate, as specified, and provides that certain findings of those investigations would constitute grounds for denial or termination of employment as a peace officer. Specifically, **this bill**:

1) Requires that any background investigation of a candidate for a peace officer position shall include an inquiry into whether the candidate is currently, or has in the past, previous seven years and while 18 years of age or older, engaged in membership in a hate group, participation in hate group activities, or public expressions of hate.

2) Provides that a finding during a pre-employment background investigation of present or past participation in hate group activities shall be grounds for denial of employment as a peace officer.

3) Requires any public agency that employs peace officers to investigate, or cause to be investigated by the appropriate oversight agency, any internal complaint or complaint from a member of the public that alleges, with sufficient particularity to investigate the matter, that a peace officer employed by that agency is currently, or has in the past, previous seven years and while 18 years of age or older, engaged in membership in a hate group, participation in hate group activities, or public expressions of hate.

4) Provides that a sustained complaint of membership in a hate group, participation in hate group activities, or public expressions of hate shall be grounds for termination of employment as a peace officer.

5) Provides that the Department of Justice (DOJ) shall adopt and promulgate guidelines for the investigation and adjudication of complaints that a peace officer has engaged in membership in a hate group, participation in hate group activities, or public expressions of hate.

6) Provides that any record relating to an investigation of a complaint described above in which a sustained finding was made by the public agency or oversight agency that a peace officer has engaged in membership in a hate group, participation in hate group activities, or public expressions of hate shall not be confidential and shall be made available for public inspection.

7) Provides that the a record made available for public inspection pursuant to these provisions may be redacted as follows:

a) To remove personal data or information, such as a home address, telephone number, or identities of family members;

b) To preserve the anonymity of complainants and witnesses;

c) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers; and,

d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer or another person.

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

a) "Genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group: killing or causing serious bodily or mental harm to members of the group, deliberately inflicting conditions of life calculated to bring about the physical destruction, in whole or in part, of the group, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group;

b) "Hate group" means an organization that, based upon its official statements, principles, or activities, supports, advocates for, threatens, or practices the genocide of, or violence towards, any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability;

c) "Membership in a hate group" means being, or holding oneself out as, an official member of a group, and can be indicated by actions or evidence including, without limitation, submitting an application for membership in a group, being listed on an official group membership roster, or publicly wearing or otherwise displaying any tattoo, uniform, insignia, flag, or logo that is reserved for members of the group;

d) "Participation in hate group activities" means active and direct involvement in, or coordination or facilitation of, acts of violence by hate group members;

e) "Peace officer" means a person described within Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who provides uniformed police services to members of the public and includes, without limitation, members of a municipal police department, a county sheriff's department, the California Highway Patrol, the University of California, California State University, or any California Community College police department, and the police department of any school district, transit district, park district, or port authority. "Peace officer" also includes any state or local correctional or custodial officer, and any parole or probation officer;

f) "Public expression of hate" means any explicit expression, either on duty or off duty and while identifying oneself as, or reasonably identifiable by others as, a peace officer, in a public forum, on social media including in a private discussion forum, in writing, or in

speech, advocating for, supporting, or threatening the genocide of, or violence towards, any individual or group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability.

g) "Public expression of hate" also includes the public display of any tattoo, uniform, insignia, flag, or logo that indicates support for the genocide of, or violence towards, any group of persons based upon race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability;

h) "Public expression of hate" does not include visiting the website of a hate group, or any single, isolated comment posted on an online forum, chatroom, or other electronic or social media operated by a hate group; and,

i) "Sustained" means a final determination by the investigating agency following an investigation, or, if adverse action is taken, a final determination by a commission, board, hearing officer, or arbitrator, as applicable, following an opportunity for an administrative appeal, as specified, , that the allegation is true.

9) Makes Legislative findings and declarations.

EXISTING LAW:

1) Provides that Congress shall make no law abridging the freedom of speech. (U.S. Const. Amend. I.)

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

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

4) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

5) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)

4) Provides that once the initial basic peace officer training is completed, specified peace officers who adhere to the standards approved by the Commission on Peace Officer Standards and Training (POST) shall be required to complete a refresher course on racial and identity profiling, including implicit bias, every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural

trends. (Pen. Code, § 13519.4, subd, (i).)

5) Requires each state and local agency that employs peace officers shall annually report data to the Department of Justice (DOJ) on all stops conducted by that agency's peace officers. (Gov. Code, § 12525.5, subd. (a)(1).)

6) Specifies that each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more, but less than 1,000, peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more, but less than 667, peace officers shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more, but less than 334, peace officers shall issue its first round of reports on or before April 1, 2023. (Gov. Code, § 12525.5, subd. (a)(2).)

7) Requires the reporting to include the following information for each stop:
   a) The reason for the stop;
   b) The result of the stop, such as no action, warning, citation, property seizure, or arrest;
   c) If a warning or citation was issued, the warning provided or violation cited;
   d) If an arrest was made, the offense charged;
   e) The perceived race or ethnicity, gender, and approximate age of the person stopped. The identification of these characteristics shall be based on the observation and perception of the peace officer making the stop. For auto stops, this requirement applies only to the driver unless actions taken by the officer apply in relation to a passenger, in which case his or her characteristics shall also be reported.
   f) Actions taken by the officer during the stop, including, but not limited to, the following:
      i) Whether the officer asked for consent to search the person, and if so, whether consent was provided;
      ii) Whether the officer searched the person or any property, and if so, the basis for the search, and the type of contraband or evidence discovered, if any; and,
      iii) Whether the officer seized any property and, if so, the type of property that was seized, and the basis for seizing the property. (Gov. Code, § 12525.5 (b).)
8) Provides that if more than one peace officer performs a stop, only one officer is required to collect and report the necessary information. (Gov. Code, § 12525.5 (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "To combat the infiltration of extremists in our law enforcement agencies, the CLEAR Act would ensure all peace officers in the state of California applying for employment undergo a background check that includes examining whether the officer holds official membership in a hate group or participated in public expressions of hate or violence. Further, discovery of these expressions, membership, or participation with hate groups can become grounds for disciplinary review and termination. By rooting out those who would jeopardize public safety with extremist and violent behavior, these much needed parameters will also increase public trust in law enforcement."

2) **The Need for this Bill**: Existing law requires that peace officers be free from bias on account of race or ethnicity, gender, nationality, religion, disability, or sexual orientation that

might adversely affect the exercise of the powers of a peace officer. In addition, POST provides mandatory training for peace officers on implicit bias. Despite these statutory requirements, there have been numerous allegations and findings regarding law enforcement involvement and cooperation with racist individuals and organizations.

Materials submitted by the sponsor of this bill identify the following incidents as having taken place in California or at the federal level, with supporting documentation:

- In 1991, a federal court judge in Los Angeles found that members of a local sheriff's department had formed a neo-Nazi gang (the "Vikings") and habitually terrorized black and Latino residents.

- In 2015 and 2016, texting and email scandals, where officers exchanged brutally racist and homophobic messages recently plagued police and sheriff's departments in Oakland, San Francisco, San José, and Los Angeles.

- In 2018, Sacramento police officers were found to have worked with white supremacists to identify "anti-racist" activists and target them following a rally. Officers expressed sympathy for white supremacy organizers and sought to use law enforcement tools to protect their identities.

- In 2019, Border Patrol Chief Carla Provost admitted to being a member of Facebook groups created by Border Agents where "a constant stream of racist, sexist, and violent images persisted for years." In the backdrop, (1) acting director of US Citizenship and Immigration Services suggested in August that U.S. immigration is intended for "Europeans," who can "stand on their own two feet;" and (2) immigrant populations (including legal asylum seekers) continue to be targeted, at times fatally, for detention, deportation, and family separation by these and related federal agencies.

- In 2020, an Orange County sheriff's deputy was put on leave and under investigation for wearing patches on his uniform from the right wing extremist Oath Keepers and Three Percenters during protests over the killing of George Floyd in Minneapolis.

This bill would require that a candidate for a peace officer position be investigated for any current or past participation in a hate group, or for making any public expression of hate. The investigation would be limited to those actions which took place within the last seven years and would only include activity and statements made subsequent to the candidate's 18th birthday. The bill defines hate groups and public expressions of hate as requiring the advocacy or threat of genocide or violence on account of race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability. The bill would also require any sufficiently detailed complaint against a current peace officer regarding participation in the same kind of activity to be investigated, and if the complaint were sustained it would constitute grounds for termination of employment as a peace officer. Finally, the bill would make the records of a sustained finding of any such complaint shall be made available for public inspection.

3) **First Amendment Considerations**: Both the United States Constitution and the California Constitution guarantee the right to freedom of speech. That right, however, is qualified for

public employees. For many years, "the unchallenged dogma was that a public employee had no right to object to conditions placed upon the terms of employment – including those which restricted the exercise of constitutional rights." (*See Connick v. Myers*, 461 U.S. 138, 143.) That view has become more nuanced over time, and it is now clear that there are circumstances in which a public employee, such as a peace officer, can object to conditions of employment that abridge their constitutional rights like the freedom of speech.

In *Garcetti v. Ceballos* (2006) 547 U.S. 410, the United States Supreme court set the current standard to trigger First Amendment protection for government employee speech. To be protected, the speech must clear three hurdles: 1) it must be about a matter of public concern; 2) it must be made as a private citizen and not as part of the employee's official duties; and 3) the interests of the employee in the speech must outweigh the interests of the employer in the safe, efficient, and effective accomplishment of its mission and purpose. (*City of San Diego v. Roe* (2004) 543 U.S. 77, 80 (there must be a sufficient nexus between the officer's conduct and the impact of that conduct on the agency in order to discipline the officer without violating the officer's First Amendment rights).)

The third requirement is the most difficult for police officers to overcome in light of the public safety mission and purpose of a law enforcement agency:

> "The effectiveness of a city's police department depends on the perception in the community that it enforces the law fairly, even-handedly, and without bias . . . If the department treats a segment of the population of any race, religion, gender, national origin, sexual preference, etc., with contempt, so that the particular minority comes to regard the police as oppressor rather than protector, respect for law enforcement is eroded and the ability of the police to do its work in the community is impaired." (*Papps v. Giuliani* (2nd Cir. 2002) 290 F.3d 143.)

As introduced, this bill would have more broadly defined hate speech and hate groups to include those which advocated for the denial of constitutional rights on account of race, religion, etc. It also would have allowed for termination and denial of employment based on events that happened at any point in time, as opposed to being limited to those which happened within the past seven years and subsequent to the subject's eighteenth birthday. On March 25, the bill was amended to remove the constitutional denial of rights language and impose the prescribed time limitations. In its current form, the bill prohibits statements or participation in groups that advocate or threaten genocide or violence against a group of persons on account of their race or other immutable traits.

If the current version of the bill were to be challenged in court, the legal question presented would probably be whether an off-duty officer's freedom to make statements or participate in a group that advocates or threatens genocide or violence against a group on account of race, religion, race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, or disability, outweighs the governmental interest in ensuring that the police are perceived as enforcing the law fairly, even-handedly, and without bias. The current version of the bill appears to better fit within the constraints of the First Amendment, as explained by the courts.

4) **Argument in Support**: According to the bill's co-sponsor, the *California Faculty Association*: "The California Faculty Association (CFA) … is proud to co-sponsor AB 655 (Kalra), the California Law Enforcement Accountability Reform Act (CLEAR Act), a bill that will combat the infiltration of extremists in law enforcement.

"After the insurrection we witnessed on January 6, 2021 at the U.S. Capitol building by right wing extremists with the apparent cooperation, participation, and support of some law enforcement and military personnel, the threat that extremist infiltration poses to equal justice and the rule of law is more evident than ever before. Continued failure to address extremism, racism, and bias among peace officers contributes to the erosion of public confidence in the legitimacy and fairness of our justice system.

"The CLEAR Act would ensure that candidates applying for employment as peace officers in the state of California undergo a background check that includes screening whether that individual holds official membership in a hate group or has participated in public expressions of hate or violence. Additionally, discovery of these expressions, membership, or participation with hate groups can become grounds for disciplinary review and termination of peace officers.

"CFA is a racial/social justice organization. We believe that AB 655 will increase public trust in law enforcement as it roots out those who would jeopardize public safety with extremist and violent behavior.

5) **Argument in Opposition**: According to the *Eagle Forum of California*: "The First Amendment protects our right to practice our religion and the freedom of speech. AB 655 appears to be a blatant unconstitutional violation of those rights and abuse of power by our elected representatives.

"We are concerned by the broad, vague and arbitrary definition of what constitutes hate speech and hate organizations. Individuals and/or organizations who hold different political or religious beliefs could be arbitrarily declared hateful.

"According to the Cato Institute Oct. 2017 study by Emily Ekins, "It is difficult to agree on a definition of hate speech, and consequently it may be hard to regulate. The idea of upholding free speech protection but also banning hate speech may work better in theory than in practice; 59%of American say people should be allowed to express unpopular opinions in public, even those that are deeply offensive to other people. The majority of Americans don't want to fire people from their jobs because of their political beliefs."

6) **Prior Legislation**:

a) AB 243 (Kamlager), of the 2019 – 2020 Legislative Session, would have required specified peace officers to complete refresher training on racial and identity profiling, including implicit bias, at least every two years rather than five years. AB 243 was held in the Senate Appropriations Committee.

b) SB 767 (Skinner), of the 2019 – 2020 Legislative Session, would have expanded the categories of personnel records of peace officers and custodial officers that are subject to disclosure under the California Public Records Act (CPRA), and established civil

penalties for untimely disclosure, and prohibits assertion of the attorney-client privilege to limit disclosure of factual information and billing records. AB 767 did not receive a concurrence hearing on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Faculty Association (Co-Sponsor)
San Jose State University Human Rights Institute (Co-Sponsor)
Asian Law Alliance
Bill Wilson Center
California Attorneys for Criminal Justice
California Central Valley Journey for Justice
California Immigrant Policy Center
California LA Raza Lawyers Association
California Prison Focus
California Public Defenders Association (CPDA)
Cancer Carepoint
Catholic Charities of Santa Clara County
East Bay Community Law Center
Equality California
Giffords
International Human Rights Clinic At Santa Clara Law
LA Raza Roundtable De California
National Association of Social Workers, California Chapter
North Bay Jobs With Justice
North Bay Organizing Project
Oakland Police Commission
Progressive Democrats for Social Justice
San Francisco District Attorney's Office
San Francisco Public Defender
San Jose Peace and Justice Center
Santa Clara County LA Raza Lawyers Association
Silicon Valley De-bug
Sonoma County Black Coalition
Sonoma County Commission on Human Rights
Sonoma County Democratic Party
Vital Immigrant Defense Advocacy and Services
Ywca Berkeley/Oakland

3 Private Individuals

Oppose

California Correctional Peace Officers Association
Eagle Forum of California
Pacific Justice Institute

Siskiyou Conservative Republicans

5 Private Individuals

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

Date of Hearing: April 6, 2021
Counsel: Cheryl Anderson

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

AB 333 (Kamlager) – As Amended March 30, 2021

SUMMARY: Redefines the terms "pattern of criminal gang activity" and "criminal street gang" for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related. Specifically, **this bill**:

(1) Requires that the offenses used to establish a "pattern of criminal gang activity" have commonly benefited at least one specified member of the gang other than the person who committed the offenses and that the common benefit from the offenses be more than reputational.

(2) Removes burglary, looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a "pattern of criminal gang activity."

(3) Prohibits the use of the currently charged crime to prove the "pattern of criminal gang activity."

(4) Requires the prosecution to prove that the defendant knows the person or people who committed the offenses used to establish the "pattern of criminal gang activity."

(5) Requires the prosecution to prove that the person or people who committed the offenses used to establish a "pattern of criminal gang activity" was or were a member of the criminal street gang subset at the time those offenses were committed, and that the offenses were committed for the benefit of, at the direction of, or in association with, the criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by members of the criminal street gang at issue.

(6) Requires the prosecution to prove that the offenses used to establish a "pattern of criminal gang activity" were committed within three years of the date of the current offense.

(7) Redefines "criminal street gang" to require the prosecution to prove an established hierarchy and that the members collectively engage in, or have engaged in, "a pattern of criminal gang activity."

(8) Requires, if requested by the defense in a case where a gang enhancement is alleged, that the defendant's guilt of the underlying offense first be proved and that a separate proceeding on the enhancement occur after a finding of guilt.

(9) Requires that a gang offense be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. The charge may be tried in the same proceeding as a gang enhancement or alternate penalty.

(10) Includes findings and declarations.

EXISTING LAW:

(1) Enacts the California Street Terrorism Enforcement and Prevention (STEP) Act which seeks the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. (Pen. Code, §§ 186.20 & 186.21.)

(2) Defines a "criminal street gang" as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more enumerated criminal offenses, having a common name or identifying sign or symbol, and whose members individually or collectively engage in a pattern of criminal gang activity. (Pen. Code § 186.22, subd. (f).)

(3) Provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who willfully promotes, furthers, or assists, in any felonious conduct by members of that gang, shall be punished by imprisonment in a country jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code § 186.22, subd. (a).)

(4) Provides that, except as specified, any person who is convicted of a felony committed for the benefits of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction for a felony, receive a sentence enhancement of two, three, or four years, in the court's discretion. (Pen. Code §186.22, subd. (b)(1)-(2).)

(5) Requires, until January 1, 2022, the court to select the sentence enhancement that, in the court's discretion, best serves the interests of justice, as specified. Requires, as of January 1, 2022, the court to order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. (Pen. Code §186.22, subd. (b)(3).)

(6) Specifies the enhanced punishment for specific felony offense, as follows:

(a) For a serious felony, five years;

(b) For a violent felony, ten years;

(c) For home invasion, carjacking, or shooting from a vehicle, a minimum of 15 years-to-life;

(d) For extortion or intimidation of a witness, a minimum of seven years-to-life; and,

(e) For any other felony punishable in the state prison for life, a minimum of 15 years before parole eligibility. (Pen. Code §186.22, subd. (b)(4).)

(7) Provides that if the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of the gang offense, or in cases involving a true finding of the gang enhancement, the court must require that the defendant serve a minimum of 180 days in a county jail. (Pen. Code §186.22, subd. (c).)

(8) Provides that any person who is convicted of an offense punishable as a felony or a misdemeanor (wobbler), which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail. (Pen. Code §186.22, subd. (d).)

(9) Defines "pattern of criminal gang activity" as the commission of, attempted commission of, conspiracy to commit, or solicitation of, or conviction of two or more enumerated offenses, provided at least one of the offenses occurred after the effective date of the statute and that the last of the offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons. (Pen. Code §186.22, subd. (e).)

(10) Authorizes the court, notwithstanding any other law, to strike the additional punishment for the gang enhancement or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served. (Pen. Code §186.22, subd. (g).)

(11) Enacts a number of public safety provisions, including increased penalties for gang-related crimes, creation of a new crime of conspiracy related to gang activity, and required registration for adults and minors who have been convicted of participation in a street gang, or where the gang enhancement was found to be true. (Proposition 21, approved by voters in the March 7, 2000 election.)

(12) Provides that a prior conviction enhancement allegation, except for the issue of identity, must be tried by the same jury deciding the issue of guilt. (Pen. Code § 1025.)

(13) Gives the court broad authority to conduct criminal trials, including the authority to bifurcate trial issues. (Pen. Code, § 1044; *People v. Calderon* (1994) 9 Cal.4th 69, 72, 74-75.)

(14) Requires, when a defendant pleads not guilty by reason of insanity, the guilt and sanity phase to be tried in separate phases. (Pen. Code, § 1026.)

(15) Provides for a bifurcated trial process in determining guilt separately from punishment in cases where the death penalty may be imposed. (Pen. Code, § 190.1.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "As a sitting Member of the Committee on Revision of the Penal Code, I listened to expert testimony detailing how gang enhancements are rarely applied toward the most serious and violent offenses. Often applied toward misdemeanor offenses, they disproportionately affect people of color. AB 333 will advance the movements toward criminal, racial and social justice by ensuring gang enhancements are only used when necessary and fair."

2) **The Gang Statute (STEP Act)**: "In 1988, the Legislature enacted the California Street Terrorism Enforcement and Prevention Act (the STEP Act). (§ 186.20 et seq.)" (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1047.) The underlying purpose of the STEP Act was to eradicate criminal activity by street gangs. (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1129.)

   Penal Code Section 186.22 has three separate charging provisions. First, subdivision (a) of the statute contains the criminal offense of gang participation. It prohibits actively participating in a criminal street gang combined with willfully promoting, furthering, or assisting in any felonious conduct by members of that gang. The gravamen of the offense is the "participation in the gang itself." (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467, fns. omitted.)

   The second provision is an enhancement allegation contained in subdivision (b)(1). If pleaded and proved, it increases the sentence for an underlying felony. The allegation is applicable to any felony "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members."

   The third, subdivision (d) of the statute, is an alternate penalty allegation which technically applies to all felonies and misdemeanors "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members," but whose practical application is to raise the sentences only for gang-related misdemeanors.

3) **"Criminal Street Gang" and "Pattern of Criminal Gang Activity" Components of the Gang Statute**: The "criminal street gang" component (i.e., the gang's existence) applies to all three gang provisions. The statute "defines 'criminal street gang' as any ongoing association that consists of three or more persons, that has a common name or common identifying sign or symbol, that has as one of its 'primary activities' the commission of certain specified criminal offenses, and that engages through its members in a 'pattern of criminal gang activity.' ([§ 186.22], subd. (f), italics [omitted].) A gang engages in a 'pattern of criminal gang activity' when its members participate in 'two or more' specified criminal offenses (the so-called 'predicate offenses') that are committed within a certain time frame and 'on separate occasions, or by two or more persons.' (*Id.*, subd. (e).)" (*People v. Loeun* (1997) 17 Cal.4th 1, 4.)

A "pattern of criminal gang activity" can be proven, among other things, through evidence of the charged offense and another offense committed on a prior occasion by the defendant's fellow gang member. (*People v. Gardeley* (1996) 14 Cal.4th 605, 625, disapproved on another ground in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13.)

Where the prosecution's theory of the existence of a criminal street gang turns on the existence and conduct of one or more gang subsets — for example, when "the prosecution seeks to prove the street gang enhancement by showing a defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets" — then the prosecution must prove an associational or organizational connection between the gang and the subsets. (*People v. Prunty* (2015) 62 Cal.4th59, 67-68.) According to the Court:

> In certain circumstances, gangs may constitute loosely coupled, amorphous organizations that routinely operate covertly. [Citations.] Prosecutors need not—and in some cases, could not—show that these groups resemble formally structured, hierarchical enterprises such as businesses or professional associations.

(*People v. Prunty, supra*, 62 Cal.4th at 77.)

Because the gang offense punishes "any" felonious conduct committed by two or more gang members, the felonious criminal conduct underlying active gang participation does not have to be gang-related, or committed for the benefit of a gang. (*People v. Albillar* (2010) 51 Cal.4th 47, 55.) On the other hand, it is well-established that the gang enhancement allegation under Penal Code section 186.22, subdivision (b)(1) does require that the crime must be gang-related. (*People v. Albillar, supra,* 51 Cal.4th at p. 60.) The alternate penalty provision under Penal Code section 186,22, subdivision (d) also applies to a gang-related crime. (*People v. Briceno* (2004) 34 Cal.4th 451, 459.)

A crime is not gang-related simply because it is committed by gang members. (*People v. Albillar, supra,* 51 Cal.4th at p 60.) However, where an expert opines that "particular criminal conduct benefited a gang by enhancing its reputation for viciousness[, this] can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a[] criminal street gang' within the meaning of section 186.22[, subdivision](b)(1)." (*Id.* at p. 63.) "However, the expert's testimony must be grounded in admissible evidence to impose a gang enhancement. '[P]urely conclusory and factually unsupported opinions' that the charged crimes are for the benefit of the gang because committing crimes enhances the gang's reputation are insufficient to support a gang enhancement. [Citation omitted.]" (*People v. Kopp* (2019) 38 Cal.App.5th 47, 70, citing *People v. Ramirez* (2016) 244 Cal.App.4th 800, 819–820 [concluding that opinion evidence that all violent crimes committed by Sureño members benefit the Sureños because they increase the Sureños' reputation made no sense].)

This bill would redefine the terms "pattern of criminal gang activity" and "criminal street gang." In doing so, this bill would limit the scope of who may be considered to be from the same criminal street gang, would require proof of organization (an established hierachary), and would require that the theory of benefit to the gang be more than a benefit to the gang's

reputation. Additionally, the bill would remove several nonviolent crimes from the list of predicate offenses that define a "pattern of criminal gang activity."

4) **Bifurcation of Trial:** The court has broad authority to grant bifurcation when requested. (Pen. Code, § 1044.) In cases where gang evidence is to be introduced, the California Supreme Court has acknowledged that such evidence could be highly prejudicial:

> The predicate offenses offered to establish a "pattern of criminal gang activity" (§ 186.22, subd. (e)) need not be related to the crime, or even the defendant, and evidence of such offenses may be unduly prejudicial, thus warranting bifurcation. Moreover, some of the other gang evidence, even as it relates to the defendant, may be so extraordinarily prejudicial, and of so little relevance to guilt, that it threatens to sway the jury to convict regardless of the defendant's actual guilt.

(*People v. Hernandez* (2004) 33 Cal. 4th 1040, 1049.) To mitigate the prejudice to the defendant, the Court held that a trial court has the discretion, but is not required, to bifurcate the trial on the gang enhancement, thereby allowing the prejudicial gang evidence to be introduced only after the defendant has been convicted of the underlying crime. (*Ibid.*)

However, requests for bifurcation are rarely granted. (Yoshino, *California's Criminal Gang Enhancements: Lessons from Interviews with Practitioners* (2008) 18 So.Cal. L.Rev. 117, 137, fn. omitted.) Even when the gang evidence is prejudicial, other factors favor joinder resulting in a denial of the request for bifurcation: "Trial of the counts together ordinarily avoids the increased expenditure of funds and judicial resources which may result if the charges were to be tried in two or more separate trials." (*People v. Hernandez*, *supra*, 33 Cal. 4th 1050 citing *Frank v. Superior Court* (1989) 48 Cal.3d 632, 639.)

This bill would require bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

5) **Committee on Revision of the Penal Code**: On January 1, 2020, the Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee's objectives are as follows:

> Simplify and rationalize the substance of criminal law;
>
> Simplify and rationalize criminal procedures;
>
> Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and,
>
> Improve the system of parole and probation.

(Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

In its first annual report, the Committee noted:

> …Black and Latinx people comprise 92% of the people sentenced under California's gang enhancement statute. The racial disparity is even starker in the state's largest jurisdiction: Over 98% of people sentenced to prison for a gang enhancement in Los Angeles are people of color. Yet research shows that white people make up the largest group of youth gang members. It is difficult to imagine a statute, especially one that imposes criminal punishments, with a more disparate racial impact.

(http://clrc.ca.gov/CRPC.html [as of 3/20/2021] at p. 44, fn. omitted.) The Committee further noted:

> All 50 states and the District of Columbia have enacted some form of anti-gang measures.
>
> But in comparison to California, other states require more evidence of connection or organization between gang members for gang enhancements to apply. For example, in Illinois, to qualify as a criminal street gang, it must be shown that a group has "an established hierarchy. In Arkansas, a person commits the offense of engaging in a criminal gang when they commit two or more predicate offenses "in concert" with two or more other persons. In Maryland, a "criminal organization" is required to have an "organizational or command structure," and to convict a person of participating in a criminal organization, the prosecution must prove the defendant had knowledge of the pattern of criminality of members of the gang.
>
> Other state courts have treated expert witness testimony about an accused's gang membership with caution and required such testimony to be closely connected to direct evidence. For example, the Minnesota Supreme Court has warned "that criminal gang involvement is an element of the crime does not open the door to unlimited expert testimony," and gang activity must therefore be proven by "firsthand knowledge." New Mexico's Supreme Court reached a similar result.
>
> At least three states (Indiana, Tennessee, and Rhode Island) require gang enhancements to be proven in a separate phase of trial.

(http://clrc.ca.gov/CRPC.html, *supra,* at p. 47, fn. omitted.)

The Committee recommended the following:

> Focus the definition of "criminal street gang" to target organized, violent enterprises.
>
> Remove nonviolent property crimes from the list of predicate gang-related felonies.
>
> Require the defendant to know the person responsible for any predicate gang-related offense.

> Prohibit use of the current offense as proof of a "pattern" of criminal gang activity.
>
> Require direct evidence of current and active gang involvement and violence, and limit expert witness testimony.
>
> Bifurcate direct evidence of gang involvement from the guilt determination trial.

(http://clrc.ca.gov/CRPC.html , *supra*, at p. 44.)

Along the lines of the Committee's recommendations, this bill would redefine the term "criminal street gang" (see Pen. Code, § 186.22, subd. (f)) which is a component of all three provisions of the gang statute (see Pen. Code, § 186.22, subds. (a), (b), & (d)). In particular, this bill's definition of "criminal street gang" would include a requirement that the prosecution prove that the organization, association or group of three or more persons has an "established hierarchy." It would also require the prosecution to prove the members collectively, rather than individually, engage in, or have engaged in a "pattern of criminal gang activity."

The bill would also redefine "pattern of criminal gang activity" (see Pen. Code, § 186.22, subd. (e)) which implicates all three provisions of the gang statute (see Pen. Code, § 186.22, subds. (a), (b), & (d)). To begin, the bill would remove several non-violent theft crimes from the enumerated predicate offenses necessary to establish a pattern – burglary, looting, felony vandalism, and specified personal identity fraud violations. Further, the predicate offenses used to establish the pattern would have to have commonly benefited at least one specified gang member other than the defendant charged, and the common benefit must have been "more than reputational."

In order to prove a "pattern of criminal gang activity," the prosecution would also have to prove the defendant knows the person or people who committed the predicate offenses. And the prosecution would have to prove that the person or persons who committed the predicate offenses were members of the criminal street gang at the time those offenses were committed, and that those offenses were committed for the benefit of, at the direction of, or in association with, the criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by members of the criminal street gang at issue. Additionally, the predicate offenses must have been committed within three years of the current offense.

Lastly, this bill would require an alleged gang enhancement or alternate penalty to be tried separately from the underlying offense, if the defense requests it. A gang offense would have to be separately tried from other counts that do not require gang evidence as an element of the crime. The gang offense could, however, be tried together with a gang enhancement or alternate penalty.

6) **Argument in Support**: According to the *Young Women's Freedom Center*, a co-sponsor of this bill: "California's gang enhancement laws have caused immeasurable damage to our communities by criminalizing culture and relationships among people in low-income Black and Latino communities. While no empirical studies have been conducted to show that gang enhancements deter crime or violence, it is well documented that they have been applied

inconsistently and disproportionately against people of color: 92% of people who receive gang enhancements are people of color. Gang enhancements have been the drivers of mass incarceration because of their vague definitions and weak standards of proof. They are responsible for the collective trauma of countless families and communities and are used as bargaining tools by the prosecution to seek longer sentences.

"AB 333 is an important step forward to undoing the harm of gang enhancements by addressing several damaging effects of 'gang evidence' at trial and narrowing the applicability of such evidence.

"First, AB 333 limits the possibility of a charged person being convicted based on mere rumor, speculation, and conjecture. Current law allows a person to be convicted of a gang enhancement based largely on speculation that the type of offense they are being charged with boosts the reputation of an alleged gang. AB 333 prevents such an assumption by requiring evidence that the offense was committed with the goal of benefitting the alleged gang.

"Second, AB 333 safeguards against someone's prior convictions being used to convict another person – even though the two may have never even met. Under current law, a 'pattern of gang activity' can be established by the evidence of another person's previous convictions who are alleged to be from the same gang as the currently charged individual. This has led to absurd results, where gang enhancements are common for people who have never even met each other. AB 333 ends prosecutors' ability to claim people are gang members simply because they may come from the same community, be related, or know each other.

"Third, AB 333 protects against wrongful convictions based on what would otherwise be inadmissible 'character evidence.' Under current law, 'gang evidence' can be presented at the same time a jury is deciding if the charged person is even guilty of the charges against them. This evidence can consist of decades-old alleged prison or street gang criminal history, is often racially discriminatory, is almost entirely from biased law enforcement 'gang experts', and often has nothing to do with the actual defendant or the alleged crime.

"Research shows how prejudicial 'gang evidence' is. In many cases, 'gang evidence' not only taints the perception of the jury against the defendant but causes racial fear-mongering. One study found that just mentioning a person was seen near gang members increased guilty verdicts from 44% to 60%, and saying the defendant was a member of a gang increased guilty verdicts to 63%.[1] The only way to avoid wrongful convictions based on highly prejudicial 'gang evidence' is to present that evidence *after* the jury decides if the charged person is guilty of anything at all. Furthermore, in many cases, 'gang evidence' from different cases is presented during trials that have nothing to do with the current case. To address this, AB 333 requires that the guilt phase of the trial be separated or 'bifurcated' from the gang allegations portion of a trial.

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[1] "Eisen, M. et al. (2013). Examining the Prejudicial Effects of Gang Evidence on Jurors. J. Forensic Psych, Practice."

"AB 333 will help to curtail the disproportionate effect of gang enhancements on communities of color. These enhancements are often charged against young people merely because of where they live and grew up. Law enforcement 'gang experts" often refer to 'gangs', communities of color, and racial groups synonymously, using residence, cultural identity and social justice themes as evidence of a person's involvement in a gang. Social relationships between members of the same ethnic group, within the same community, and even within family members are often deemed as gang-related. Gang enhancements significantly increase penalties faced by people of color, sometimes doubling, tripling, quadrupling or imposing a life sentence that would otherwise be unavailable for the charged offense."

7) **Argument in Opposition**: According to the *San Diego Deputy District Attorneys Association*: "This bill eviscerates the current Penal Code section 186.22(b) gang enhancement that is a critical tool in curbing gang violence....

[¶]...[¶]

"Requiring that the charged defendant "know" the people used for pattern of criminal activity is unduly onerous, does nothing to protect the charged defendant, and potentially prejudices the defendant on trial

"AB 333 requires that the prosecution prove *beyond a reasonable doubt* that the charged defendant knows the people in the two certified prior convictions. This is unnecessary and especially onerous. First, it is unnecessary because two prior convictions are needed to establish the existence of the criminal street gang itself, and these predicate crimes have nothing to do with the current charged crime or gang allegation. Second, proving that someone "knows" another person who may have been separately convicted of a gang-related crime sounds great in theory, but it is completely irrelevant and superfluous. Is it enough that the two are in photographs together? How does a prosecutor prove this fact beyond a reasonable doubt?

"Moreover, this requirement would have an adverse impact on the stated goal of AB333 and would in fact be more prejudicial to the defendant on trial. In order to ensure a fair trial, it is often the common practice of prosecutors to intentionally *not* use predicate offense convictions that bear any ties to the defendant on trial so as to clearly delineate the separate legal purpose for which those other convictions are being introduced – simply establishing the existence of the gang as a whole, not proving the guilt of the accused on trial. Adding this proposed knowledge requirement will then lead to the defendant being more closely associated with other persons who have committed felony offenses that establish the pattern of criminal activity, and would increase the potential prejudice to the defendant on trial. Finally, adding this additional requirement does nothing to protect the charged defendant from being wrongly convicted of a gang enhancement.

"The new bill illogically requires bifurcation of the gang enhancement from the underlying charge, doing so will dramatically increase the costs to the court system and unduly consume valuable judicial resources

"Requiring that the People first prove the substantive charge, for example, a murder, before proving up the gang allegation is illogical. Murders for the benefit of the gang or murders in

association with other gang members are often done for a singular gang purpose. The very motive for the murder is gang-related. For example, the murder may be a retaliation killing of a rival gang member, or an internal gang dispute where a member is killed for a perceived slight. It is impossible to excise the motive from a gang retaliation murder. Motive, under the law, can be one type of evidence of guilt. When a charged defendant pleads not guilty, the People have an obligation to put on all evidence that demonstrates guilt, including motive evidence. This bill strips the People from being able to prove their case beyond a reasonable doubt.

"Perhaps the more devastating impact of mandatory bifurcation of the gang enhancement is the increased cost and consumption of valuable court resources that would result if all this state's courthouses were required to extend the length of trials and potentially empanel separate juries to make separate determinations of guilt for the underlying crimes and the truth of the gang allegations. Our courts are cash-strapped as it is, and the significant backlog of cases due to the COVID pandemic and resulting health and safety protocols currently makes it all the more difficult to operate in the justice system. Adding an additional financial burden to the judicial system under the current crises with little to no benefit to the defendant on trial is unwise and misplaced.

"Requiring a common benefit to another gang member and that the common benefit be more than reputational misunderstands the primary motivations and operations inherent within violent street gang culture

"Gang crimes oftentimes only make sense when one begins to understand the motivations and operations of a person who commits a crime for the benefit of, in association with, or at the direction of a violent criminal street gang. Fear and intimidation of the surrounding community where the gang operates tends to be the primary motivation behind all gang-related crimes. Respect within this narrow subculture is often synonymous with fear and intimidation imposed upon crime victims, witnesses, and the gang's very own community. Excising this primary benefit from a jury's consideration in determining whether the charged defendant committed the crime to benefit the gang marginalizes the very communities that experience that fear and intimidation that results from gang violence."

8) **Related Legislation**:

a) SB 481 (Durazo), amends Proposition 21 by extending resentencing provisions to certain inmates serving a sentence of life without the possibility of parole for gang-related murder. SB 481was referred to the Senate Committee on Public Safety on March 18, 2021.

9) **Prior Legislation**:

a) SB 516 (Skinner), of the 2019-2020 Legislative Session, would have required gang enhancements to be tried in separate phases from other criminal charges that do not require gang evidence. SB 516 was held on the Senate Committee on Appropriations' suspense file.

b) AB 264 (Low), Chapter 270, Statutes of 2017, required the court to consider issuing a restraining order for up to 10 years in gang cases, and expanded the court's authority to issue post-conviction restraining orders to cover witnesses to the qualifying crimes.

c) AB 1123 (Patterson), of the 2013-2014 Legislative Session, would have abrogated a California Supreme Court case by redefining the term "criminal conduct by members of a gang" for the purposes of the crime of active participation in a criminal street gang. AB 1123 failed passage in this committee.

d) SB 296 (Wright), of the 2011-2012 Legislative Session, would have established a process whereby a person subject to a gang injunction could petition for a hearing for exemption or relief from the injunction in whole or in part, and would have required that the person seeking relief establish that he or she was not a gang member, had not supported acts prohibited by the injunction, and had not within three years obtained gang tattoos, been arrested or been documented to have associated with gang members. SB 296 was vetoed by the Governor.

e) AB 2590 (Feuer), of the 2007-2008 Legislative Session, would have revised the definition of "criminal street gang" and "active participant" for the purposes of the STEP Act. AB 2590 was held on the Assembly Committee on Appropriations' suspense file.

f) Proposition 21, of the March 7, 2000 election, enacted a number of public safety provisions, including several gang provisions. Proposition 21 increased penalties for gang-related crimes, created a new crime of conspiracy related to gang activity, and required registration for adults and minors who have been convicted of participation in a street gang, or where the gang enhancement was found to be true.

g) SB 1555 (Robbins), Chapter 1256, Statutes of 1987, and AB 2013 (Moore), Chapter 1242, Statutes of 1877, both enacted the STEP Act. Both bills were signed by the Governor on the same day, but SB 1555 was chaptered last.

REGISTERED SUPPORT / OPPOSITION:

Support

Nextgen California (Sponsor)
Anti-recidivism Coalition (Co-Sponsor)
San Francisco Public Defender (Co-Sponsor)
Silicon Valley De-bug (Co-Sponsor)
Young Women's Freedom Center (Co-Sponsor)
A New Way of Life Re-entry Project
Alliance for Boys and Men of Color
American Civil Liberties Union
Asian Americans Advancing Justice - California
Asian Solidarity Collective
Brotherhood Crusade
Building Justice San Diego (homework San Diego)
California Attorneys for Criminal Justice

California Coalition for Women Prisoners
California Immigrant Policy Center
California Public Defenders Association (CPDA)
California United for a Responsible Budget (CURB)
Californians for Safety and Justice
Center on Policy Initiatives
Ceres Policy Research
Change Begins With Me Indivisible Group
Chrysalis Center
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources Advocacy and Services
Community Solutions for Children, Families and Individuals
Courage California
Criminal Justice Clinic, UC Irvine School of Law
Cure California
East Bay Community Law Center
Ella Baker Center for Human Rights
Fresno Barrios Unidos
Homeboy Industries
Immigrant Legal Resource Center
Initiate Justice
Insight Center for Community Economic Development
Kern County Participatory Defense
LA Defensa
Legal Services for Prisoners With Children
National Association of Social Workers, California Chapter
National Center for Youth Law
People's Collective for Justice and Liberation
Pillars of The Community
Prison Yoga Project
Re:store Justice
Rubicon Programs
San Diego County Building & Construction Trades Council
San Francisco Taxpayers for Public Safety
San Mateo County Participatory Defense
Secure Justice
Showing Up for Racial Justice (SURJ) At Sacred Heart in San Jose
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County
Smart Justice California
Starting Over INC.
Success Stories Program
Team Justice
The W. Haywood Burns Institute
Think Dignity
UC Berkeley's Underground Scholars Initiative (USI)
Uncommon Law
Underground Scholars Initiative Berkeley
Uprise Theatre

Urban Peace Institute
We the People - San Diego
Youth Alive!

20 Private Individuals

Opposition

California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
City of Placentia
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Riverside Sheriffs' Association
San Diegans Against Crime
San Diego Deputy District Attorneys Association
Santa Ana Police Officers Association

2 private individuals

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

Date of Hearing: April 6, 2021
Counsel: Cheryl Anderson

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

AB 282 (Lackey) – As Introduced January 21, 2021

As Proposed to be Amended in Committee

SUMMARY: Prohibits a judge from offering misdemeanor diversion to a person charged with driving under the influence of drugs and/or alcohol (DUI).

EXISTING LAW:

1) Authorizes a superior court judge to offer diversion to a person charged with a misdemeanor over the objection of a prosecuting attorney (court initiated misdemeanor diversion), except that a defendant may not be offered diversion for any of the following currently charged offenses:

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

   b) A domestic violence offense – i.e., the willful infliction of corporal injury resulting in a traumatic condition upon a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, former cohabitant, fiancé or fiancee, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship;

   c) A domestic battery offense – i.e., battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé or fiancee, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship; and,

   d) Stalking. (Pen. Code, § 1001.95, subds. (a) & (e).)

2) Provides that a judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation. (Pen. Code, § 1001.95, subd. (b).)

3) States that if the defendant has complied with the imposed terms and conditions, at the end of the diversion period, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95, subd. (c).)

4) Requires the court to provide the defendant notice and hold a hearing to determine whether criminal proceedings should be reinstated if it appears to the court that the defendant is not complying with the terms and conditions of diversion. If the court finds that the defendant

has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. (Pen. Code, § 1001.95, subd. (d).)

5) Provides that in order for a defendant who is diverted pursuant to this provision to have their action dismissed, the defendant must complete all conditions ordered by the court, make full restitution, and comply with any court-ordered protective order, stay-away order, or order prohibiting firearm possession. However, a defendant's inability to pay restitution due to indigence cannot be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. (Pen. Code, § 1001.96.)

6) States that upon successful completion of the court-ordered terms, conditions, or programs of diversion, the arrest upon which diversion was imposed shall be deemed to never have occurred. The defendant may indicate in response to any question concerning their prior criminal record that they were not arrested. (Pen. Code, § 1001.97, subd. (a).)

7) Prohibits, without the defendant's consent, using a record pertaining to an arrest resulting in successful completion of diversion in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.97, subd. (a).)

8) Requires that the defendant be advised that, regardless of their successful completion of diversion, the arrest on which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding the foregoing provisions, the defendant is not relieved of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined. (Pen. Code, § 1001.97, subd. (b).)

9) Authorizes the prosecution to approve a pretrial diversion program for misdemeanor offenses. (Pen. Code, §§ 1001.2, subd. (b) & 1001.50, subd. (b).)

10) Defines "pretrial diversion" as the procedure of postponing prosecution either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.50, subd. (c).)

11) Provides that to be eligible for a prosecution-approved misdemeanor diversion program, all of the following must apply to the defendant:

    a) The defendant has not ever had probation or parole revoked without thereafter being completed;

    b) The defendant has not participated in a diversion program within the previous five years; and,

    c) The defendant has never been convicted of a felony, and has not been convicted of a misdemeanor within the previous five years. (Pen. Code, § 1001.51, subd. (a).)

12) Specifies that a prosecution-approved misdemeanor diversion program does not apply to DUI offenses. (Pen. Code, § 1001.51, subd. (b).)

13) Excludes defendants from a prosecution-approved misdemeanor diversion program where the accusatory pleading charges the commission of a misdemeanor:

   a) Which requires incarceration upon conviction;

   b) Which requires sex offender registration upon conviction;

   c) Which the magistrate determined should be prosecuted as a misdemeanor, as specified;

   d) Which involves the use of force or violence against a person, unless the charge is a simple assault or battery;

   e) For which the granting of probation is prohibited; or,

   f) Which is a driving offense punishable as a misdemeanor, as specified. (Pen. Code, § 1001.51, subd. (c).)

14) Specifies that when a person is charged with a DUI offense, the court shall not suspend or dismiss the criminal proceedings because the defendant participates in education, training, or treatment programs. (Veh. Code, § 23640.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "In a time when our nation desperately needs healing, we must send a message that we remain tough on serious crime and committed to victims' rights, especially victims of hate crimes DUIs, child abuse, and elder abuse. This bill brings us one step closer to building a society we know we can and must be. This bill also answers the Governor's call to exclude DUIs from diversion eligibility."

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

3) **Prosecution Approved Misdemeanor Diversion Programs**: There are multiple diversion programs under existing law, including a prosecution approved diversion program for misdemeanors generally. (Pen. Code, § 1001 et. seq.) The Legislature has authorized the prosecution to approve a local misdemeanor diversion program. (See Pen. Code, §§ 1001-1001.9, 1001.50-1001.55.) No program can continue without the approval of the prosecution. And no person can be diverted under a diversion program unless it has been approved by the prosecution. (Pen. Code, §§ 1001.2, subdivision (b), 1001.50, subdivision (b); *People v. Marroquin* (2017) 15 Cal.App.5th Supplement 1, 37.) However, the prosecution is not

authorized to determine whether a particular defendant shall be diverted. (Pen. Code, § 1001.2.)

A prosecution approved misdemeanor diversion program has a number of exclusions. (Pen. Code, § 1001.51, subds. (b) & (c).) Ineligible misdemeanor offenses include those which require registration as a sex offender and involve use of force other than simple assault and battery. Also ineligible are offenses for which probation is prohibited and for which incarceration is mandatory, as well as certain Vehicle Code offenses. (*Ibid.*) DUI offenses are expressly excluded. (Pen. Code, § 1001.51, subd. (b).) There are also requirements in order to be eligible, including that the defendant has not been granted diversion within five years of the current charges filed, the defendant has never been convicted of a felony or convicted of a misdemeanor within the preceding five years, and the defendant has never had their probation or parole revoked without thereafter successfully completing it. (Pen. Code, § 1001.51, subd. (a).)

4) **AB 3234 – Court Initiated Misdemeanor Diversion**: AB 3234 (Ting), Chapter 334, Statutes of 2020, created a court initiated misdemeanor diversion program. (Pen. Code, §§ 1001.95-1001.97.) Under this program, a superior court judge is authorized to divert a misdemeanor defendant outside of a prosecutor approved program. Unlike existing prosecutor approved misdemeanor diversion programs, the court initiated program has no requirements for the defendant to satisfy in order to be eligible. However, several offenses are excluded from court initiated misdemeanor diversion; domestic violence, stalking, and registrable sex offenses are ineligible.

   Though whether or not to divert otherwise eligible misdemeanor defendants is in the court's discretion, that judicial discretion is not without limits. "[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russel* (1968) 69 Cal.2d 187, 195.) A trial court abuses its discretion when it exceeds the bounds of reason, all of the circumstances before it being considered. (*Id.* at p. 194.)

5) **Need to Clarify Whether a DUI Offense is Ineligible for Court Initiated Misdemeanor Divsion:** Vehicle Code section 23640 prohibits diversion for anyone charged with a DUI offense (Veh. Code, §§ 23152, 23153). The court-initiated diversion statute does not mention this rule. (Pen. Code, § 1101.95.)

   When originally enacted, California's military diversion statute (Pen. Code, § 1001.80) contained a similar omission with respect to DUI offenses. (Stats. 2014, ch. 658, § 1.) In grappling with the military diversion statute and Vehicle Code section 23640, the state courts of appeal issued conflicting opinions. Division One of the Fourth Appellate District held that Vehicle Code section 23640 prohibits diversion pursuant to Penal Code section 1001.80 for defendants charged with DUI offenses. (*People v. VanVleck* (2016) 2 Cal.App.5th 355, rev. gtd. Nov. 16, 2016, S237219.) Division Four of the Second Appellate District reached the opposite conclusion. (*Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275, rev. gtd. Nov. 16, 2016, S237734.) The California Supreme Court took up the issue in these cases but dismissed review as moot (*Hopkins, supra*, 2 Cal.App.5th 1275, review dism. Oct. 18, 2017; *VanVleck, supra*, 2 Cal.App.5th 355, review dism. Nov, 15, 2017), after the Legislature amended the military diversion statute, effective August 7, 2017, to clarify that military

members charged with misdemeanor DUI offenses are eligible for military diversion, provided they meet specified criteria. (Stats. 2017, ch. 179, § 1.)

This bill would correct a similar ambiguity in the court initiated misdemeanor diversion statute enacted by AB 3234 – whether a misdemeanor DUI offense is eligible for court initiated diversion. Under this bill, a court would be prohibited from granting misdemeanor diversion on a DUI offense – i.e., DUIs would be ineligible for court initiated misdemeanor diversion.

This clarification is consistent with the Governor's Signing Message on AB 3234. In signing AB 3234, which created court-initiated misdemeanor diversion, the Governor expressed concern that DUI offenses were not excluded from the misdemeanor diversion program. He wrote that he would work with the Legislature to expeditiously remedy this situation. (https://www.gov.ca.gov/2020/09/30/governor-newsom-signs-critical-criminal-justice-juvenile-justice-and-policing-reform-package-including-legislation-banning-the-carotid-restraint/ [as of March 18, 2021].)

6) **Argument in Support**: According to *Mothers Against Drunk Driving*: "AB 282 would fix a law enacted last year (AB 3234) which allows for drunk and drugged drivers, regardless of first or subsequent offense, to enter into an unlimited number of diversion or plea deals. When Governor Newsom signed AB 3234 into law last year, he urged lawmakers to fix the law as it relates to impaired drivers.

"Drunk driving is still a deadly crime in California. Although drunk driving deaths have decreased by 52 percent since 1982, this violent crime has killed over 50,000 California residents in 37 years, including 949 in 2019 alone."

7) **Argument in Opposition**: According to the *American Civil Liberties Union*, "Existing law allows a judge to offer diversion to a defendant in a misdemeanor case. In a case where the judge chooses to offer diversion, the judge continues the case for a period of up to two years and orders the defendant to comply with terms, conditions or program that the judge deems appropriate. At the end of the period of diversion, if the defendant has complied with all terms and conditions, the judge dismisses the action. Defendants whose cases are diverted and monitored by the court are far less likely to reoffend, and far more likely to find employment in the future than those who are simply convicted.[1] The misdemeanor diversion statute allows judges to make individualized determinations as to the best course of action in each case, with results that are effective in protecting public safety and preventing crime.

8) **Prior Legislation**:

   a) AB 3234 (Ting), Chapter 334, Statutes of 2020, created a court-initiated misdemeanor diversion program and lowered the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20

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[1] "1 https://thecrimereport.org/2021/02/25/texas-study-shows-diversion-curbs-recidivism-strengthens-job-prospects/ [study showing the use of diversion statutes reduced likelihood of recidivism by 75% and increased likelihood of employment by 50%]"

years.

b) SB 725 (Jackson), Chapter 179, Statutes of 2017, specifies that a trial court can grant military pretrial diversion on a misdemeanor charge of driving under the influence of alcohol and/or drugs (DUI).

c) SB 1227 (Hancock), Chapter 658, Statutes of 2014, allows misdemeanor pretrial diversion for defendants who have military-service-related mental health issues.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California (Co-Sponsor)
California District Attorneys Association
California State Sheriffs' Association
Mothers Against Drunk Driving
Peace Officers Research Association of California (PORAC)
San Diego County District Attorney's Office

1 private individual

Opposition

American Civil Liberties Union
California Public Defenders Association (CPDA)
Drug Policy Alliance
San Francisco Public Defender

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

Amended Mock-up for 2021-2022 AB-282 (Lackey (A))

Mock-up based on Version Number 99 - Introduced 1/21/21
Submitted by: Cheryl Anderson, Assembly Public Safety

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

SECTION 1. Section 1001.95 of the Penal Code is amended to read:

1001.95. (a) A judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.

(b) A judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(c) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.

(d) If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

(e) A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:

(1) Any offense for which a person, if convicted, would be required to register pursuant to Section 290.

~~(2) A violation of Section 273a or 273d.~~

(3) A violation of Section 273.5.

(4) A violation of subdivision (e) of Section 243.

~~(5) A violation of Section 368.~~

~~(6) A violation of Section 422.~~

~~(7) A violation of Section 422.6.~~

(8) A violation of Section 646.9.

(9) A violation of Section 655 of the Harbors and Navigation Code, Section 23103 of the Vehicle Code, as specified in Section 23103.5 of the Vehicle Code, or Section 23152 or 23153 of the Vehicle Code.

Date of Hearing: April 6, 2021
Chief Counsel: Gregory Pagan

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

AB 669 (Lackey) – As Introduced February 12, 2021

SUMMARY: Exempts the sale or purchase of a handgun, not on the Department of Justice (DOJ) roster of not unsafe handguns, by a county probation department for use by, sold to, or purchased by any sworn member thereof who has satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST), and who as a condition of carrying that handgun, completes a live-fire qualification prescribed by their employing entity at least once every six months.

EXISTING LAW:

1) 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 Department of Justice (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 state;

   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).)

2) 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).)

3) 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.)

4) 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.)

5) 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).)

6) 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).)

7) 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).)

8) States that a handgun removed from the roster for failing the above re-testing 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).)

9) 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; and,

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).)

10) 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; and,

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, "AB 2699 (Santiago) made changes to the non-roster firearm requirements enacted in AB 2165 (Bonta) in 2016. AB 2699 inadvertently affected probation officers who are NOT required to complete the POST basic course as a condition of hire or continued employment. Instead, county Probation training requirements are mandated through Standards and Training for Corrections 'STC'. The current language prohibits Probation Officers from using non-roster firearms on duty because of the POST basic course requirement and would force Probation Departments to purchase new firearms. It would also have the long-term effect of forcing county probation departments to purchase new firearms anytime a department issued rostered firearm falls off the list and becomes a

non-roster firearm.

2) **"Unsafe" Handgun Law**: SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

   a) *Required Safety Device*: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.

   b) *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

   c) *Drop Test*: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer

3) **Failure to Pay a Fee may Result in a Weapon Being Deemed "Unsafe"**: DOJ deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, and perfectly capable of passing all three firing tests, but they are deemed "unsafe" for purposes of categorization. Many law enforcement agencies still use these weapons and there are numerous exemptions to the "unsafe" handgun law that allows those agencies to continue to use and possess them. This bill would add additional agencies to the exemptions list in order to avoid the cost of replacing firearms that are listed as "unsafe" despite being capable of complying with the firing tests.

4) **Argument in Support**: According to the *State Coalition of Probation Organizations,* "As you know, AB 669 would reinstate for county probation departments the prior requirements under AB 2165 (Bonta) which were inadvertently affected by AB 2699 (Santiago) by removing the 'Post Basic course' requirement for county probation departments thus

preventing the need for county probation departments to replace non-roster firearms that have been in use for several years.

"AB 669 will exempt sales to or purchases by a county probation department and sworn members thereof who have completed the firearms portion of a training course prescribed by POST pursuant to Section 832, and who, as a condition of carrying that handgun, completes a live-fire qualification prescribed by their employing entity at least once every six months.

"One additional benefit of AB 669 is that it would eliminate the need for probation departments to purchase new firearms because of the statutory change described, or anytime a rostered firearms falls off the list and becomes a non-roster firearms. Needless to say, the purchase of new firearms would be very costly."

5) **Argument in Opposition**: According to *Brady United Against Gun Violence*, "Law enforcement officers who have completed the entire Basic Police Officer Standards and Training Course have long been exempt from the restrictions in the Unsafe Handgun Act.

"However, in recent years, the list of exempt agencies had grown without and mandate for such training. Last year, AB 2699 closed this loophole by explicitly mandating full POST training for all law enforcement officers who seek to purchase off-roster firearms (i.e. firearms that have not been certified for sale or manufacture by the California DOJ under the UHA). AB 669 would reinstate the loophole that AB 2699 had closed by carving out an exemption from the UHA for county probation officers, allowing them to complete only the firearms portion of POST training. Notably, county probation officers are not seeking this carve-out because they *need* to carry an off-roster gun for any substantive reason or are unable to complete full POST training. Instead, they simply *prefer* models of handguns that are not one of the more than 800 on-roster models available and also *prefer* not to undergo full POST training. Brady and Brady California oppose AB 669 because it seeks to undo AB 2699 by arbitrarily exempting county probation departments and their officers from the full POST training that both protects law enforcement and mitigates risks to the public and that other law enforcement officers must complete.

"AB 669's provision to require probation officers to complete only the firearms portion of the training course in order to be exempt from the UHA – rather than the full POST training mandated by AB 2699 – will likely inject more unsafe handguns into the state, presenting a grave danger to the people of California. As AB 2699 recognized, it is essential that law enforcement officers complete the entire POST training to fully understand how to handle dangerous firearms. There have been many instances of well-trained sworn officers unintentionally firing their service weapons. Without that mandated extensive training and periodic re-training, those newly entitled to own unsafe handguns will be a greater risk to themselves and others."

REGISTERED SUPPORT / OPPOSITION:

Support

State Coalition of Probation Organizations (Sponsor)
Association of Orange County Deputy Sheriff's
Association of Probation Supervisors of Los Angeles County
Chief Probation Officers of California
El Dorado County Probation Officers Association
Fraternal Order of Police, Southern California Probation, Lodge# 702
Kern County Probation Officers Association
N. California Probation Lodge 19, California Fraternal Order of Police
Riverside Sheriffs' Association
Sacramento County Probation Association
San Joaquin County Probation Officers Association
Sutter County Probation Officers Association
Ventura County Professional Peace Officers Association

Oppose

Brady Campaign
Brady Campaign California

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

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

AB 998 (Lackey) – As Amended March 30, 2021

SUMMARY: Facilitates the sharing of mental health records of a person transferred from or between the Department of Corrections and Rehabilitation, the State Department of State Hospitals, and county agencies. Specifically, **this bill**:

1) Requires a provider of health care, a health care service plan, or a contractor to disclose mental health records, as defined, may be disclosed by a county correctional facility, county medical facility, state correctional facility, or state hospital, as required by the provisions below.

2) Establishes that that when jurisdiction of an inmate is transferred from or between the Department of Corrections and Rehabilitation, the State Department of State Hospitals, and county agencies caring for inmates, these agencies shall disclose, by electronic transmission when possible, mental health records for any transferred inmate who received mental health services while in the custody of the transferring facility. Mental health records shall be disclosed by and between a county correctional facility, county medical facility, state correctional facility, state hospital, or state-assigned mental health provider to ensure sufficient mental health history is available for the purpose of satisfying the requirements for inmate evaluations prior to the question being before the Board of Parole Hearings and to ensure the continuity of mental health treatment of an inmate being transferred between those facilities.

3) Provides that the mental health records shall be disclosed at the time of transfer or within seven days of the transfer of custody between those facilities.

4) Defines "mental health records" to include:

   a) Clinician assessments, contact notes, and progress notes;

   b) Date of mental health treatment and services;

   c) Incident reports;

   d) List of an inmate's medical conditions and medications;

   e) Psychiatrist assessments, contact notes, and progress notes; and,

   f) Suicide watch, mental health crisis, or alternative housing placement records.

5) Provides that all transmissions made pursuant to this section shall comply with the Confidentiality of Medical Information Act, the Information Practices Act of 1977, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal Health Information Technology for Economic and Clinical Health Act, and the corresponding implementing regulations relating to privacy and security in specified sections of the Code of Federal Regulations.

EXISTING LAW:

1) Provides that, as a condition of parole, a prisoner who meets the following criteria shall be provided necessary treatment by the State Department of State Hospitals as follows:

   a) The prisoner has a severe mental health disorder that is not in remission or that cannot be kept in remission without treatment.

   b) The severe mental health disorder was one of the causes of, or was an aggravating factor in, the commission of a crime for which the prisoner was sentenced to prison.

   c) The prisoner has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the prisoner's parole or release.

   d) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental health disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental health disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the prisoner's parole release day, and that by reason of the prisoner's severe mental health disorder the prisoner represents a substantial danger of physical harm to others.

   e) The crime is one of the specified crimes, including manslaughter, murder, rape, and other serious and violent crimes (Pen. Code, § 2962.)

2) Allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order the inmate to remain in custody for up to 45 days past the scheduled release date for a full MDO evaluation. (Pen. Code, § 2963.)

3) Allows the prisoner to challenge the MDO determination both administratively (a hearing before the board) and judicially (a superior court jury trial). (Pen. Code, § 2966.)

4) Requires MDO treatment to be inpatient treatment unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. (Penal Code Section 2964(a).) If the hospital does not place the parolee on outpatient treatment within 60 days of receiving custody of the parolee, they may request to hearing to determine whether outpatient treatment is appropriate. (Pen. Code, § 2964(b).)

5) Specifies that if the parolee's severe mental disorder is put into remission during the parole period and can be kept that way, the director of the hospital shall notify the BPH and shall discontinue treatment. (Pen. Code, § 2968.)

6) Allows the district attorney to file a petition with the superior court seeking a one-year extension of the MDO commitment. (Pen. Code, § 2970.)

7) Specifies that the cost of treatment for an MDO, whether inpatient or outpatient, is a state expense while the person is under the jurisdiction of either CDCR or the state hospital. (Pen. Code, § 2976.)

8) Provides that an inmate who is released on parole or post-release community supervision (PRCS) must be returned to the county that was the last legal residence of the inmate prior to his or her incarceration, as specified, except as otherwise provided. Provides that an inmate may be returned to another county if that would be in the best interests of the public. (Pen. Code, § 3003, subds. (a)-(c).)

9) Specifies the information, if available, that must be released by CDCR to local law enforcement agencies regarding a paroled inmate or inmate placed on PRCS, who is released in their jurisdictions. (Pen. Code, § 3003, subd. (e)(1).)

10) States that unless the information is unavailable, CDCR is required to electronically transmit to a county agency, the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto PRCS, for the purpose of identifying the medical and mental health needs of the individual, as specified. (Pen. Code, § 3003, subd. (e)(2)-(5).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Lack of available information should not be a reason for someone to have their mental health put in jeopardy. When health professionals do not have the required information on a patient to provide care, it hurts the patient and wastes time and money spent on another diagnosis. AB 998 will ensure that medical records follow an inmate when transferred, guaranteeing that they can get the care they need."

2) **Need for this Bill:** According to the author, "Existing law (Penal Code 2962) requires mental health evaluations of certain inmates by CDCR psychologists prior to release on parole to aid in determining if an inmate should be released into the community or needs additional treatment from the Department of State Hospitals (DSH). Among the evaluation requirements is the review of an inmate's treatment and behavior over the most recent 12-month period. At the time of the required evaluation, not all inmates have been in state custody for 12-months so psychologists performing the evaluations do not have the required records and need the records from other facilities where the inmate was prior to CDCR or DSH.

   "State correctional facilities, at times, receive mentally unstable inmates where the inmates' mental health history is not included at the time of transfer to CDCR. Not only does this

impact inmate and staff safety, but it is costly as well since many times it may result in duplicate treatment/diagnostic testing by the receiving facility. Although current law offers a variety of statutory schemes discussing the transfer of patient records for the public, none apply in a correctional setting. Having medical records transferred with the inmate will ensure the evaluators have complete records to comply with the statutory requirements, as well as provide continuity of care for inmates as they are transferred between facilities."

This bill ensures that health providers, and state and local agencies, share relevant documents about a person's mental health, wherever they are in custody.

3) **Background on the Mentally Disordered Offender Act (Pen. Code § 2960 et seq.):** A MDO commitment is a post-prison civil commitment. The MDO Act is designed to confine as mentally ill an inmate who is about to be released on parole when it is deemed that they has a mental illness which contributed to the commission of a violent crime. Rather than release the inmate to the community, CDCR paroles the inmate to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period. The MDO law actually addresses treatment in three contexts - first, as a condition of parole (Pen. Code, § 2962); then, as continued treatment for one year upon termination of parole (Pen. Code § 2970); and, finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (Pen. Code § 2972). (People v. Cobb (2010) 48 Cal.4th 243, 251.)

Penal Code section 2962 lists six criteria that must be proven for an initial MDO certification, namely, whether: (1) the inmate has a severe mental disorder; (2) the inmate used force or violence in committing the underlying offense; (3) the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the inmate was treated for the disorder for at least 90 days in the year before the inmate's release; and (6) by reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962, subds. (a)-(d); People v. Cobb, supra, 48 Cal.4th at p. 251-252.)

The initial determination that the inmate meets the MDO criteria is made administratively. The person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the DSH will evaluate the inmate. If it appears that the inmate qualifies, the chief psychiatrist then will certify to the Board of Parole Hearings (BPH) that the prisoner meets the criteria for a MDO commitment.

The inmate may request a hearing before BPH to require proof that they are a MDO. If BPH determines that the defendant is a MDO, the inmate may file, in the superior court of the county in which they are incarcerated or is being treated, a petition for a jury trial on whether they meets MDO criteria. The jury must unanimously agree beyond a reasonable doubt that the inmate is a MDO. If the jury, or the court if a jury trial is waived, reverses the determination of BPH, the court is required to stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

MDO treatment must be on an inpatient basis, unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. But if the parolee can no longer be safely and effectively treated in an outpatient program, they may be taken into

custody and placed in a secure mental health facility. A MDO commitment is for one year; however, the commitment can be extended. (Pen. Code § 2972, subd. (c).) When the individual is due to be released from parole, the state can petition to extend the MDO commitment for another year. The state can file successive petitions for further extensions, raising the prospect that, despite the completion of a prison sentence, the MDO may never be released. The trial for each one-year commitment is done according to the same standards and rules that apply to the initial trial.

4) **Argument in Support**: According to the *American Federation of State, County and Municipal Employees (AFSCME),* "In accordance with Penal Code section 2962, prior to releasing a prisoner on parole, an evaluation of the prisoner must be conducted by specified clinicians. The purpose of this evaluation is to both ensure society is protected from prisoners with dangerous mental disorders and to provide further treatment if it is necessary. The lack of adequate mental health records creates a situation that is not safe for our communities if prisoners are released on parole without proper mental health evaluations.

"AFSCME is committed to ensuring our evaluators have the tools to conduct full and complete evaluations of the inmate in accordance with Penal Code requirements so they can make fully informed recommendations about if a prisoner can safely be paroled into the community or needs further treatment from the Department of State Hospitals. There are no medical record statutes that apply to correctional settings; this lack of record accessibility creates challenges for the health professionals who are charged with reviewing records prior to parole and evaluating the prisoner.

"By sponsoring this bill, we are providing our state clinicians the tools they need to conduct a full evaluation prior to parole, ensuring parolees are not a danger to themselves or our communities."

5) **Prior Legislation**:

a) SB 591 (Galgiani), Chapter 649, Statutes of 2019, stated that a practicing psychiatrist or psychologist from the Department of State Hospital (DSH) or the California Department of Corrections and Rehabilitation (CDCR) be afforded prompt and unimpeded access to an inmate temporarily housed at a county jail, when the psychiatrist or psychologist is conducting an evaluation of the inmate as a Mentally Disordered Offender (MDO). Made changes to the process to determine whether an inmate is a MDO.

b) SB 350 (Galgiani), of the 2017-2018 Legislative Session, would have required the disclosure of medical, dental, and mental health information between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider when an inmate is transferred from or between state and county facilities, as specified. SB 350 was held in the Senate Appropriations Committee.

c) SB 1443 (Galgiani), of the 2015-2016 Legislative Session, would have permitted the sharing of medical, mental health and dental information between correctional facilities, as specified. SB 1443 was held in the Senate Appropriations Committee.

d) SB 1295 (Nielsen), Chapter 430, Statutes of 2016, authorized the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals as a MDO.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, Afl-cio (Sponsor)
California State Sheriffs' Association
National Association of Social Workers, California Chapter

Opposition

None

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

Date of Hearing: April 6, 2021
Counsel: Cheryl Anderson

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

AB 898 (Lee) – As Amended April 5, 2021

SUMMARY: Provides that if probation is transferred to another county, and a prosecutor or probation department in either county is seeking to file a petition to prohibit the Department of Justice (DOJ) from granting automatic conviction record relief, the petition must be filed in the county of current jurisdiction, and expands notice provisions regarding conviction record relief to include probation transfer cases. Specifically, **this bill**:

1) Requires DOJ, in cases where probation has been transferred, to electronically submit notice of conviction record relief to both the transferring court and any subsequent receiving court.

2) Requires a receiving court that reduces a felony to a misdemeanor or dismisses a conviction under specified provisions to provide a disposition report to DOJ with the original case number from the transferring court; DOJ must electronically submit a notice to the court that sentenced the defendant.

3) Provides that if probation was transferred multiple times, DOJ must electronically submit notice to all involved courts.

4) States that any court receiving notice of a reduction or dismissal must update its records to reflect the same.

5) Prohibits a court receiving notification of dismissal, as specified, from disclosing information concerning the dismissed conviction except to the person whose conviction was dismissed or a criminal justice agency, as specified.

6) States that a prosecuting attorney or probation department, in either the receiving county or transferring county, seeking to file a petition to prohibit the department from granting automatic conviction record relief must file the petition in the county of current jurisdiction.

7) Requires DOJ, in cases where relief is denied, to electronically submit notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts. Requires DOJ to provide similar notice if relief is subsequently granted.

8) Requires the receiving court to provide a receipt of records from the transferring court, including the new case number.

9) Provides that the transferring court must report to the DOJ that probation was transferred and identify the receiving court and new case number, if applicable.

EXISTING LAW:

1) Requires the DOJ, as of July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons with convictions that meet specified criteria and are eligible for automatic conviction record relief. (Pen. Code § 1203.425, subd. (a)(1)(A).)

2) States that a person is eligible for automatic conviction relief if they meet all of the following conditions:

   a) The person is not required to register pursuant to the Sex Offender Registration Act;

   b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

   c) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges;

   d) Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

   e) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

      i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

      ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code § 1203.425, subd. (a)(1)(A)(B).)

3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person who is eligible, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 1203.425, subd. (a)(2)(A).)

4) Requires the DOJ, as of July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 1203.425, subd. (a)(3)(A)).)

5) Allows the prosecuting attorney or probation department to, no later than 90 calendar days before the date of a person's eligibility for relief, to file a petition to prohibit the department

from granting automatic relief, based on a showing that granting the relief would pose a substantial threat to public safety. (Pen. Code § 1203.425, subd. (b)(1)).)

6) Requires the court to notify the defendant of the petition and conduct a hearing within 45 days. (Pen. Code § 1203.425, subd. (b)(2).)

7) Provides that if the court grants the petition, the court must furnish a disposition report to DOJ. (Pen. Code § 1203.425, subd. (b)(6).)

8) States that if relief is denied, but subsequently granted under a different provision, as specified, the court must submit a disposition report to the DOJ. (Pen. Code § 1203.425, subd. (b)(7).)

9) Provides, except as specified, that whenever a person is released on probation or mandatory supervision, the court, upon noticed motion, must transfer the case to the superior court in any other county in which the person resides permanently with the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines the transfer would be inappropriate and states its reasons on the record. (Pen. Code § 1203.9, subd. (a)(1).)

10) Requires law enforcement agencies to report every arrest to DOJ, and to include in the report personal identifying information and arrest data, as specified, and fingerprints, except as otherwise provided by law or as prescribed by the DOJ. (Pen. Code, § 13150, subd. (a).)

11) Requires a court to send to DOJ a disposition report regarding every case it disposes of resulting from an arrest that was reported to DOJ. The court must similarly report when it orders actions subsequent to the initial disposition of the case. (Pen. Code, § 13151, subd. (a).)

12) 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).)

13) Requires DOJ, on or before July 1, 2019, to review the records in the state summary criminal history information database and identify past marijuana convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation, as specified. Requires DOJ to notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (a).)

14) Requires the prosecution by July 1, 2020, to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation. (Health & Saf. Code, § 11361.9, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "No statutes or rules of court currently ensure that transferring and receiving courts communicate to ensure expungements and reductions of felonies to misdemeanors are correctly represented in both courts' records. Two courts become involved in a case if someone is charged in a different jurisdiction than where they live, or if they move. In these instances, the case needs to be transferred if the person is placed on formal probation. If one of the courts is not notified that someone is granted relief, publicly accessible conviction information may remain.

   "AB 898 will ensure that expungements and reductions of felonies to misdemeanors are correctly represented on a person's record if there are multiple courts involved. Currently, inaccurate publicly accessible information about a person's conviction can linger after automatic relief is granted, which can make it difficult for people to obtain employment and housing."

2) **Background**: According to information provided by the author's office:

   Two courts become involved in a case if someone is convicted in a different jurisdiction than where they live, or if they move. In these instances, the case needs to be transferred to the county of residence if the person is on formal probation, and generally, the receiving court has considered and granted criminal record relief.

   If a receiving court reduces or dismisses a conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court's case file may be inaccurate. This can make it difficult for people to obtain employment and housing, among other things. Absent statutory direction, there is no consistency among transferring and receiving courts on how records are maintained or updated when a reduction or dismissal occurs.

   In 2018 and 2019, the Legislature passed significant automated record relief bills, which transferred the burden of seeking record relief from a defendant-petitioner to government agencies. AB 1793 (Bonta; Stats. 2018, ch. 993) provided automated relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. AB 1076 (Ting; Stats. 2019, ch. 578) required the Department of Justice (DOJ) to grant automatic record relief to individuals who have completed probation without revocation and not currently serving a sentence for any offense. A court may not disclose information concerning a conviction granted automatic record relief or a dismissal under this legislation except in limited circumstances.

   Because DOJ has disposition information only from the county of conviction (the transferring court), if a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file. This inaccurate information could hamper the ability of individuals eligible for relief to obtain employment and housing, among other things.

3) **Argument in Support**: According to the California Public Defender's Association: "It is an unfortunate truth that a single arrest or conviction can act as a lifelong barrier to employment, housing, and education. The consequences of conviction are so significant, in fact, that these secondary effects are often far more severe than the actual punishment permitted by law.

"Recognizing that is not in our shared community's best interest to prevent those who have already served their time from pursing their education, finding a job, or seeking stable housing, California has long allowed Californians convicted of specified offenses to apply to the court for the expungement of their prior conviction and the sealing of related court records.

"One problem with current expungement law is that it does not take into account the way in which conviction records are kept in California. A former defendant who was supervised in two courts for the same offense, for example, may have two sets of conviction records, making the expungement of only one court's records effectively useless.

"AB 898 addresses this issue by clarifying the expungement procedure so that a defendant who was supervised for the same expungeable [*sic*] offense in two different court systems will get both sets of records sealed following the grant of an expungement order."

4) **Related Legislation**:

a) AB 1308 (Ting) allows an arrest or conviction that occurred on or after January 1, 1973, to be considered for automatic record relief. AB 1308 is pending before this committee.

b) SB 731 (Durazo) extends automatic record relief to specified felony convictions that occurred on or after January 1, 1973. SB 731 is scheduled to be heard in the Senate Committee on Public Safety on April 6, 2021.

5) **Prior Legislation**:

a) SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019.

b) AB 88 (Committee on Budget), of the 2019-2020 Legislative Session, would have adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 88 died on the Senate inactive file.

c) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires the DOJ, as of January 1, 2021, and subject to an appropriation, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and required the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

d) AB 1331 (Bonta), Chapter 581, Statutes of 2019, expanded the data that law enforcement entities are required to report to the Department of Justice related to every arrest to

include the Criminal Investigation and Identification (CII) number and incident report number.

e) AB 2978 (Ting), of the 2019-2020 Legislative Session, would have required that an arrest or conviction have occurred on or after January 1, 1973, rather than January 1, 2021, in order to be considered for automatic record relief. AB 2978 was not heard in this committee.

f) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held on the Assembly Appropriations suspense file.

g) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council of California (Sponsor)
American Civil Liberties Union
California for Safety and Justice
California Public Defenders Association (CPDA)
Initiate Justice
Re:store Justice
San Francisco Public Defender

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

Date of Hearing: April 6, 2021
Counsel: Matthew Fleming

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

AB 1223 (Levine) – As Introduced February 19, 2021

SUMMARY: Imposes a $25 excise tax on the sale of a new firearm and an excise tax in a percentage amount upon the sale of ammunition, the proceeds of which are to be deposited into the California Violence Intervention and Prevention Grant Program (CalVIP) Firearm and Ammunition Tax Fund, which the bill also creates. Specifically, **this bill**:

1) Establishes in the State Treasury the CalVIP Firearm Tax Fund to receive moneys from the $25 firearm excise tax and percentage ammunition excise tax and continuously appropriates those moneys, without regard to fiscal years, to the Board of State and Community Corrections (BSCC) for the purpose of funding grants, as specified.

2) Sunsets the Tax Fund on January 1, 2028.

3) Extends the operative date of the CalVIP program – currently due to expire on January 1, 2025 – to January 1, 2028.

4) Imposes an excise tax on every retailer upon the sale of a firearm sold as new at the rate of $25 per firearm, to be deposited into the CalVIP Firearm and Tax Fund.

5) Imposes an excise tax on every retailer upon the sale of ammunition sold at retail at the rate of __ % of the gross receipts of each ammunition sale, to be deposited into the CalVIP Firearm and Tax Fund.

6) Exempts from these taxes the sale of any firearm or ammunition purchased by any peace officer or any law enforcement agency employing that peace officer, for use in the normal course of employment.

7) Requires California Department of Tax and Fee Administration (CDTFA) to administer and collect the taxes imposed by this proposal, as specified.

8) Makes the taxes imposed by these provisions due and payable to CDTFA quarterly on or before the last day of the month next succeeding each quarterly period of three months.

9) Requires that on or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with CDTFA.

10) Requires that the taxed amounts be paid to CDTFA in the form of remittances payable to the department, and those revenues, net of refunds and costs of administration, shall be deposited in the CalVIP Firearm Tax Fund.

11) Defines the following terms for purposes of the CalVIP Firearm and Ammunition Tax:

a) "Ammunition" means a loaded cartridge consisting of a primed case, propellant, and one or more projectiles capable of being fired from a firearm. "Ammunition" includes reloaded ammunition. "Ammunition" does not include blanks;

b) "Antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898. This includes any matchlock, flintlock, percussion cap, or similar type of ignition system, or any replica thereof, whether actually manufactured before or after the year 1898, or any firearm manufactured in or before 1898 that uses fixed ammunition no longer manufactured in the United States and not readily available in the ordinary channels of commercial trade;

c) "Department" means the California Department of Tax and Fee Administration;

d) "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. "Firearm" includes only any handgun, semiautomatic shotgun, or semiautomatic rifle. "Firearm" does not include an antique firearm;

e) "Handgun" means any pistol, revolver, or firearm capable of being concealed upon the person;

f) "Law enforcement agency" means any department or agency of the state or of any county, city, or other political subdivision thereof that employs any peace officer that is authorized to carry a firearm while on duty, or any department or agency of the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in California, that employs any police officer or criminal investigator authorized to carry a firearm while on duty;

g) "Peace officer" means any person described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code that is authorized to carry a firearm on duty, or any police officer or criminal investigator employed by the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in California, that is authorized to carry a firearm while on duty;

h) "Retailer" means any person that is engaged in the business of making retail sales of goods, including firearms and ammunition, to the general public;

i) "Semiautomatic" refers to a firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger. "Semiautomatic" does not include a pump, bolt, or lever action shotgun or rifle; and,

j) "Sold as new" refers to a firearm sold by a retailer that has not previously been purchased for any purpose other than for resale.

12) Makes Legislative Findings and Declarations.

EXISTING LAW:

1) States that the Legislature may provide for property taxation of all forms of tangible personal property, and by two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. (Cal. Const., Art. XIII, § 2.)

2) Establishes the CalVIP program until January 1, 2025. (Pen. Code, §§ 14130; 14132.)

3) Authorizes DOJ to require the dealer to charge each firearm purchaser a fee not to exceed one dollar ($1), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. (Pen Code § 28225, subd. (a).)

4) States that the fee shall be no more than what is necessary to fund specified costs to the DOJ. (Pen Code § 28225, subds. (b) and (c).)

5) Authorizes DOJ to require each dealer to charge each firearm purchaser or transferee a transfer fee not to exceed one dollar ($1) for each firearm transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 23690.)

6) Authorizes DOJ to require firearms dealers to charge each person who obtains a firearm a fee not to exceed five dollars ($5) for each transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 28300.)

7) Authorizes DOJ to require a dealer to charge each firearm purchaser a fee in the amount of thirty-one dollars and nineteen cents ($31.19) to be available, upon appropriation by the Legislature, for expenditure by the department to offset the reasonable costs of firearms-related regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms. (Pen. Code § 28233.)

8) Authorizes a certified instructor of the firearm safety test to charge a fee of twenty-five dollars ($25), fifteen dollars ($15) of which is to be paid to DOJ to cover its costs in carrying out and enforcing firearms laws. (Pen. Code, § 31650.)

9) Requires various fees to be paid to the Department of Justice at the time of a firearm purchase. (Pen. Code, § 28200, et. seq.)

10) Imposes an eighteen cent ($0.18) tax on each gallon of fuel sold in the state. ((Rev. and Tax. Code, § 7360.)

11) Imposes taxes on cigarettes. (Rev. and Tax Code §§ 30101, et. seq.)

12) Imposes taxes on cannabis. (Rev. and Tax. Code §§ 34010, et. seq.)

EXISTING FEDERAL LAW:

1) Imposes a 10% tax on the manufacturer, producer, or importer of a pistol or revolver. (26 U.S.C. § 4181).

2) Imposes a 11% tax on the manufacturer, producer, or importer of a firearm other than a pistol or revolver and on shells and cartridges. (*Ibid.*)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** "Gun sales and incidents of gun violence have increased dramatically since the beginning of the Covid-19 pandemic. 2020 saw a 46 percent increase in gun homicides, and January 2021 was the deadliest month for gun homicides since 2007.

   "In 2019, Governor Gavin Newsom signed the Break the Cycle of Violence Act which codified the California Violence Intervention and Prevention (CalVIP) Grant Program to award competitive grants to this program for the purpose of violence intervention and prevention. Since 2007, the Legislature appropriated funds annually to the California Gang Reduction, Intervention and Prevention program in the State Budget, which was renamed CalVIP in 2017.

   "In 2019, these programs helped California reduce gun homicide among the high risk age group (15-29 years old) to the lowest rate since 1970. However, the CalVIP program is set to sunset on January 1, 2025 and the Governor and Legislature must allocate funding for the program each year in the budget.

   "AB 1223 will extend the CalVIP Grant Program until January 1, 2028, impose a $25 excise tax on a retailer for each new handgun, semiautomatic rifle, or shot gun sold, as well as impose an excise tax on ammunition until January 1, 2028. Funds accrued will then be deposited in the CalVIP Firearm and Ammunition Tax Fund in order to provide a reliable and continuous funding source for the CalVIP program to invest in reducing gun-related violence in our communities."

2) **CalVIP Grant Program:** From 2007 to 2017, California's Budget Acts appropriated $9.215 million per year to operate the California Gang Reduction, Intervention, and Prevention (CalGRIP) program, which provided matching grants to cities for initiatives to reduce youth and gang-related crime. The Budget Acts guaranteed $1 million annually for the City of Los Angeles, with the remainder distributed to other cities of all sizes through a competitive application process, overseen by the Board of State and Community Corrections (BSCC). In 2017, the Legislature turned CalGRIP funds into CalVIP funds by shifting the program away from initiatives targeting gang crime and affiliation toward a narrower and more objective focus on evidence-based violence prevention programs.

   The 2017 State Budget Act provided $1 million to the City of Los Angeles and $8.215 million for other cities and Community Based Organizations (CBOs) to compete for up to $500,000 each. This Act provided that CalVIP funds could be used for violence intervention and prevention activities, with preference given to applicants that proposed programs that

have been shown to be the most effective at reducing violence and to applicants in cities or regions disproportionately affected by violence. The *Giffords Center to Prevent Gun Violence* publishes additional information about CalGRIP and CalVIP legislation as well as the programs that they fund on its website. (Giffords, https://giffords.org/2017/06/calvip/.)

AB 1603 (Wicks) Chapter 735, Statutes of 2019, codified the CalVIP grant program established in the budget, providing a statutory basis for its existence. It also codified the guidelines for the application and approval of grants. This bill would create a firearm excise tax of $25 per new firearm sold as well as a percentage excise tax on the retail sale of ammunition. Those funds would then be used as a continuous source of funding for CalVIP grants through the CalVIP Firearm and Ammunition Tax Fund, independent of the budget allocations from the Legislature.

3) **Existing Fees on Firearms Purchases**: California imposes several fees upon the purchase of a new firearm in the state. The total state fee is $37.19. The Dealer Record of Sale fee (DROS) is $31.19. The DROS fee covers the costs of the required background check prior to purchase and the transfer registry. There is also a $1.00 Firearms Safety Act Fee, and a $5.00 Safety and Enforcement Fee. In the event of a private party transfer, a firearms dealer may charge an additional fee of up to $10.00 per firearm.

4) **Firearm and Ammunition Excise Tax**: California's excise taxes are flat, per-unit taxes that must be paid by the merchant before specified goods can be sold. Gasoline, cigarettes, cellphones, and cannabis are all subject to excise taxes in California. Even though excise taxes are collected from businesses, virtually all California merchants pass on the excise tax to the customer through higher prices for the taxed goods.

   This bill would imposes a $25 excise tax on the sale of a new firearm in California, and a percentage excise tax on the gross receipt from the sale of ammunition. The provisions of this bill are identical to portions of AB 18 (Levine) of the 2019 – 2020 Legislative Session. Both AB 18 and this bill were double-referred to the Committee on Revenue and Taxation. For additional analysis of this bill's tax policy implications, please refer to the analyses prepared by the Assembly Committee on Revenue and Taxation.

5) **Changes to Taxes on Personal Property Require a 2/3 Vote**: The California Constitution provides that the Legislature may impose taxes on all forms of tangible personal property. It further provides that personal property may be reclassified for differential taxation or for exemption upon a 2/3 vote of both houses. This bill has been marked as requiring a 2/3 vote because it would impose a new tax on firearms, a form of tangible personal property.

6) **Argument in Support**: According to *Giffords Law Center, et. al.*: "Gun violence is a public health, safety, and equity crisis. Amid a devastating pandemic and economic emergency, and record-setting gun sales in 2020 and 2021, communities across the nation have faced an alarming spike in shootings, homicides, and related traumas. California is no exception . . .

   "Across California, thousands of people survive shootings and other violent assaults each year. After these traumatic, life-altering events, most receive treatment for physical wounds, but are then returned to the same frightening circumstances in which they were violently attacked in the first place, while grappling with untreated trauma, toxic stress, and instability.

...

"In recent years, California has made modest but critical investments in effective, community-based responses to violence, largely through the California Violence Intervention and Prevention (CalVIP) grant program.

"CalVIP provides matching grants to community-based violence intervention efforts in communities most impacted by group-related shootings and homicides. CalVIP-supported initiatives focused on protecting and healing individuals at highest risk include hospital-based violence intervention, targeted street outreach, conflict mediation, violence preventive counseling services and peer support, relocation assistance away from dangerous circumstances, and group violence intervention "Ceasefire" initiatives.

...

"Even as CalVIP's framework has served as a national model, California's investment in violence prevention has not yet matched the enormity of the challenge our communities face, especially over the past year, or the commitment made by other states.

...

"AB 1223 (Levine) would similarly place a reasonable excise tax on sellers profiting from the commercial sale of firearms, ammunition, and ghost gun kits ("firearm precursor parts") in order to generate sustained revenue for programs that are specifically focused at remediating the devastating effects these products cause human families and communities across the state. This tax is a modest and reasonable excise tax on sellers whose lawful and legitimate commercial activity still imposes enormous harmful externalities on California's families, communities, and taxpayers.

"The modest tax proposed in this measure is smaller than the federal excise tax on other firearm and ammunition industry participants and is similarly unlikely to discourage lawful sales and commerce in firearms, ammunition, or firearm precursor parts; a research review by the Rand Corporation noted that "research suggests that moderate tax increases on guns or ammunition would do little to disrupt hunting or recreational gun use."

"As an organization dedicated to making all people safer and freer from violence, we are strongly supportive of efforts to provide sustained, meaningful investment in programs like CalVIP that are effective at interrupting cycles of gun violence and preventing shootings before they occur."

7) **Argument in Opposition**: According to *Gun Owners of California*: "We oppose this legislation from a foundational perspective in that taxing an enumerated right is not only unconstitutional, but is strongly prejudicial. Why would anyone want to penalize the law abiding, who are engaging in a perfectly legal financial transaction of a perfectly legal product? Conversely, if your proposal sought to levy a special tax on someone who had committed a crime while using a firearm, that at least bears a nexus to the problem you aim to solve. Penalizing the lawful for the misdeeds of the unlawful seems misdirected and punitive.

"If the Legislature chooses to raise and expend resources to address violence of any kind – gun-related or otherwise, shouldn't that be a cost borne by the whole of California's tax-payers – rather than singling out those who choose to purchase a firearm? After all, the overwhelming majority of firearms used in crimes are either stolen or secured on the black market by thieves. In fact, according to the 2019 U.S. Department of Justice Report on the "Source and Use of Firearms involved in Crimes" only 1.3% obtained the gun from retail source, and these people are not the ones who are committing the crimes.

"Our organization has a 40-year history of fighting for effective crime control and opposing ineffective gun control. The safety of Californians is at the very foundation of our mission, and it has been our consistent goal to work toward common sense solutions regarding the issue of crime and firearm ownership; this can be done, however, without sacrificing our Constitutional rights and the ability of the law abiding to protect their families.

8) **Prior Legislation**:

a) AB 18 (Levine) of the 2019 – 2020 Legislative Session would have imposed an excise tax in the amount of $25 on the sale of a new firearm. AB 18 was held in the Assembly Appropriations Committee.

b) AB 1603 (Wicks) Chapter 735, Statutes of 2019, codified the establishment of the California Violence Intervention and Prevention Grant Program (CalVIP) and the authority and duties of the board in administering the program, including the selection criteria for grants and reporting requirements to the Legislature.

c) AB 1669 (Bonta) Chapter 736, Statutes of 2019, among other things, increased the Dealer Record of Sale fee (DROS) for firearm purchases from $14 to $32.19

d) SB 934 (Allen), of the 2017-2018 Legislative Session, would have codified the CalVIP grant program. SB 934 died in the Senate Appropriations Committee.

e) AB 97 (Ting) Chapter 14, Statutes of 2017, was the Budget Act of 2017; among other things, provided more than nine million dollars ($9,000,000) to the Board of State and Community Corrections for the purpose of administering CalVIP grants to cities and community-based organizations for violence intervention and prevention activities.

REGISTERED SUPPORT / OPPOSITION:

Support

Advance Peace
Brady United Against Gun Violence
California Partnership for Safe Communities
City of Richmond
Community Justice Action Fund
Everytown for Gun Safety Action Fund
Fresno Barrios Unidos
Giffords Law Center

March for Our Lives California
Mom's Demand Action
National Association of Pediatric Nurse Practitioners, Los Angeles
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
Public Health Advocates
Shephat Outreach
Soledad Enrichment Action, INC.
Students Demand Action
Team Enough
Urban Peace Institute
Youth Alive!

Oppose

Black Brant Group, the
Cal-ore Wetlands and Waterfowl Council
California Bowmen Hunters/state Archery Association
California Chapter Wild Sheep Foundation
California Deer Association
California Houndsmen for Conservation
California Rifle and Pistol Association, INC.
California Sportsman's Lobby, INC.
California Waterfowl Association
Dooley Enterprises INC.
Gun Owners of California, INC.
Miwall Corp.
Nor-cal Guides and Sportsmen's Association
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)
Safari Club International - California Chapters
San Diego County Wildlife Federation
San Francisco Bay Area Chapter - Safari Club International
Suisun Resource Conservation District
Tulare Basin Wetlands Association

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

Date of Hearing: April 6, 2021
Counsel: David Billingsley

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

AB 659 (Mathis) – As Introduced February 12, 2021

SUMMARY: Creates a new misdemeanor crime by specifying that the fourth violation of illegal dumping on private property is punishable by up to 30 days in county jail and a fine of not less than $750 nor more than $3,000. Specifically, **this bill:**

1) Specifies that the fourth violation of illegal dumping (less than one cubic yard) on private property shall be a misdemeanor punishable by up to 30 days in the county jail and by a fine of not less than $750 nor more than $3,000.

2) Specifies that for the fourth or subsequent misdemeanor violation, each day that waste placed, deposited, or dumped remains shall not result in the accrual of a separate fine or violation for the purposes of punishment.

3) Provides that for the fourth or subsequent violation, if the prosecuting attorney pleads and proves the waste matter placed, deposited, or dumped includes used tires, the fine prescribed in this subdivision shall be doubled.

EXISTING LAW:

1) States that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Pen. Code, § 374.3, subd. (a).)

2) Provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (Pen. Code, § 374.3, subd. (b).)

3) States that a person violating dumping provisions is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation the law is a separate violation. (Pen. Code, § 374.3, subd. (c).)

4) Provides these provisions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined

by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (Pen. Code, § 374.3, subd. (d).)

5) Specifies a person convicted of dumping shall be punished by a mandatory fine of not less than $250 nor more than $1,000 upon a first conviction, by a mandatory fine of not less than $500 nor more than $1,500 upon a second conviction, and by a mandatory fine of not less than $750 nor more than $3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (Pen. Code, § 374.3, subd. (e).)

6) Provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (Pen. Code, § 374.3, subd. (f).)

7) States that except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that a person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (Pen. Code, § 374.3, subd. (g).)

8) States that a person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than $1,000 nor more than $3,000 upon a first conviction, not less than $3,000 nor more than $6,000 upon a second conviction, and not less than ($6,000) nor more than $10,000 upon a third or subsequent conviction.

9) Defines "commercial quantities" means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "By increasing the penalty for illegal dumping on private property from an infraction to a misdemeanor upon conviction for a 4th offense, AB 659 will protect our private lands, communities and the health of our environment. AB 659 is the next step in preserving our state's environment and supporting our agricultural businesses."

2) **AB 144 (Mathis), of the 2015-2016 Legislative Session and AB 215 (Mathis) of the 2019-2020 Legislative Session:** AB 144 contained similar provisions as this bill. AB 144 was vetoed by Governor Brown. In his veto message (which applied to a total of nine bills),

Governor Brown stated that:

> Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.
>
> Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.
>
> Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.

AB 215 (Mathis) contained the same provisions as this bill. AB 215 was held in the Assembly Appropriations Committee.

3) **This Bill Creates a New Misdemeanor:** This bill would create a new misdemeanor for conduct that is currently punished as an infraction. The provisions of this bill, would make a fourth or subsequent violation of dumping waste on private property in non-commercial amounts punishable by a misdemeanor penalty of up to 30 days in the county jail and a fine of not less than $750 and up to $3,000. As a result of imposing a misdemeanor penalty, this legislation would permit persons accused of dumping non-commercial amounts on private property to apply for the aid of a public defender. Additionally, persons charged with misdemeanor offenses may demand a jury trial in Superior Court.

   Under current law, dumping in commercial amounts (more than a cubic yard) is punished as a misdemeanor, while dumping at less than commercial amounts, is an infraction punishable with graduated fines. The existing fines for illegal, non-commercial, dumping are significant. The fines are on a graduated scale that increases for repeated violations of the law and include mandatory minimums. Currently, a fine for a 3rd or subsequent violation as an infraction is a fine not less than $750 and up to $3000.

4) **Penalty Assessments**: The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. Assuming a defendant is fined the maximum fine of $3,000 under Penal Code Section 374.3 (illegal dumping non-commercial) for a 3rd offense infraction, the following penalty assessments would be imposed pursuant to the Government and Penal codes:

Base Fine:	$3,000.00
Penal Code § 1464 assessment ($10 for every $10):	$3,000.00
Penal Code § 1465.7 assessment (20% surcharge):	$600.00

Penal Code § 1465.8 assessment ($40 per criminal offense):	$40.00
Government Code § 70372 assessment ($5 for every $10):	$1,500.00
Government Code § 70373 assessment ($35 for infraction offense):	$35.00
Government Code § 76000 assessment ($7 for every $10):	$2,100.00
Government Code § 76000.5 assessment ($2 for every $10):	$600.00
Government Code § 76104.6 assessment ($1 for every $10):	$300.00
Government Code § 76104.7 assessment ($4 for every $10):	$1,200.00
Fine with Assessments:	$12,375.00

5) **This Bill Would Punish Dumping on Private Land More Harshly Than Dumping on Public Land:** This bill seeks to make a fourth, or subsequent, offense of dumping (non-commercial amounts) on private land a misdemeanor. A fourth, or subsequent, offense of dumping (non-commercial amounts) on public land is an infraction. Such disparate treatment raises the question as to whether there exists a policy rational to justify that distinction.

6) **Argument in Support**: According to the *California Farm Bureau Federation,* "The dumping of illegal waste within rural communities, and specifically on private land, is not a rarity—mattresses, used tires, household items, hazardous waste and construction debris are often left or drift onto private lands. In response, counties and individual landholders invest significant funds to remediate. A 2006 survey conducted jointly by the California State Association of Counties, the California Integrated Waste Management Board and the League of California Cities found that 33 counties spent a combined $17,425,824 annually to combat illegal dumping. Beyond financing the clean-up, illegal dumping threatens the ability for farmers and ranchers to maintain appropriate food safety and by extension, public health. Contaminated fields essentially mean crop loss, and for organic growers, contamination may lead to lost certification that achieves over three years and thousands of dollars to obtain. The drift of waste, such as used tires in waterways within or adjacent to agricultural operation, has even broader, long-term consequences.

"While some counties have taken proactive steps to address the issue by free cleanup, waste disposal amnesty days, or vigorous public education campaigns. Often, however, the existing suite of enforcement tools are not strong enough to truly address the growing problem. AB 659 responds, by explicitly specifying the criminality of illegal dumping on private property and details the associated, mandatory fines. Only through targeted and substantial enforcement can California address these long-standing issues."

7) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, "Currently, it is an infraction to dump waste on public or private property, punishable by a fine of

up to $1,000 for a first offense with higher fines for repeat offenses. Current law also states that every day the waste remains on the property constitutes 'a separate violation' of the statute. (Pen. Code sec. 374.3(c).) As a result, a person who illegally dumps waste faces a fine of up to $1,000 for every day the waste remains on the property.

"Research shows that severity of punishment does not generally increase deterrence, but rather that certainty of punishment has a greater deterrent effect.1 A person contemplating whether to dump waste illegally does not wonder, 'How much will the fine be?' but rather, 'will I get caught?' Increasing fines and imposing misdemeanor penalties, including potential jail time for repeat offenders, will do little to reduce the frequency of illegal dumping on private property."

8) **Prior Legislation:**

a) AB 215 (Mathis), of the 2019-2020 Legislative Session, would have made the 4th or subsequent violation of dumping on private property a misdemeanor punishable by imprisonment in a county jail for not more than 30 days. AB 215 was held on the Assembly Appropriations Suspense File.

b) SB 409 (Wilk), of the 2019-2020 Legislative Session, would have made it unlawful for a property to receive waste matter if a permit or license is required from a state or local agency and was not obtained prior to receiving the waste matter. SB 409 was held in the Assembly Appropriations Committee.

c) AB 144 (Mathis), of the 2015-2016 Legislative Session, would have made the 4th or subsequent violation of dumping on private property a misdemeanor punishable by imprisonment in a county jail for not more than 30 days. AB 144 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Farm Bureau Federation
California State Sheriffs' Association
Tulare County Sheriff-coroner
U.S. Tire Manufacturers Association

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties

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

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

AB 603 (McCarty) – As Introduced February 11, 2021

SUMMARY: Requires agencies to post online, annually, specified information about money spent on law enforcement related settlements and judgments. Specifically, **this bill**:

1) Provides that on or before February 1 of each year, each municipality shall post on its internet website how much it spent on law enforcement settlements and judgments during the previous year, resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment, broken down by individual settlement or judgment.

2) Requires that for each action posted, the municipality shall include all of the following information:

   a) The court in which the action was filed;

   b) The name of the law firm representing the plaintiff;

   c) The name of the law firm or agency representing each defendant;

   d) The date the action was filed;

   e) Whether the plaintiff alleged improper police conduct, including, but not limited to, claims involving use of force, assault and battery, malicious prosecution, or false arrest or imprisonment; and,

   f) If the action has been resolved, the date on which it was resolved, the manner in which it was resolved, and whether the resolution included a payment to the plaintiff, and, if so, the amount of the payment.

3) States that if any settlements or judgments are paid for using municipal bonds, the municipality shall post on its internet website the amount of the bond, the time it will take the bond to mature, interest and fees paid on the bond, and the total future cost of the bond.

4) Requires the municipality to post on its internet website the amount of any settlements or judgments that were paid by insurance, broken down by individual settlement or judgment, and the amount of any premiums paid by the municipality for insurance against settlements or judgments resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment.

5) Requires the Transportation Agency to provide the same information with regards to the Department of the California Highway Patrol.

6) Makes legislative findings including:

   a) "Throughout the country, municipalities with the 20 largest police departments paid over $2 billion since 2015 in misconduct claims. Of those 20 municipalities, four are located in California. The County of Los Angeles paid $238,300,000, the City of Los Angeles paid $172,200,000, the City of San Francisco paid $22,000,000, and the City of San Diego paid $12,500,000."

   b) "Cities and counties typically use liability insurance or general obligation bonds procured by the municipality or state to pay for police settlements. Cities and counties pay annually for liability insurance, which is also used to cover trip-and-fall injuries and workers' compensation claims, to cover the costs of settlements involving police misconduct, brutality, or death of a civilian by a peace officer."

   c) "Therefore, it is the intent of the Legislature to enact legislation to establish transparency requirements surrounding police use of force settlements and judgments against police and sheriff's departments and the Department of the California Highway Patrol."

EXISTING LAW:

1) Declares, under the California Constitution, the people's right to transparency in government. ("The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....") (Cal. Const., Art. I, Sec. 3.)

2) Establishes the "California Public Records Act" ("CPRA") and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)

3) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6250 et seq.)

4) Provides that there are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Gov. Code, § 6254 et seq.) 5)

5) Does not require, under the CPRA, disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254, subd. (f).)

6)) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Government Code § 6255.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "For far too long, cities and counties have spent taxpayer dollars on settlements and judgments in police misconduct and excessive use of force cases without adequate public disclosure. These settlements are decided in closed sessions by city councils or boards of supervisors. In order to obtain any information about these cases, citizens, including journalists, have to file public records act requests. The onus should not be on citizens to acquire and publish this information.

"These settlements result in local jurisdictions paying out significant amounts in taxpayer dollars that could be used to fund afterschool and youth programs or to build new parks, community centers and libraries."

2) **Background**: This bill's legislative findings include the following statements: "In 2019, the City of Sacramento paid an insurance company $2,000,000 in taxpayer dollars to secure up to $35,000,000 for settlements and judgments. Among the payouts made in 2019 was the city's largest ever settlement, involving $5,200,000 for a man who was so brutally beaten by a police officer that he requires intensive, life-long medical care."

"In 2017, the Los Angeles Police Department cost taxpayers $80,000,000 settling lawsuits involving officer misconduct. Similarly, the County of Los Angeles paid out over $50,000,000 in misconduct claims from 2015 to 2016, inclusive, the majority of which were excessive force claims. Shootings alone cost the County of Los Angeles $60,000,000 between 2011 to 2016, inclusive."

"During the 2018–19 fiscal year, the County of Los Angeles paid over $16,000,000 in judgments against the Sheriff's Department, another $30,000,000 in settlements against the department, and incurred an additional $80,000,000 in litigation expenses on behalf of the department. According to the county's annual report, 'six of the nine most expensive settlements in FY 2018–19 stemmed from Law Enforcement excessive-force shooting fatalities involving the Sheriff's Department.'"

"In addition to liability insurance, the board of supervisors or city council can authorize a general obligation bond to pay for these incidents of police misconduct and brutality. These types of general obligation bonds are so common that they are called Police Brutality Bonds by the Wall Street firms who profit from them. These bonds are paid for by taxpayers and take years to pay off due to additional fees and high interest rates."

"In 2009 and 2010, the City of Los Angeles issued $71,400,000 in Police Brutality Bonds. Banks and other private firms collected more than $1,000,000 in issuance fees on these two bonds. By the time these bonds are paid off, taxpayers will have handed over more than $18,000,000 to investors—allowing Wall Street to profit from the death or serious injury of a

civilian at the hands of a police officer."

This bill would set a uniform standard in statewide and local CPRA compliance. Although existing law provides that members of the public may use the CPRA to request information about judgments and money settlements against law enforcement agencies, and all public agencies, policies and procedures, there are currently wide gaps in compliance with such requests. The records are not all currently regularly available online.

3) **Argument in Support**: According to the *American Civil Liberties Union,* "The ACLU has been one of the many advocates for further police transparency to pierce the veil of secrecy the state has provided law enforcement agencies and officers. The Right to Know Act, SB 1421 (Skinner, 2018), provided a breakthrough in this area by requiring transparency in police records relating to use of force, sexual assault, and dishonesty. Even with the passage of SB 1421, law enforcement agencies throughout the state continue to ignore current law and reject calls for transparency. AB 603 peels back another layer of the shroud of secrecy.

"Current law allows citizens to file civil suits or claims against police or sheriffs for misconduct or use of force incidents that result in death or serious bodily injury. State law stipulates officers are not responsible for the economic damages of these lawsuits. Instead, these settlements typically come from the general fund of the city involved; if the law enforcement agency itself pays, it is part of a larger line item for settling officer misconduct litigation. That means city budgets allocate funds to their law enforcement agencies with the expectation that they will be financially liable for their wrongdoing, year over year. While taxpayers pay for these settlements, the public will often hear about these settlements only from newspapers. Information about the financial implications of these police misconduct settlements is difficult to find, and frequently requires Public Records Act requests to get details.

"AB 603 requires cities, counties, and the CA Highway Patrol to post financial details about police misconduct settlements and judgments on their websites. These settlements result in local jurisdictions paying out significant amounts in taxpayer dollars that could be used to reinvest in the community. Citizens have the right to know how their city, county, and state are spending their hard-earned tax dollars. By requiring municipalities to publicly post financial details of their law enforcement use-of-force settlements, AB 603 provides much needed transparency for taxpayers on where their tax dollars are being spent."

4) **Related Legislation**: SB 16 (Skinner), would require the disclosure of police misconduct records pursuant to the CPRA. SB 16 is currently pending before the Senate Judiciary Committee.

5) **Prior Legislation**: SB 978 (Bradford), Chapter 978, Statutes of 2018, required law enforcement agencies to post online all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the CPRA.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
California Attorneys for Criminal Justice
California Immigrant Policy Center
California Public Defenders Association (CPDA)
Consumer Attorneys of California
Initiate Justice
Oakland Privacy

Opposition

None

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

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

AB 582 (Patterson) – As Introduced February 11, 2021

SUMMARY: Increases the penalties for "hit and run" resulting in death to another. Specifically, **this bill**: Increases the punishment for fleeing the scene of an accident resulting in the death of another from a "wobbler" having a maximum punishment of four years in state prison, to a "wobbler" having a maximum punishment of three, four, or six years in the state prison.

EXISTING LAW:

1) Requires the driver of a vehicle involved in an accident resulting in injury to another person to stop at the scene of the accident and to fulfill specified requirements, including providing identifying information and rendering assistance. (Veh. Code, § 20001, subd. (a).)

2) Provides that, except as specified, fleeing the scene of an accident resulting in injury to another, is punishable by 16 months, two, or three years in state prison or, by imprisonment in a county jail not to exceed one year, or by a fine of not less than $1,000 nor more than $10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subd. (b)(1).)

3) Provides that fleeing the scene of an accident which results in permanent, serious injury or death to another, is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine ranging between $1,000 and $10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subd. (b).)

4) Allows the court, in the interests of justice, to reduce or eliminate the minimum term of imprisonment required for a conviction of fleeing the scene of an accident causing death or permanent, serious injury. (Veh. Code, § 20001, subd. (b).)

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

6) Defines "gross vehicular manslaughter" as the unlawful killing of a human being, in the driving of a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or with driving a vehicle in the commission of a lawful act which might produce death, in an unlawful act, and with gross negligence. Gross vehicular manslaughter is punishable by either imprisonment in a county jail for not more than one

year, or in the state prison for two, four, or six years. (Pen. Code, § 191, subd. (c)(1).)

7) Defines "gross vehicular manslaughter while intoxicated" as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driver was under the influence of drugs or alcohol, and the killing was either the proximate result of an unlawful act not amounting to a felony, and with gross negligence, or the proximate result of a lawful act that might produce death, in an unlawful manner, and with gross negligence. Gross vehicle manslaughter while intoxicated is punishable by imprisonment in the state prison for four, six, or ten years. (Pen. Code, § 191.5, subd. (a).)

8) Provides for additional punishment when great bodily injury is inflicted during the commission of a felony not having bodily harm as an element of the offense. (Pen. Code, § 12022.7.)

9) Provides that an act or omission that is punishable in different ways by different provisions of law shall be punished under the law providing for the longest term of punishment, but in no case can the act or omission be punished under more than one law. (Pen. Code, § 654.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Last year, this Public Safety Committee realized that there is currently a perverse loophole in the law, that inadvertently encourages drivers to flee the scene of an accident – particularly if they are under the influence – rather than stay at the scene to render aid or call 911. I am so appreciative of all of the committee's work on this bill, and have brought back AB 582, Gavin's Law, to get it to the finish line this year, COVID-19 not withstanding.

   "As with 2019's AB 582, this bill is a result of the tragic hit-and-run death of Gavin Gladding, a beloved member of the Clovis community. The driver of the vehicle that killed Gavin was seen drinking at a party before the accident; however, because he fled the scene, law enforcement was unable to determine if he was under the influence at the time of the accident. He received a short sentence of 3 years in prison and served less than half of that time.

   "Often, drivers who leave the scene of an accident do so because they are under the influence of alcohol or drugs at the time and fear the consequences. To deter drivers from leaving the scene, AB 582 will increase the possible penalty for hit-and-runs resulting in great bodily injury or death. By bringing this code more into line with the penalties assessed for vehicular manslaughter and making them greater than a DUI sentence, AB 582 will encourage drivers to stay at the scene of a crime, even if they may be under the influence, as opposed to fleeing the scene. This will help ensure that justice is served in a timely and appropriate manner."

2) **Fleeing the Scene of an Accident Resulting in Injury**: Vehicle Code section 20001 is commonly known as "hit and run." To prove a violation of hit and run resulting in permanent, serious injury or death the prosecution must establish that: (1) the defendant was involved in a vehicle accident while driving; (2) the accident caused permanent, serious injury or death to another; (3) the defendant knew that he or she was involved in an accident

that injured another person, or knew from the nature of the accident that it was probable that another person had been injured; and, (4) the defendant willfully failed to perform one or more duties, including immediately stopping at the scene, providing reasonable assistance to any injured person, to provide specified identifying information, and showing driver's license upon request. (See CALCRIM No. 2140.)

"The purpose of [the statute] is to prevent the driver of an automobile from leaving the scene of an accident in which he participates or is involved without proper identification and to compel necessary assistance to those who may be injured. The requirements of the statute are operative and binding on all drivers involved in an accident regardless of any question of their negligence respectively." (*People v. Scofield* (1928) 203 Cal. 703, 708.) In other words, it is not necessary to drive impaired, recklessly or negligently. These duties apply regardless of the fault of the accident.

Currently, the crime of hit and run resulting in death or permanent, serious injury is a wobbler. The crime is punishable by up to one year in jail, or up to four years in prison. (Veh. Code, § 20001, subd. (b).) This bill would increase the punishment to a maximum of six years in prison where the accident results in death.

3) **Prison Overcrowding and COVID-19**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

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

In March 2020, Gov. Gavin Newsom and then-CDCR Secretary Ralph Diaz announced plans to reduce the prison population due to COVID-19. By August 2020, California's prison population dropped below 100,000, representing the smallest prison population since 1990. (Anna Bauman, *California Prison Population Drops Below 100,000 for First Time in 30 Years*, July 30, 2020, San Francisco Chronicle, available at sfchronicle.com/crime/article/California-prison-population-drops-below-100-000-15448043.php.) As of Feb. 28, 2021, the current CDCR population is 94,607, a decrease of 28,516 from last year. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/03/Tpop1d2102.pdf)

CDCR has informed this Committee that from November 2018 through October 2019 there were 97 new admissions for a hit and run resulting in permanent, serious injury or death. For the 2020 calendar year, there were 35 counts of a new admission or parole violator for a hit and run resulting in permanent, serious injury or death. As of December 31, 2020, the total number of felony counts for CDCR's in-custody population was for principle and subordinate offenses for a hit and run resulting in permanent, serious injury or death was 263.

As noted above, this bill would increase only the punishment for hit and run causing death. Because, as drafted, the statute does not distinguish between permanent, serious injury or death, it not possible to tell exactly how many of the new admissions to CDCR involve a hit and run resulting in death.

4) **Argument in Support**: According to the *Streets Are For Everyone*, "AB 582 is named after Gavin Gladding, a beloved Clovis Unified School District Vice Principal who was tragically killed in a hit-and-run incident in 2018. Currently, the penalty for an individual who leaves the scene of a vehicle accident resulting in permanent serious injury or death is a maximum of four years and/or a fine of $1,000-$10,000.

"The potential sentence for leaving the scene of a crash is not enough to deter drivers, especially those who may be under the influence, from leaving the scene. When these drivers leave the scene, not only are they failing to render aid to any injured victim, but they are also removing evidence from the scene of a crime. Law enforcement officials are not able to conduct field sobriety tests of the driver, document his/her statement, or collect any other pertinent information and evidence, therefore hamstringing the entire investigation.

"Conversely, if someone under the influence were to stay at the scene, that person could (and likely would) then be given a longer prison sentence (possibly even twelve years or more) and/or a higher fine, than an individual who fled the scene.

"As noted by the Assembly Public Safety Committee members in 2019, there is currently a loophole in the law as it is written that inadvertently encourages someone to flee the scene of an accident, and it needs to be addressed.

"AB 582 addresses this loophole and will increase the possible penalty for hit-and-runs resulting in death to a maximum possible penalty of six years in jail. By bringing this code more in line with the penalties assessed for vehicular manslaughter, AB 582 will encourage drivers to stay at the scene of a crime, even if they may be under the influence."

5) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "This bill would unnecessarily increase the punishment for fleeing the scene of an accident that resulted in someone's death to 3, 4 or 6 years in state prison.

"Current law already imposes significant penalties for fleeing the scene of an accident that causes serious injury or death; 2, 3, or 4 years in state prison. Fundamental legal principles require any sentence to be anchored in the underlying offense. Here, the act of leaving the scene is not the cause of the injury. Instead, most of these cases involve unintentional accidents as opposed to deliberate actions with the intent to cause injuries or death.

"No one should flee the scene of an accident; however, current law sufficiently and appropriately punishes this behavior."

6) **Prior Legislation**:

a) AB 582 (Patterson), Statutes of 2019-2020, would have increased the punishment for fleeing the scene of an accident resulting in the death of another from a "wobbler" having a maximum punishment of four years in state prison, to a "wobbler" having a maximum

punishment of three, four, or six years in the state prison. AB 582 failed passage in the Senate.

b) AB 2014 (E. Garcia), of the 2017-2018 Legislative Session, would have increased the penalty for fleeing the scene of an accident resulting in death or serious bodily injury from 16 months, two or three years in state prison to two, four, or six years in state prison. AB 2014 was heard in committee for testimony, but the final hearing for vote only was cancelled at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California District Attorneys Association
California State Sheriffs' Association
Fresno County District Attorney's Office
Fresno Police Department
Fresno Police Officers Association (FPOA)
Peace Officers Research Association of California (PORAC)
Streets are For Everyone (SAFE)

Opposition

American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
California Attorneys for Criminal Justice
San Francisco Public Defender

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

Date of Hearing: April 6, 2021
Counsel: Nikki Moore

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

AB 673 (Salas) – As Introduced February 12, 2021

SUMMARY: Stipulates that the portion of any grant funding awarded through the Office of Emergency Services to local domestic violence centers that is funded by the state shall be distributed to the recipient in a single disbursement at the beginning of the grant period.

EXISTING LAW:

1) States that the Legislature finds the problem of domestic violence to be of serious and increasing magnitude; and that existing domestic violence services are underfunded and that some areas of the state are unserved or underserved. Declares that a goal or purpose of the Office of Emergency Services (OES) shall be to ensure that all victims of domestic violence served by the OES Comprehensive Statewide Domestic Violence Program receive comprehensive, quality services. (Pen. Code, § 13823.15, subd. (a).)

2) Establishes under OES a Comprehensive Statewide Domestic Violence Program; the program's goals are to provide local assistance to existing service providers, to maintain and expand services based on a demonstrated need, and to establish a targeted or directed program for the development and establishment of domestic violence services in currently unserved and underserved areas. OES shall provide financial and technical assistance to local domestic violence centers in implementing all of 14 required services including operating a 24-hour crisis hotline. (Pen. Code, § 13823.15, subd. (b).)

3) Establishes the OES and the specified advisory committee to collaboratively administer the Comprehensive Statewide Domestic Violence Program, and requires OES to allocate funds to local centers meeting the criteria for funding. Provides that all organizations funded pursuant to this section shall utilize volunteers to the greatest extent possible. States that the centers may seek, receive, and make use of any funds which may be available from all public and private sources to augment state funds received pursuant to this section. (Pen. Code, § 13823.15, subd. (c).)

4) Defines "domestic violence shelter service provider" or "DVSSP" to mean "a victim services provider that operates an established system of services providing safe and confidential emergency housing on a 24-hour basis for victims of domestic violence and their children, including, but not limited to, hotel or motel arrangements, haven, and safe houses." (Pen. Code, § 13823.15, subd. (f)(15)(B).)

5) States that the funding process for distributing grant awards to DVSSPs shall be administered by the Office of Emergency Services, and including by providing matching funds or in-kind contributions equivalent to not less than 10 percent of the grant they would receive, which

may come from other governmental or private sources. (Pen. Code, § 13823.15, subd. (f)(14).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "During the pandemic, we have seen a rise in domestic violence cases and our nonprofits struggling to keep their doors open. AB 673 will enable those who provide domestic violence services to better assist victims in a more effect way, ensuring that our support systems are urgently responding to those in need."

2) **Need for the Bill:** According to the author, "To provide support to domestic violence shelter service providers (DVSSPs), the California Governor's Office of Emergency Services (Cal OES) administers the Domestic Violence Assistance Program (DVAP). Cal OES distributes $20.6 million in state funds for services that target IPV survivors. DVAP also receives $33 million in federal funding, and in total distributes $53 million to 102 shelter-based providers throughout California.

   "While working through COVID-19, DVSSPs have also had to deal with delays in receiving reimbursement from Cal OES due to issues with its reimbursement system. At best, DVAP recipients have to wait two or three months to receive funding. Some service providers are forced to take out loans in order to keep their doors open, and then spend some of the funding they receive on paying off those loans. Other service providers worry that they can't survive the gap between providing services and being reimbursed, and so forgo providing a service and leave grant funding unspent and unused. For smaller providers, the risk of being left waiting months to get their reimbursements is so great that they don't apply for grants at all."

3) **Argument in Support**: According to the *Little Hoover Commission*, "AB 673 (Salas), which would enable recipients of grant funding awarded pursuant to California Penal Code §13823.15 to receive the entirety of the state's portion of the grant funding in a single disbursement at the beginning of the grant period.

   "In its 2020 report, Intimate Partner Violence: Getting the Money to Those on the Front Line, the Commission found that organizations funded through the state's Domestic Violence Assistance Program face severe financial challenges as they wait 79 to 109 days to be reimbursed for services provided to survivors of intimate partner violence. Many of these service providers – which tend to be nonprofits operating on tight budgets – rely on lines of credit or reduce services to cover expenses until reimbursement checks arrive. Others leave grant money unspent or avoid applying for it in the first place. To ensure these service providers have the resources they need to help some of the most vulnerable Californians, the Commission recommended that they receive the entirety of the state's portion of grant funding at the beginning of the grant period instead of reimbursements.

   "AB 673 would carry out this recommendation and better help those on the front line serve and support survivors of intimate partner violence."

4) **Prior Legislation**: SB 1276 (Rubio), Chapter 249, Statutes of 2020, eliminated the requirement that local domestic violence centers which receive funding from the state shall provide a cash or in-kind match of at least 10 percent of the funds received.

REGISTERED SUPPORT / OPPOSITION:

Support

California Partnership to End Domestic Violence
Little Hoover Commission

Opposition

None

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

Date of Hearing: April 6, 2021
Counsel: Matthew Fleming

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

AB 644 (Waldron) – As Introduced February 12, 2021

SUMMARY: Requires a person to participate in a post-release substance abuse program rather than an institutional substance abuse program in order to be eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction.

EXISTING LAW:

1) Establishes the California Medication-Assisted Treatment (MAT) Re-Entry Incentive Program, which makes a person eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction, if the person meets all of the following requirements:

   a) The person has been released from state prison and is subject to the jurisdiction of, and parole supervision by, the department, as specified;

   b) The person has been enrolled in, or successfully participated in, an institutional substance abuse program; and,

   c) The person successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food and Drug Administration approved medically assisted therapy (MAT), and, whenever possible, is provided through a program licensed or certified by the State Department of Health Care Services, including federally qualified health centers (FQHS), community clinics, and Native American Health Centers. (Pen. Code, § 3000.02, subds. (a) and (b).

2) Exempts persons convicted of specified sex offenses from the MAT Re-Entry Incentive Program. (Pen. Code, § 3000.02, subd. (d).)

3) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to award a prisoner program credit reductions from his or her term of confinement for participation in approved rehabilitation programming, including substance abuse treatment. (Pen. Code, § 2933.05.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The Newsom Administration, including CDCR, and Assemblymember Waldron agree that the provisions of AB 1304 will be most

impactful if parolees are not excluded from eligibility because they did not participate in a custodial treatment program.

"The risk of relapse to opioid use following release from a correctional setting is extremely high, and the majority of participants drop out of community-based treatment before completion. This propagates a cycle of failure for these individuals. It is imperative that the investment the State of California is making in substance use treatment within correctional settings be complimented with policies that improve adherence to medications and treatment post-release.

"AB 644 incentivizes formerly incarcerated individuals to participate in post-release SUD treatment, regardless of whether or not they participated in in-custody treatment. This bill will strengthen the California MAT Re-Entry Incentive Program – which will reduce recidivism and associated state costs, and provide a much-needed lifeline to formerly incarcerated persons seeking to overcome addiction."

2) **Medication Assisted Treatment**: Medication-assisted treatment (MAT) is a "whole-patient" approach to treating substance use disorders that uses medication in combination with counseling and behavioral therapies. MAT is clinically effective in treating substance use disorders, including opioid and alcohol use disorders. The Substance Abuse and Mental Health Services Administration (SAMHSA) within the U.S. Department of Health and Human Services describes the mechanics of MAT:

> "MAT is primarily used for the treatment of addiction to opioids such as heroin and prescription pain relievers that contain opiates. The prescribed medication operates to normalize brain chemistry, block the euphoric effects of alcohol and opioids, relieve physiological cravings, and normalize body functions without the negative effects of the abused drug.
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> ...
>
> "MAT has proved to be clinically effective and to significantly reduce the need for inpatient detoxification services for these individuals. MAT provides a more comprehensive, individually tailored program of medication and behavioral therapy that address the needs of most patients." (United States Department of Health & Human Services website, https://www.samhsa.gov/medication-assisted-treatment, [as of March 29, 2021].)

MAT has been shown to improve patient survival, increase retention in treatment, decrease illicit opiate use and other criminal activity among people with substance use disorders, increase patients' ability to gain and maintain employment, and improve birth outcomes among women who have substance use disorders and are pregnant. (Id.) SAMHSA reports that MAT is underused and attributes this to misconceptions about the treatment model, discrimination against MAT patients despite state and federal laws prohibiting such discrimination, lack of training for doctors with respect to MAT, and negative opinions toward MAT among health care professionals and in communities. (*Id.*)

3) **The Need for this Bill**: The 2019-2020 budget allocated a significant amount of funding through the 2021-2022 fiscal year to implement an integrated substance use disorder

treatment program throughout the state's prisons. The program includes the use of MAT to treat inmates with opioid and alcohol use disorders, a redesign of the current cognitive behavioral treatment curriculum, the development and management of inmate treatment plans, as well as substance use disorder-specific pre-release transition planning. The statewide MAT program is an expansion of a MAT pilot program previously operated by the Receiver at three state prisons.

AB 1304 (Waldron) Chapter 325, Statutes of 2020 established the California MAT Re-Entry Incentive Program. That program created a reduction in parole time for a parolee who participated in specified substance abuse treatment that was not ordered by the court. This bill clarifies that the parolee must participate in a post-release treatment program in order to be eligible for the reduction.

4) **Argument in Support**: According to the *County Behavioral Health Directors Association of California*: "AB 644 makes a technical change to AB 1304 (Waldron) of 2020. AB 1304 established the California MAT Re-entry Incentive Program which incentivizes parolees to participate in Medication-Assisted Treatment (MAT) programs by providing reduced parole sentences to eligible parolees who complete specified periods of treatment. In Kentucky, a similar, bipartisan measure was shown to have reduced overall reincarceration, increased the number of days out before reincarceration, and reduced illegal drug use, alcohol use, and opiate use.

"Under the current California MAT Re-entry Incentive Program, a person can be eligible for a 30 day reduction in their parole period for every six months of treatment, not ordered by the court, with a maximum of a 90 day reduction if the person has been enrolled in or successfully participates in an institutional substance use program and successfully participates in a SUD treatment program that includes the use of MAT. AB 644 proposes amending this language to expand the treatment options to any post-release SUD program, removing the limitation that the individual must be an institutional setting to qualify for this program.

"The risk of relapse to opioid use following release from a correctional setting is extremely high, and the majority of participants drop out of community-based treatment before completion . Initiatives that support treatment of individuals experiencing a substance use disorder are imperative to combat the risk of relapse and overdose post-release. This bill will strengthen the California MAT Re-Entry Incentive Program, reduce recidivism and associated state costs, and provide a much-needed lifeline to formerly incarcerated persons living with a SUD."

5) **Argument in Opposition**: According to the *Advocates for Responsible Treatment*: "Simply put, while well-intended, AB 644 would send thousands of parolees straight from prison into the arms of for-profit addiction treatment providers, precisely where the industry wants them, tragically locking them into a vicious cycle of addiction and crime, all so that businesses can siphon off their health insurance premiums.

"The state of California has an abysmal track record of oversight for non-institutional addiction treatment programs. The Department of Health Care Services merely certifies such programs; it does not license them. In for-profit, outpatient treatment programs, the state does not screen addiction treatment program owners, staff, employees and consultants for

criminal backgrounds, thereby jeopardizing the potential for parolees to adhere to restrictions of their parole. Likewise, the state has zero requirements for drug-use testing for either owners, staff, employees or consultants, virtually ensuring parolees sent to these programs will once again be exposed to drug use. Recovering addicts are still brokered with impunity in California because the legislature has never passed any clear penalties for the crime, transferring that responsibility on DHCS. Just emerging from prison, parolees will have few ways to evaluate the programs that target them for the potential profits they represent."

6) **Related Legislation**: AB 653 (Waldron) would establish the Medication-Assisted Treatment Grant Program, in order for the Board of State and Community Corrections (BSCC) to award grants to counties purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment. AB 653 is set for hearing in the Assembly Public Safety Committee on April 6, 2021.

7) **Prior Legislation**:

   a) AB 1304 (Waldron) Chapter 325, Statutes of 2020, established the California MAT Re-Entry Incentive Program which made specified parolees eligible for a reduction in the period of parole if the person successfully participates in a substance abuse treatment program.

   b) SB 843 SB 843 (Comm. on Budget and Fiscal Review), Chapter 33, Statutes of 2016, established a pilot program within CDCR to provide a medically assisted substance use disorder treatment model for treatment of inmates with a history of substance use problems.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice
Alkermes, INC.
California Public Defenders Association (CPDA)
County Behavioral Health Directors Association of California

Oppose

Advocates for Responsible Treatment

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

Date of Hearing: April 6, 2021
Counsel: David Billingsley

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

AB 653 (Waldron) – As Amended March 30, 2021

SUMMARY: Establishes the Medication-Assisted Treatment Grant Program, in order for the Board of State and Community Corrections (BSCC) to award grants to counties purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment. The bill would sunset on January 1, 2026. Specifically, **this bill**:

1) Creates the Medication-Assisted Treatment (MAT) Grant Program which shall be administered by the Board of State and Community Corrections (BSCC).

2) Specifies that BSCC shall award grants, on a competitive basis, to counties, as authorized by this article.

3) Requires BSCC to establish minimum standards, funding schedules, and procedures for awarding grants.

4) Allows MAT Grant Program funds to be used by recipient counties for one or more of the following activities:

   a) Salaries and related costs for the placement of substance use disorder counselors in county jails that provide medication-assisted treatment to inmates with a substance use disorder;

   b) Doses of medication related to substance use disorder for inmates to take home upon release from county jail;

   c) Funding for services provided pursuant to contracts between county jail health providers and narcotic treatment providers;

   d) Mobile crisis teams of behavioral health professionals that can respond with law enforcement to mental health or other health crisis calls. Mobile response activities funded pursuant to this section shall include referrals for substance use disorder treatment and medication –assisted treatment for individuals under criminal justice supervision when clinically appropriate;

   e) Funding to increase capacity for community-based, medication-assisted treatment and substance use disorder treatment services for justice-involved individuals, or to improve care coordination and connections to medication-assisted treatment services upon release from correctional facilities. Activities may include, but are not limited to, capital expenditures or operating costs to establish new reentry centers or treatment programs that will serve justice-involved populations, expansion of existing community-based,

medication-assisted treatment services to better meet the needs of justice-involved individuals, and other strategies to ensure timely and appropriate access to medication-assisted treatment upon release; and,

f) Salary and related costs for providing medication-assisted treatment for persons who are under criminal justice supervision.

5) Specifies that MAT Grant Program funds shall not be used to supplant existing resources for medication-assisted treatment services delivered in county jails or in the community.

6) States that counties that receive grants pursuant to this article shall collect and maintain data pertaining to the effectiveness of the program, as indicated by the board in the request for proposals, including data on drug overdoses of, and the rate of recidivism for, inmates and persons under criminal justice supervision who receive county-administered, medication-assisted treatment services.

7) States that information relating to the rate of recidivism that shall be collected and maintained pursuant to this subdivision includes all of the following, as they relate to inmates or persons under criminal justice supervision who receive services funded pursuant to this article:

a) The number and percentage who were sentenced to jail or prison within three years after being released from a jail sentence in which they were provided services funded pursuant to this article, or for persons under criminal justice supervision, after having been provided with services that were funded pursuant to this article;

b) The number and percentage who were convicted of a misdemeanor or a felony within three years after being released from a jail sentence in which they were provided services funded pursuant to this article, or for persons under criminal justice supervision, after having been provided with services that were funded; and,

c) The number and percentage who were arrested for a crime or who have had their parole, probation, mandatory supervision, or postrelease community supervision revoked within three years after being released from a jail sentence in which they were provided services funded pursuant to this article, or for persons under criminal justice supervision, after having been provided with services that were funded.

8) Requires a county that receives a grant to include recidivism data for persons released from jail, or under criminal justice supervision, who received services less than three years prior to any reporting period established by BSCC.

9) Specifies that a county that receives a grant pursuant to this article may use state summary criminal history information, or local summary criminal history information, to collect data as required by BSCC.

10) States that BSCC may establish a deadline by which counties that receive grants pursuant to this article are required to submit data collected and maintained pursuant to this subdivision to the board to enable the board to comply with the reporting requirement, as specified.

11) Defines "Criminal justice supervision" as "probation, postrelease community supervision, and mandatory supervision."

12) Defines "Medication-assisted treatment" as "the use of United States Food and Drug Administration approved medically assisted therapy to treat a substance use disorder, including opioid use disorder and alcohol use disorder, and that, whenever possible, is provided through a program licensed or certified by the State Department of Health Care Services."

13) Specifies that on or before July 1, 2025, BSCC shall compile a report describing the activities funded pursuant to the bill, and the success of those activities in reducing drug overdoses and recidivism by jail inmates and persons under criminal justice supervision. The report shall be submitted to the Legislature.

14) States that the provisions of this bill shall be operative only to the extent that funding is provided, by express reference, in the annual Budget Act or another statute.

15) Establishes a sunset date of January 1, 2026.

EXISTING LAW:

1) Creates the MAT Re-Entry Incentive Program. (Pen. Code, § 3000.02, subd. (a).)

2) Specifies that a person shall be eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction, if the person meets all of the following requirements:

   a) The person has been released from state prison and is subject to the jurisdiction of, and parole supervision by, CDCR, as specified;

   b) The person has been enrolled in, or successfully participated in, an institutional substance abuse program; and,

   c) The person successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food and Drug Administration approved medically assisted therapy (MAT), and, whenever possible, is provided through a program licensed or certified by the State Department of Health Care Services, including federally qualified health centers (FQHS), community clinics, and Native American Health Centers. (Pen. Code, § 3000.02, subd. (b)(1)-(3).)

3) Specifies that the sentence reduction shall be contingent upon successful participation in treatment, as determined by the treatment provider. (Pen. Code, § 3000.02, subd. (c).)

4) Exclude inmates from the MAT program if the inmate is any of the following:

   a) Sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), or (18) of subdivision (c) of Section 667.5;

b) Convicted of an offense for which the inmate has received a life sentence pursuant to subdivision (b) of Section 209, with the intent to commit a specified sex offense, or Section 667.51 , 667.61, or 667.71; or,

c) Convicted of, and required to register as a sex offender for the commission of, an offense specified in Section 261, 262, 264.1, 286, or 287, paragraph (1) of subdivision (b) of Section 288, Section 288.5 or 289, or former Section 288a, in which one or more of the victims of the offense was a child under 14 years of age. (Pen. Code, § 3000.02, subd. (d)(1)-(3).)

5) States that operation of MAT program is contingent upon the appropriation to the State Department of Health Care Services of funds received pursuant to a federal Substance Abuse and Mental Health Services Administration (SAMHSA) opioid use disorder or substance use disorder grant. (Pen. Code, § 3000.02, subd. (e)(1).)

6) Requires CDCR to collect data and analyze utilization and program outcomes and shall provide that information in the report, as specified. (Pen. Code, § 3000.02, subd. (e)(2).)

7) Requires the Department of Corrections and Rehabilitation (CDCR) to expand substance abuse treatment services in prisons to accommodate at least 4,000 additional inmates who have histories of substance abuse. Requires a substance abuse treatment program offered by CDCR to include a peer counseling component, except as specified. (Pen. Code, § 2694, subds. (a) & (b).)

8) Requires CDCR, under the oversight of the Undersecretary of Health Care Services, to establish a three-year pilot program at one or more institutions that will provide a medically assisted substance use disorder treatment model for treatment of inmates with a history of substance use problems. Requires the program to offer a continuum of evidenced-based care that is designed to meet the needs of the persons being served and that is appropriate for a correctional setting. Requires the department to consider all of the following in establishing the program:

a) Access to services during an inmate's enrollment in the pilot program;

b) Access to subacute detoxification and medical detoxification, as necessary;

c) Comprehensive pretreatment and post-treatment assessments;

d) Ongoing evaluation of an inmate's program needs and progress at least every 90 days, and appropriate adjustment of treatment based on that evaluation;

e) Services provided by professionals for whom substance use disorder treatment is within the scope of their practice;

f) Referrals for medically assisted care and prescription of medication-assisted treatment;

g) Provision of behavioral health services, including the capacity to treat co-occurring mental illness;

h) Access to medication-assisted treatment throughout the period of incarceration up to and including immediately prior to release; and,

i) Linkages to community-based treatment upon parole. (Pen. Code, § 2694.5, subd. (a).)

9) Requires CDCR to provide annual reports to the Legislature on the pilot program. (Pen. Code, § 2694.5, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "In 2018, the Department of Corrections and Rehabilitation estimated that approximately 80 percent of incarcerated individuals had Substance Abuse Disorders (SUD) and, of these, approximately 26% have Substance Use Disorders related to opiate drugs. Medication Assisted Treatment is a 'whole-patient' approach to treating substance use disorders that uses medication in combination with counseling and behavioral therapies. MAT is clinically effective in treating substance use disorders, including opioid and alcohol use disorders.

"Individuals who are struggling with substance use disorders are at high risk of fatal drug overdoses in the period after release from custody (a three to eightfold increased risk of drug related deaths within the first 2 weeks of release from prison).

"By creating a grant program for counties that can be used for drug treatment-related programs for incarcerated individuals and by expanding funding for MAT-related treatment for parolees, AB 653 will prevent fatal overdoses, reduce recidivism, and improve outcomes for those struggling with substance use disorders."

2) **Medication Assisted Treatment:** Medication-assisted treatment (MAT) is the use of Food and Drug Administration (FDA)-approved medication for the treatment of a specific substance use disorder in combination with clinically indicated behavioral or cognitive-behavioral counseling and other indicated services. Currently, medications are available to treat tobacco, alcohol, and opioid use disorder (OUD), and research is underway to identify effective medications for other substances as well.

The Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services states that "MAT is primarily used for the treatment of addiction to opioids such as heroin and prescription pain relievers that contain opiates. The prescribed medication operates to normalize brain chemistry, block the euphoric effects of alcohol and opioids, relieve physiological cravings, and normalize body functions without the negative effects of the abused drug."

Medication-assisted treatment (MAT) has been carefully studied and shown to be effective in treating OUDs. Dozens of studies, including randomized controlled trials, have proven that

medication-assisted treatment (MAT):

a) Enhances treatment engagement during and after discharge from custody;

b) Decreases relapse rates;

c) Is associated with reduced criminal recidivism; and,

d) Is associated with lower overdose deaths and health risk behavior. (Substance Abuse and Mental Health Services Administration: Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings. HHS Publication No. PEP19-MATUSECJS Rockville, MD: National Mental Health and Substance Use Policy Laboratory. Substance Abuse and Mental Health Services Administration, 2019.) (https://store.samhsa.gov/sites/default/files/d7/priv/pep19-matusecjs.pdf)

Following incarceration, individuals with OUD enter back into the environment where their substance use originated. This puts the individual at high risk for relapse. Further, their tolerance for opioids is reduced while incarcerated. This puts the individual at high risk for overdose. The impact of opioid use on individuals transitioning from jail or prison back to the community presents a number of significant dangers for the individual. Outcomes include higher rates of returning to the criminal justice system, harm to families, negative public health effects such as the transmission of infectious diseases, and death. Within 3 months of release from custody, 75 percent of formerly incarcerated individuals with an OUD relapse to opioid use, and approximately 40 to 50 percent are arrested for a new crime within the first year.

SAMSHA reviewed evidence based practices related to inmates with OUD following the inmates return to the community. That review identified numerous studies which support the use of MAT for effectively addressing OUDs and that moderate and mitigate the risk of overdose for persons with OUD after release. (Id.)

3) **AB 1304 (Waldron), Chapter 325, Statutes of 2020, Established a MAT Re-Entry Program of State Prison Inmates Released on Parole:** AB 1304 established the California MAT Re-Entry Incentive Program, which would make a person released from prison on parole, with specified exceptions, who has been enrolled in, or successfully completed, an institutional substance abuse program, eligible for a reduction in the period of parole if the person successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food and Drug Administration approved medically assisted treatment (MAT). AB 1304 authorized a 30-day reduction for each 6 months of treatment successfully completed that is not ordered by the court, up to a maximum 90-day reduction. The MAT Re-Entry Program is contingent upon the appropriation to the State Department of Health Care Services of funds received pursuant to a federal Substance Abuse and Mental Health Services Administration (SAMHSA) opioid use disorder or substance use disorder grant. AB 1304 also requires the Department of Health Care Services to collect data and analyze utilization and program outcomes and to provide that information in a specified report.

Where AB 1304 targeted MAT towards state prison parolees, this bill would direct money

for MAT to county jail inmates or other individuals supervised by county probation departments. This bill will grant program to counties to provide MAT for individuals involved in the criminal justice system at the county level. This grant program would award money to counties and target individuals that are released from county jail or on probation, post-release community supervision, or mandatory supervision.

4) **Argument in Support**: According to *Alkermes, Inc.*, "Alkermes, a fully-integrated, global biopharmaceutical company, seeks to develop innovative medicines that help address the unmet needs and challenges of people living with debilitating diseases, including schizophrenia and opioid and alcohol use disorders.

"In 2018, the Department of Corrections and Rehabilitation estimated that approximately 80 percent of prison inmates suffered from at least one type of substance use disorder. MAT is a "whole-patient" approach to treating substance use disorders that uses medication in combination with counseling and behavioral therapies. MAT is clinically effective in treating substance use disorders, including opioid and alcohol use disorders, and has been shown to reduce recidivism when use by justice-involved populations.

"Though MAT has proven to be effective in the treatment of those struggling with substance use disorders, be they incarcerated or supervised in the community, counties require more funding in order to expand MAT programs. By creating a grant for counties that can be used for substance abuse treatment-related programs for inmates and those on community supervision, AB 653 will address the funding needs of communities that seek to expand MAT programs."

5) **Related Legislation**:

a) AB 644 (Waldron), clean up bill for AB 1304 (Waldron), Chapter 325, Statutes of 2020.

b) AB 741 (Bennett), requires each sheriff to convene a mentally ill discharge plans advisory group. AB 741 is awaiting hearing in the Assembly Public Safety Committee.

6) **Prior Legislation**:

a) AB 1304 (Waldron), Chapter 325, Statutes of 2020, established the California MAT Re-Entry Incentive Program which makes a parolee, except as specified, eligible for a reduction in the period of parole if the person successfully participates in a substance abuse treatment program, as specified, including medication-assisted treatment.

b) SB 843 (Committee on Budget and Fiscal Review), Chapter 33, Statutes of 2016, enacted the pilot program providing medically assisted substance use disorder treatment model for the treatment of inmates. "Integrated Substance Use Disorder Treatment (ISUDT) Program" is the MAT component of the program. This legislation is a companion the ISDUT for reentry into the community component. CDCR and CCHCS programs worked collaboratively to develop an ISUDTP to address the needs of inmates suffering from substance use disorders, covering their entire time in prison from entry to release.

REGISTERED SUPPORT / OPPOSITION:

Support

Alkermes, INC.
California Consortium of Addiction Programs and Professionals
California State Sheriffs' Association
County Behavioral Health Directors Association of California

Opposition

None

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

Date of Hearing: April 6, 2021
Chief Counsel: Gregory Pagan

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

AB 311 (Ward) – As Introduced January 25, 2021

SUMMARY: Prohibits a vendor at a gun show or event from possessing, displaying, offering to sell, selling, or transferring a firearm precursor part, and makes a violation of this prohibition a misdemeanor punishable by a fine not to exceed two thousand dollars ($2,000). Specifically, this bill:

1) Prohibits a vendor at a gun show or event from possessing, displaying, offering to sell, selling, or transferring a firearm precursor part, and makes a violation of this prohibition punishable by a fine not to exceed two thousand dollars ($2,000), and bars the vendor from attending or participating in the producer's gun shows for one year.

2) States that a violation of the of the prohibition against participating in or event shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000), and bars the vendor from participating in a gun show or event in this state for five years from the date of conviction. A violation shall be grounds for the forfeiture of a firearms dealer's license.

3) Deletes a provision of existing law that, commencing July 1, 2002, allows a licensed precursor parts vendor to sell firearms a gun show or event subject to the purchases being approved by means of a DOJ electronic background check.

EXISTING LAW:

1) Provides that the Department of Justice (DOJ), upon request, may assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification. Whenever the manufacturer's number or other mark of identification or a distinguishing number or mark assigned by the DOJ has been destroyed or obliterated, the DOJ, upon request, shall assign a distinguishing number or mark of identification to any firearm, as specified. (Pen. Code § 23910.)

2) Requires a person, commencing July 1, 2018, to apply and obtain from the DOJ a unique serial number or other mark of identification prior to manufacturing or assembling a firearm and a violation of this section is a misdemeanor. (Pen. Code § 29180, subd. (b).)

3) Requires by January 1, 2019, any person who, as of July 1, 2018 owns a firearm that does not bear a serial number assigned to it to shall obtain from the DOJ a unique serial number or other mark of identification, and a violation of this section is a misdemeanor. (Pen. Code § 29180, subd. (c).)

4) Provides commencing July 1, 2022, a licensed vendor may sell precursor parts at a gun show or event if the gun show is not conducted from any motorized towed vehicle. (Pen. Code 30448, subd. (b).)

5) Defines "gun show or event" to mean a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization of associations that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms on the community. (Pen Code § 30448, subd. (c).)

6) Provides that the DOJ is authorized to issue firearm precursor parts vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing firearms or firearm precursor parts, as specified, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department. (Pen. Code § 30945, subd. (a).)

7) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the DOJ from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

8) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

9) States that a dealer operating at a gun show must comply with all applicable laws, including California's waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

10) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the DOJ. (Pen. Code § 27200.)

11) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the DOJ, as specified. (Pen. Code §§ 27200, 27245.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Ghost guns can bypass common sense policies created to protect our communities from senseless gun violence. AB 311 will address growing concerns over the availability of these firearms by prohibiting their sale at gun shows. The increased availability of ghost guns poses enormous risks to public safety and undermines law enforcement efforts to prevent gun violence in California. Not surprisingly, ghost guns are rapidly becoming the weapon of choice for crimes. Ghost guns have been

used in a wide variety of crimes in California, including homicides, robberies, school shootings, mass shootings, domestic violence, and the shooting deaths of at least four law enforcement officers in the line of duty.

"Gun shows are particularly problematic venues for ghost gun kit sales, as they bring together hundreds of willing buyers and sellers, who, with complete anonymity and no oversight, can quickly complete their transactions, which typically are done in cash with no transaction record."

"AB 311 will prohibit the unregulated sale of ghost gun kits and parts at gun shows, reducing the number of untraceable ghost guns into our communities."

2) **Background**: In 2016, with concern growing related to 3D Printers that print working firearms, and firearm kits that allows an individual to assemble a firearm. AB 1673 (Gibson) was introduced, which expanded the definition of a firearm to include an unfinished frame or receiver that is readily identifiable as a component of a working firearm. If passed and signed this bill would have required that a person could only purchase an unfinished frame or receiver from a licensed firearms dealer and a DOJ background check would have to be conducted. AB 1673 was vetoed by the Governor. The Governor in his veto message stated, "I am returning AB 1673 without my signature. This bill seeks to stem tide of untraceable homemade firearms on our streets. While I appreciate the author's intent the actual wording of the unduly vague and could have far reaching unintended consequences. By defining certain metal parts as a firearm because they could ultimately be made into a homemade weapon, this bill could trigger potential application of myriad and serious criminal penalties."

Also, in 2016, AB 857 (Cooper), Chapter 60, Statutes of 2016, required a person, commencing July 1, 2018, to apply to and obtain from the Department of Justice (DOJ) a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, as specified; and required by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number assigned to it to obtain a unique serial number or other mark of identification prior to manufacturing or assembling a firearm, and failure to do so is punished as a misdemeanor.

In 2018, AB 2382 (Gibson) was introduced and it authorized the DOJ to issue firearms precursor parts vendor licenses, and required any person purchasing firearms precursor parts to undergo a background check. AB 2382 was held on the Senate Appropriations suspense file. Finally, in 2019, AB 879 Gipson, Chapter 730, became law. AB 879 required, effective July 1, 2024, that firearms precursor part could only be sold by a licensed precursor parts vendor, and required a background check of the purchaser be conducted prior to delivering the precursor part. The effective date of AB 879 was subsequently advanced to July 1, 2022. AB 879, specifically authorized the sale of firearm precursor parts, by licensed precursor parts vendors, at a gun show or event. This bill repeals that provision. Should that provision, allowing licensed firearm precursor parts vendor to sell precursor parts at a gun show be repealed before it even becomes effective, and given a chance to work?

3) **Gun Show Regulations in California**: In 1999, California enacted the nation's broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least $1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements.

   In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser.

   California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "In-State and Interstate Associations between Gun Shows and Firearm Deaths and Injuries," Annals of Internal Medicine (2017) Vol. 1 Iss. 8.)

4) **Arguments in Support**:

   a) According to the *Brady United to Prevent Gun Violence,* "Under current law, a person who assembles a firearm must apply to the DOJ for a serial number, and a background check, and to affix the serial number to the gun within 10 days of the assembly (29180 PC). But there has been minimal compliance with that provision. In 2019 the Legislature enacted AB 879 (Gipson), which will not take effect until 2022. Under that law, firearm precursor parts will have to be sold by licensed dealers in face-to-face transactions and only to a purchaser passes a background check. AB 879 does not require serial numbers to be placed on unfinished frames and receivers before they are transferred to purchasers.

   "Gun shows often feature hundreds of vendors and have for unlawful sales of firearms and other illegal conduct. Most transactions at gun shows are not monitored by law enforcement. The California Bureau of Firearms reported that it had to discontinue gun show enforcement efforts in the latter part of 2018.

   "Sales of kits to build ghost guns are booming at California gun shows, making untraceable ghost guns and urgent an escalating problem in the State. The kits include all the parts necessary to assemble a gun and require the purchaser to drill some holes before putting the parts together into a lethal firearm, following online instruction videos. Assembling the parts into a lethal ghost gun by untrained amateurs using common household tools. A peace officer who built a Glock-Replica handgun from parts

described as 'ridiculously easy' to assemble.

"Ghost gun kits are openly displayed at California gun shows, with the unfinished receivers rubber banded to other parts to show how near to complete these guns are. Potential purchasers can see and feel exactly what their gun will look like once they have put it together. The price for the kits, generally $400 for a Glock replica handgun, is lower than those for firearms with serial numbers made by licensed manufacturers. The kits typically are sold at gun shows in quick transactions with no receipts. Worryingly, observers have noted that vendors do not do not inform purchasers about California's requirement to apply to DOJ for a serial number for every gun assembly.

b) According to the *San Diego City Attorney*, "AB 311 would amend the Penal Code to prohibit vendors at gun shows from possessing, displaying, offering to sell, selling, or transferring any firearms precursor parts. Firearm precursor parts are the unmarked components used to assemble what are commonly known as 'ghost guns'. These parts are not sold as pre-assembled weapons, have no serial numbers, and cannot be traced.

"This bill expands upon previous legislation introduced in 2019 by then Assembly Member Todd Gloria, which took effect on January 1, 2021. Prohibiting the sale of firearms and ammunition at gun show held at the Del Mar Fairgrounds. AB 311 would effectively close a loophole that would allow firearms parts (ghost gun kits) to be sold at such events.

"This bill is critically important to safeguard the public from crimes committed with weapons that can't be tracked, and to aid law enforcement and prosecutors who often use firearms to identify perpetrators.

"The safety of our children and our neighbors requires that gun owners act responsibly, and that all firearms our identifiable and traceable. There is only one reason to have a 'ghost gun' and that is to use it to commit crimes and thwart law enforcement. We are all safer when sensible gun laws are enacted and followed"

5) **Arguments in Opposition**:

a) According to the *Gun Owners of California,* "Our organization has a 42 year history of fighting for *effective* crime control and opposing ineffective gun control, and there is no evidence that gun show sales of precursor parts leads to proliferation of criminally used ghost guns. Unfortunately, your bill appears to be an attempt to needlessly cripple gun shows who have operated in the state practically for without incident for 50 years. Under current law, all sales of 'precursor parts' must be processed through a licensed dealer and require a background check, whether the parts are sold in a brick and mortar or at a gun show. The term 'gun show loophole' is a significant misnomer given that **every** gun show must comply with **every** statute: background checks, waiting periods, and registration requirements. There are zero exceptions; no one can walk into a gun show empty handed and walk out with a firearm. Plus any 'unlicensed' dealer who sells any firearm at a gun show is engaging in criminal activity and should be prosecuted. In fact, according to the U.S. Department of Justice Report on the 'Source and Use of Firearms Involved in Crimes' only **1.3%** obtained the gun from a retail source, and **O.8%** obtained

from a gun show. The evidence is very clear that gun shows themselves and the law abiding attendees are not the problem."

b) According to the *California Rifle and Pistol Association,* "AB 311 is the next step in very misguided legislation directed at legally purchased firearms parts instead of violent criminals who knowingly use firearms in the commission of crimes! AB 879 (Gipson) signed into law in 2019 by Governor Newsom, will, commencing July 1, 2022 will require firearms 'precursor' to be treated in the same manner as if they were actual firearms having to be sold only through a dealer with a mandated background check. AB 879 specifically addresses parts that could be used to repair an existing firearm, or used to assemble one. Parts include such items as unfinished receivers and unfinished handgun frames. In and of themselves, these parts do not constitute a firearm and should not be treated as such.

"We are confused about the author's intent for this legislation. In 2016 Governor Brown signed into law AB 857(Cooper) the 'ghost guns' serialization requirements. AB 857 already made it illegal to turn any 'precursor' parts into a firearm without proper registration and serialization from DOJ, and completion of a background check.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Brady California United Against Gun Violence
Brady United Against Gun Violence
Friends Committee on Legislation of California
Laguna Woods Democratic Club
Neveragainca
San Diegans for Gun Violence Prevention
San Diego City Attorney's Office
San Diego; City of
The Violence Prevention Coalition of Orange County
Women Against Gun Violence

Oppose

California Rifle and Pistol Association, INC.
California Sportsman's Lobby (CSL)
Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action
Outdoor Sportsmen's Coalition of California
Safari Club International, CA Coalition

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