California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Wednesday, August 5, 2020
2 p.m. -- State Capitol, Room 4202

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

1.	Archuleta	SB 480	Law enforcement uniforms.	Ms. Moore
2.	Archuleta	SB 905	Criminal history information requests.	Mr. Fleming
3.	Bradford	SB 203	Juveniles: custodial interrogation.	Mr. Fleming
4.	Bradford	SB 731	Peace Officers: civil rights.	Mr. Billingsley
5.	Chang	SB 922	Criminal procedure: limitations of actions.	Ms. Moore
6.	Chang	SB 1123	Elder and dependent adult abuse.	Mr. Fleming
7.	Durazo	SB 1111	Juveniles: detention facilities.	Mr. Fleming
8.	Durazo	SB 1290	Juveniles: costs.	Ms. Anderson
9.	Galgiani	SB 388	Missing persons: reports: local agencies.	Ms. Moore
10.	Grove	SB 903	Grand theft: agricultural equipment (Urgency).	Mr. Pagan
11.	Hertzberg	SB 315	Criminal procedure: COVID-19 Alternative Adjudication Program.	Mr. Billingsley
12.	Hertzberg	SB 369	Prisoners: California Reentry Commission.	Mr. Billingsley
13.	Jones	SB 723	Firearms: prohibited persons.	Mr. Billingsley
14.	Jones	SB 1126	Juvenile court records.	Mr. Billingsley
15.	McGuire	SB 629	Public peace: media access.	Mr. Fleming
16.	Portantino	SB 914	Firearms.	Mr. Pagan
17.	Rubio	SB 1276	The Comprehensive Statewide Domestic Violence Program.	Ms. Moore
18.	Skinner	SB 776	Peace officers: release of records.	Ms. Anderson
19.	Skinner	SB 1064	Prisons: confidential informants.	Ms. Moore
20.	Umberg	SB 1196	Price gouging.	Mr. Billingsley
21.	Umberg	SB 1220	Peace and custodial officers.	Ms. Anderson
22.	Wilk	SB 409	Illegal dumping.	Mr. Billingsley
23.	Wilk	SB 580	Animal abuse: probation: treatment.	Mr. Billingsley

Date of Hearing: August 5, 2020
Counsel: Nikki Moore

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

SB 480 (Archuleta) – As Amended July 27, 2020

As Proposed to be Amended in Committee

SUMMARY: Prohibits a state and local law enforcement agency from authorizing or allowing its employees to wear camouflage, or any uniform that is substantially similar, as defined, to any uniform of the United States Armed Forces or state active militia. Specifically, **this bill**:

1) Declares that a uniform is "substantially similar" if it "so resembles an official uniform of the United States Armed Forces or state active militia as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the United States Armed Forces of state active militia."

2) States that a uniform is not substantially similar if it includes at least two of three components: 1) a band or star facsimile mounted on the chest area, 2) a patch on one or both sleeves displaying the insignia of the employing agency or entity, and 3) the word "Police or Sheriff" prominently displayed across the back or chest area of the uniform.

3) States that this section applies to personnel who are assigned to uniformed patrol, uniformed crime suppression, or uniformed duty at an event or disturbance, and not to members of a swat team, sniper team, or tactical team engaged in a tactical response or operation.

EXISTING LAW:

1) Prohibits a law enforcement officer or any other person from wearing a uniform that is substantially similar to the official uniform of members of the California Highway Patrol (CHP) except duly appointed members of the CHP and persons authorized by the commissioner to wear such uniform in connection with a program of entertainment. Provides that a uniform shall be deemed substantially similar to the uniform of the CHP if it so resembles such official uniform as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the CHP. (Veh. Code, § 2261.)

2) Makes it a misdemeanor for a person to wear the uniform of a peace officer while engaged in picketing, or other informational activities in a public place relating to a concerted refusal to work, whether or not the person is a peace officer. (Pen. Code, § 830.95.)

3) Makes it a misdemeanor for a person to fraudulently claim, or present themselves to be a veteran or member of the Armed Forces of the United States, the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, or any other reserve component of the Armed Forces of the United States, with the intent to obtain

money, property, or other tangible benefit. (Pen. Code, § 532b, sub. (b).)

4) Makes it a misdemeanor for a person, other than an officer or member of a fire department, to willfully wear, exhibit, or use the authorized uniform, insignia, emblem, device, label, certificate, card, or writing of an officer or member of a fire department or a deputy state fire marshal, with the intent of fraudulently impersonating an officer or member of a fire department or the Office of the State Fire Marshal, or of fraudulently inducing the belief that they are an officer or member of a fire department or the Office of the State Fire Marshal. (Pen. Code, § 538e, sub. (a).)

5) Requires, commencing January 1, 2020, the Commission on Peace Officer Standards and Training and each local law enforcement agency to conspicuously post on their Internet Web sites 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 California Public Records Act. (Pen. Code, § 13650.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 480 seeks to protect our service members, law enforcement officers, and civilians by ensuring that there are clear identifying features on police uniforms that distinguishes them from the military and prohibits the use of camouflage unless it is being worn by tactical teams. In light of the recent protests, it has been made clear that the uniforms of our local law enforcement agencies bear a striking resemblance to those of the Unites States Armed Forces. In these cases, it is not only easy for civilians to confuse the uniforms which can cause problems for our State National Guard whose presence had been requested by mayors across the state to support law enforcement, but studies suggest these visuals can also send a wrong message of aggression.

   "SB 480 would ensure there are identifying features on law enforcement uniforms to prevent any further confusion between our United States military and police departments in order to protect the public, our police officers, and our men and women in uniform."

2) **National Guard Recently Deployed to California Cities:** The streets of Bay Area, Sacramento, Los Angeles, San Diego, and other cities across the state have recently been occupied by the National Guard as protests over George Floyd's killing dominated the streets. State and local law enforcement officers were also heavily deployed on the streets, prior to and after the National Guard presence. Similar scenes played out across the country.

   At the same time, there have been reports across the country that state and local law enforcement officials have been wearing military-presenting uniforms. "I see officers from @MenloParkPD, @SMCSheriff, @SanMateoPD, @HillsboroughPD and others. They have batons out and have zip ties, tear gas and flash bangs in their kits. Some in the background from the sheriff's office are decked out in camo." (See https://twitter.com/aldot29/status/1268007934308442112, last accessed July 24, 2020.)

   The author cites to an article discussing the psychological effect of law enforcement officers wearing military-like fatigues: "When we dress our police officers in camouflage before

deploying them to a peaceful protest, the result will be police who think more like soldiers. This likely includes heightening their perception of physical threats, and increasing the likelihood that they react to those threats with violence. Simply put, dressing police up like soldiers potentially changes how they see a situation, changing protesters into enemy combatants, rather than what they are: civilians exercising their democratic rights." (See Geordie McRuer, *Cops' Deadly Identity Problem: How Police Officers' Military Uniforms Affect Their Mental State*, Salon, Sept. 12, 2014, available at https://www.salon.com/2014/09/12/cops_deadly_identity_problem_how_police_officers_military_uniforms_affect_their_mental_state/.)

This bill would prohibit the use of camouflage fatigues by state and local law enforcement officers, and also uniforms that appear substantially similar to military uniforms, in responding to events and protests.

3) **Argument in Support**: According to the *Los Angeles County Sheriff's Department*, "The Los Angeles County Sheriff's Department does not allow the use of uniforms substantially similar to the armed forces to be used by our members of uniformed patrol, crime suppression, or uniformed duty at an event or disturbance."

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Los Angeles County Sheriff's Department

Opposition

None

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

Amended Mock-up for 2019-2020 SB-480 (Archuleta (S))

Mock-up based on Version Number 96 - Amended Assembly 7/27/20
Submitted by: Nikki Moore, Public Safety

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

SECTION 1. Section 13655 is added to the Penal Code, to read:

13655. (a) A department or agency that ~~employees~~ employs peace officers shall not authorize or allow its employees to wear a uniform that is substantially similar to any uniform of the United States Armed ~~Forces~~ Forces or state active militia.

(b) A department or agency that employs peace officers shall not authorize or allow its employees to wear a uniform that is made from a camouflage printed or patterned material.

~~(b)~~ (c) For purposes of ~~this section~~ subdivision (a), a uniform is "substantially similar" if it so resembles an official uniform of the United States Armed Forces or some active militia as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the United States Armed Forces or state active militia. A uniform shall not be deemed to be substantially similar to a uniform of the United States Armed Forces if it includes at least two of the following three components: a badge or star or facsimile thereof mounted on the chest area, a patch on or both sleeves displaying the insignia of the employing agency or entity, and the word "Police" or "Sheriff" prominently displayed across the back or chest area of the uniform.

~~(c)~~ (d) This section applies to personnel who are assigned to uniformed patrol, uniformed crime suppression, or uniformed duty at an event or ~~disturbance~~ disturbance, including any personnel that respond to assist at a protest, demonstration, or similar disturbance.. It does not apply to members of a swat team, sniper team, or tactical team engaged in a tactical response or operation.

Date of Hearing: August 5, 2020
Counsel: Matthew Fleming

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

SB 905 (Archuleta) – As Amended May 21, 2020

SUMMARY: Provides that a residence address shall not be required to be submitted to the Department of Justice (DOJ) for a background check of an individual applying to work with a minor and makes a technical amendment to facilitate the processing of background checks. Specifically, **this bill**:

1) Provides that the DOJ shall not require the applicant's residence address for any request for criminal records pertaining to a person applying for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care.

2) Adds "universal citation" language into California law to clarify that all agencies and entities that are authorized to get background checks can also receive federal background check information.

EXISTING LAW:

1) Provides that people seeking a license, employment or volunteer position with supervisory or disciplinary power over a minor may have a criminal background check through the DOJ. (Pen. Code, § 11105.3).

2) Requires any request for a criminal background check shall include the fingerprints of the individual along with other specified information. (Pen. Code, § 11105.3, subd. (b).).

3) Provides that under specified statutes the DOJ may request a federal background check along with the state criminal history information. (Penal Code § 11105).

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "During this COVID-19 crisis, we need volunteers more than ever. Especially now, people should not be held back by procedure from contributing to their community. SB 905 protects the privacy of Californians by no longer requiring a residence address on a background check. By not requiring an address on these background checks, we can provide assurance to individuals that they can volunteer in their communities without risking and compromising the safety and security of themselves or their loved ones."

2) **Removing Residence Address from Background Check Applications**: Under existing law, specified people whose job or volunteer position includes authority over children are required to get a criminal background check. Such a background check may require a person submit their home address along with their fingerprints. Some organizations have found that while people are happy to volunteer they are not comfortable submitting always conformable submitting private information to a governmental agency. This bill would provide that a residence address would not be required to be submitted to the DOJ in order to perform a background check.

3) **Federal background check clarification**: Public law (Pub. L.) 92-544 authorizes the Federal Bureau of Investigation (FBI) to exchange Criminal History Record Information (CHRI) with officials of state and local governmental agencies for licensing and employment purposes. This can only be authorized by a state statute which has been approved by the Attorney General of the United States. In order make such an approval, the Attorney General of the United States looks for specific language in the state statute. If the language is not present then the Attorney General will not approve the sharing of CHRI.

   Over the years, this Legislature has enacted various background check laws that require federal criminal history information. While many state background check statutes contain the appropriate language for approval by the Attorney General of the United States, not all do. This bill would introduce a "universal citation" into California law, which would alleviate the need to include the specific statutory language that the Attorney General requires in every California background check statute. This would ensure that all requirement criteria of Public Law 92-544 and FBI policy are met, which will reduce the number of requests for federal criminal records checks authority that are denied by the FBI, thereby simplifying the process of complying background checks as requested by this Legislature.

4) **Argument in Support**: According to *the California Department of Justice*, "The DOJ is the Federal Bureau of Investigation's (FBI) designated single point-of-contact in California for entities seeking to obtain federal criminal history record information (CHRI) for licensing, certification, and permit purposes. Each time a new statute is enacted or an existing statute is amended that requires the DOJ to provide federal CHRI, the DOJ must seek approval from the FBI which verifies that the statute meets the requirements of Public Law (PL) 92-544. PL 92-544 authorizes the FBI to exchange CHRI with officials of state and local governmental agencies for licensing and employment purposes and establishes administrative safeguards for the dissemination of this information for non-criminal justice licensing and employment purposes.

   "SB 905 includes a 'universal citation' that defines consistent procedures for agencies and organizations to request a fingerprint-based criminal history information check from the DOJ and the FBI. Instead of including the specific language required for access to federal CHRI in every background check statute, agencies and organizations will now be able to reference PC 11105 Subdivision (u). Recently, the FBI notified the DOJ that the statute permitting state employee background checks (PC 11105(b)(10)) does not meet the requirements of PL 92-544. The proposed change to PC 11105 (b)(10), referencing the new PC 11105 (u), will ensure the statute adequately meets these requirements."

5) **Prior Legislation:**

a) AB 465 (Bonilla) Chapter 146, Statutes of 2013, authorized a community youth athletic program to request state- and federal-level background checks for a volunteer coach or hired coach candidate.

b) AB 1628 (Beall), of the 2011-12 Legislative Session, among other provisions, would have required a private entity doing business in the state that rents, leases, or uses public property and has an employee, member, agent, licensee, or representative who will access the property and who has duties involving close interaction with children on a regular basis to perform an enhanced background check, as specified, on the employee, member, agent, licensee, or representative. AB 1628 was held in the Assembly Committee on Appropriations' Suspense File.

c) AB 1593 (Blakeslee), of the 2008-09 Legislative Session, would have required school districts that use nonteaching volunteer aides to adopt a screening policy for those volunteers and would have required, as a minimum criminal background check, that districts utilize the DOJ's "Megan's Law" Web site, which tracks registered sex offenders in California. AB 1593 was held in the Senate Committee on Appropriations' Suspense File.

d) SB 2161 (Schiff), Chapter 421, Statutes of 2000, requires DOJ and local criminal justice agencies to furnish the state summary criminal history information to county child welfare agency personnel who have been delegated the authority of county probation officers pursuant to these provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California Department of Justice
California Public Defenders Association
Oakland Privacy
San Francisco Public Defender

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: Matthew Fleming

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

SB 203 (Bradford) – As Amended July 27, 2020

SUMMARY: Expands and extends protections for minors prior to custodial interrogation by law enforcement. Specifically, **this bill**:

1) Requires that prior to any custodial interrogation and before the waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.

2) Prohibits the waiver of such consultation with legal counsel.

3) Requires the court to consider a lack of consultation with legal counsel for the purposes of determining the admissibility of any statements made to law enforcement, as well as in determining the credibility of any officer who willfully failed to comply with the consult requirement.

4) Eliminates the sunset date of January 1, 2025 for similar protections that applied only to minors under the age of 16, making them permanent.

5) Eliminates the requirement that the Governor convene a panel of experts to examine the effects and outcomes of requiring minors under the age of 16 to consult with counsel prior to any interrogation or Miranda waiver.

6) Makes legislative findings and declarations.

EXISTING FEDERAL LAW: States that no person shall "be compelled in any criminal case to be a witness against himself." (U.S. Const. Amend. V.)

EXISTING LAW:

1) States that persons may not be compelled in a criminal cause to be a witness against themselves. (Cal. Const., Art. I, Sec. 15.)

2) Requires, prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. Prohibits waiver of the consultation. (Welf. and Inst. Code, § 625.6, subd. (a).)

3) Requires the court, in adjudicating the admissibility of statements of a youth 15 years of age or younger made during or after a custodial interrogation, to consider the effect of failure to

comply with the consultation requirement. (Welf. and Inst. Code, § 625.6, subd. (b).)

4) Specifies that the consultation requirement does not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:

   a) The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat; and

   b) The officer's questions were limited to those questions that were reasonably necessary to obtain that information. (Welf. and Inst. Code, § 625.6, subd. (c).)

5) Exempts probation officers from complying with the consultation requirement in their normal course of duties, as specified. (Welf. and Inst. Code, § 625.6, subd. (d).)

6) Requires the Governor to convene a panel of experts to study the effects and outcomes related to the implementation of the consultation requirement and produce a report by January 1, 2024. (Welf. and Inst. Code, § 625.6, subd. (e).)

7) Sunsets the consultation requirement on January 1, 2025. (Welf. and Inst. Code, § 625.6, subd. (f).)

8) Provides that a peace officer may, without a warrant, take into temporary custody a minor. (Welf. & Inst. Code, § 625)

9) Provides that in any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor will be adjudged a ward of the court or charged with a criminal action, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional rights, including his right to remain silent, his right to counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel. (Welf. & Inst. Code, § 625, subd. (c).)

10) Provides that when a minor is taken into a place of confinement the minor shall be advised that he has the right to make at least two telephone calls, one completed to a parent or guardian, or a responsible relative, or employer and one to an attorney. (Welf. & Inst. Code, § 627.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "People can decide to give up their rights, but for that to be meaningful, they have to understand their rights. What we know now is children and youth have less capacity than adults to quickly grasp complicated concepts and understand the consequences of their actions especially in stressful circumstances like a custodial interrogation. If we ignore that fact, we undermine the justice system and ultimately the constitution.

"In practice, the system is flawed and can result in serious disproportionate consequences for youth. Most youth can understand their rights and what a waiver means, but what is needed to help them understand is different than what most adults need. SB 203 would ensure young people understand their rights."

2) **Miranda Warnings**: "Miranda warnings" are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime. The purpose of Miranda warnings is to advise people that have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case.

   The Court summarized its decision as follows: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." (*Id.* at 444-45.)

   Put more simply, "Miranda warnings" are meant to inform people who are arrested of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the right not to answer any questions, that anything the person does say can be used against them as evidence in a court of law, that the person has the right to an attorney, that if the person cannot afford an attorney one will be appointed at no cost, and that the person has the right to invoke these rights at any point in time during questioning.

3) **Custodial Interrogation**: In order for Miranda warnings to apply, an individual must be subjected to "custodial interrogation." Custodial interrogation is a legal term of art that has been discussed in a prolific body of case law. Briefly stated, the term "custodial" refers to the suspect being in the custody of law enforcement. It does not require that the subject be in handcuffs or the back of a police car, but rather that the police have deprived the suspect of his or her freedom of action in some significant way. (*R.I. v. Innis* (1980) 446 U.S. 291, 298.) "Interrogation" relates to questioning by officers. Such questioning can be in the form

of an officer asking the suspect direct questions, or it can be indirect in the form of comments or actions by the officer that the officer should know are likely to produce an incriminating reply. (*Id.* at 300-01.)

It is worth noting that there are several situations in which Miranda warnings, and therefore protections envisioned by this bill, would not apply. For example, spontaneous statements by a suspect are not considered to be the product of interrogation and therefore do not require Miranda warnings. (*Id.*) There also exceptions to Miranda rule. One important exception is known as the "public safety" exception and allows police to ask questions of a suspect even in the absence of a Miranda waiver so long as they are "reasonably prompted by a concern for the public safety." (*N.Y. v. Quarles* (1984) 467 U.S. 649, 656.) Under this exception, police could question a subject about a firearm that was left near a playground or the whereabouts of a missing person without having to first "mirandize" the suspect. (*Id.*)

4) **Special Considerations for Youth**: A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and also that they are more prone to falsely confessing to a crime they did not commit. (*See* Luna, *Juvenile False Confessions*: *Juvenile Psychology, Police Interrogation Tactics, And Prosecutorial Discretion* (2018) 18 Nev. L.J. 291, available at: https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1733&context=nlj, [as of Jul. 16, 2020].) The research suggests that "[b]ecause adolescents are more impulsive, are easily influenced by others (especially by figures of authority), are more sensitive to rewards (especially immediate rewards), and are less able to weigh in on the long-term consequences of their actions, they become more receptive to coercion." (*Id.* at 297, *citing* various scientific journals.) The context of custodial interrogation is believed to exacerbate these risks. In fact, prior research has shown that 35 percent of proven false confessions were obtained from suspects under the age of 18. (Drizin & Leo, *The Problem of False Confessions in the Post-DNA World* (2004), 82 N. C. L. Rev. 891, 906–907, available at: https://scholarship.law.unc.edu/nclr/vol82/iss3/3/, [as of Jul. 16, 2020].) As explained below, these considerations have caused this Legislature to approve measures in the past that would have required a minor to consult with an attorney prior to any waiver of Miranda rights.

   a) *SB 1052 and Governor Brown's Veto Message*: SB 1052 (Lara) of the 2015-2016 Legislative Session was similar to this bill in that it would have required minors under the age of 18 to consult with an attorney prior to any custodial interrogation by a police officer. SB 1052 was passed by both houses, but was ultimately vetoed by Governor Brown. In his veto message Governor Brown stated:

      > "This bill presents profoundly important questions involving the constitutional right not to incriminate oneself and the ability of the police to interrogate juveniles. Ever since 1966, the rule has been that interrogations of criminal suspects be preceded by the *Miranda* warning of the right to remain silent and the right to have an attorney.
      >
      > "In more cases than not, both adult and juvenile suspects waive these rights and go on to answer an investigator's questions. Courts uphold these 'waivers' of rights as long as the waiver is knowing and voluntary. It is rare for a court to invalidate such a waiver.

> "Recent studies, however, argue that juveniles are more vulnerable than adults and easily succumb to police pressure to talk instead of remaining silent. Other studies show a much higher percentage of false confessions in the case of juveniles.
>
> "On the other hand, in countless cases, police investigators solve very serious crimes through questioning and the resulting admissions or statements that follow.
>
> "These competing realities raise difficult and troubling issues and that is why I have consulted widely to gain a better understanding of what is at stake. I have spoken to juvenile judges, police investigators, public defenders, prosecutors and the proponents of this bill. I have also read several research studies cited by the proponents and the most recent cases dealing with juvenile confessions.
>
> "After carefully considering all the above, I am not prepared to put into law SB 1052's categorical requirement that juveniles consult an attorney before waiving their *Miranda* rights. Frankly, we need a much fuller understanding of the ramifications of this measure.
>
> "In the coming year, I will work with proponents, law enforcement and other interested parties to fashion reforms that protect public safety and constitutional rights. There is much to be done."

In the year immediately after SB 1052 was vetoed, the legislature passed, and Governor Brown signed, SB 395.

b) *SB 395 (Lara) Chapter 681, Statutes of 2017*: SB 395, in its final version, provided that a youth who is age 15 or younger is required to consult with counsel prior to waiving his or her Miranda rights. This consultation cannot be waived. In passing SB 395, the Legislature made findings and decelerations that "[p]eople under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver" and that "a large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions." As introduced, SB 395 was nearly identical to this bill and included 16 and 17 year olds. SB 395 was amended on the Assembly floor on September 17, 2017. With those amendments, SB 395 excluded 16 and 17 year olds and imposed a requirement that the Governor convene an unpaid panel of experts to review the implementation of SB 395, examine its outcomes and effects, and generate a report for the Governor and the Legislature. This bill would effectively undo the final set of amendments to SB 395 by including 16 and 17 year olds in the protections from custodial interrogation and eliminating the governor-appointed panel of experts.

5) **San Francisco Ordinance**: In 2018, the City and County of San Francisco enacted an ordinance that required its police department to abide by a policy that is substantially similar to this bill. (San Francisco City and County Ordinance No. 41-19, available at: https://sfbos.org/sites/default/files/o0041-19.pdf, [as of Jul. 16, 2020].) The background and

findings for adopting the ordinance contain citations to various publications that indicate there is a significant concern that youth may be unable to properly understand their rights, and may also falsely confess more often than adults. (*Id.* at pp. 1-3.)

6) **Officer Credibility Determination**: In addition to the expansion of Miranda waiver protections for minors age 16 and 17, this bill would also require a court to consider an officer's willful failure to comply with those protections in determining credibility of the officer. Even without this explicit provision in the bill, a court would likely consider any officer's willful non-compliance with state law when judging the officer's credibility.

7) **Argument in Support**: According to the bill's co-sponsor, the *Pacific Juvenile Defender Center*, "In our experience, youth who are 16 or 17 years of age are similarly in need of legal advice before they can meaningfully decide whether to waive their constitutional rights and talk to the police. The adolescent brain continues to develop slowly into the mid-twenties, and until then, youth can be overwhelmed by emotional and social responses, contributing to short-sighted choices. (Scott, Duell and Steinberg, Brain Development, Social Context and Justice Policy, 57 Wash. U. J. of Law & Pol'y (2018), p. 11.) Because police are allowed to lie and use trickery, fundamental fairness requires that youth up to the age of majority receive the advice of counsel before deciding whether to speak to the police - to assure that any statements are given voluntarily, with an understanding of the rights at stake.

"The United States Supreme Court recognized the 'incompetencies of youth' in their dealings with the police in *J.D.B. v. North Carolina* (2011) 564 U.S. 261. In recognizing the need for special rules for juveniles in deciding when Miranda warnings must be given, the Court spoke of the inherently coercive character of juveniles' interactions with the police. It noted that, 'children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.' Not surprisingly, a huge proportion of statements later found involuntary by the appellate courts involve juvenile confessions.

"Even youth who can recite the Miranda warnings by heart, often do not understand the words or legal concepts. A review of Miranda studies found that:

- Even among adults, one-third fail to meaningfully understand their 'right' as it applies to their right to silence.

- About 27 percent of juveniles wrongly believe that unsigned waivers afford them complete protection from incriminating evidence.

- Forty-two percent of juveniles falsely believe that interrogating officers are prevented from using "off-the-record" disclosures as incriminating evidence.

- About 19 percent of juvenile offenders inaccurately believe that the judge is entitled to a defense attorney's disclosures regarding his or her client's guilt; this percentage increases dramatically to 56 percent with regard to court-appointed counsel.

- Nearly 31 percent of juvenile detainees believe that their parents have a legal responsibility to assist the police in prosecuting them. (Drogin and Rogers, Criminal Justice: Juveniles and Miranda, 32 GPSolo (2015), pp. 70–71.)

"San Francisco County has already enacted an ordinance requiring that youth up to age 18 be advised by an attorney before a police interrogation may proceed. One of the motivations for the ordinance was the County Supervisors' recognition that states and cities nationwide are rethinking the way minors are questioned by police, following high-profile incidents in which suspects have falsely confessed to crimes. (Sernoffsky, Proposed SF ordinance would require juveniles to have lawyers when interrogated, San Francisco Chronicle (Dec. 18, 2019).) The Supervisors unanimously passed the ordinance. (St. Clair, SF Board of Supervisors unanimously passes Jeff Adachi Youth Rights ordinance, San Francisco Chronicle (Mar. 1, 2019).)

"Aside from the tremendous harm caused to young people by wrongful conviction based on involuntary statements, the cost to the system may be enormous. An analysis of the cost of wrongful conviction in California found that improper police practices in relation to violations of rights in confessions carry an average cost of $620,832 per error. (Silbert, Hollway, and Larizadeh, Criminal Injustice: A Cost Analysis of Wrongful Convictions, Errors, and Failed Prosecutions in California's Criminal Justice System, Chief Justice Earl Warren Institute on Law and Social Policy, Berkeley School of Law (2015), p. 52.) And sadly, the rate of juvenile appellate challenges is extremely low, so many involuntary statements go unchallenged.

"As lawyers representing children, we so often meet young people who have no idea about the impact of what they have said to the police. The vast majority are youth of color whose families lack the resources to immediately hire a lawyer to go to the police station. When these youth realize what has happened, they lose faith that the system will treat them fairly. In providing 16 and 17-year-olds with the advice of counsel, some will still decide to waive their Miranda rights if this bill becomes law, but the decision will be made with a clear understanding of the rights they are giving up.

"As was the case with S.B. 395, this legislation will not impede legitimate law enforcement activities. It does not change longstanding exceptions to Miranda requirements for emergency situations. It leaves the determination of whether a confession is voluntary and therefore admissible at trial to the discretion of the judge. Advice may be given over the telephone or by video conference, as well as in person, so there should be no delay in law enforcement activities. We are not aware of any undue expense having been experienced in implementing S.B. 395. The law already requires that youth receive appointed counsel at the time of their initial detention hearing, so requiring the advice of counsel at the interrogation stage simply requires that counsel be involved at an earlier point."

8) **Argument in Opposition**: According to the *California State Sheriffs' Association*: "Existing law provides, until January 1, 2025, prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. Under current law, this consultation may not be waived. In opposing SB 395 (Chapter 681, Statutes of 2017), which created this provision, we argued that the bill exceeded what the United States Supreme Court had required on the matter. Law enforcement may simply want to talk to a minor, and even if the parent or guardian is notified in advance, this discussion would have to wait until counsel could consult with the minor if there was a chance that the interaction could fall under the

bill's undefined umbrella of a custodial interrogation. By expanding the bill's reach to minors 17 years of age or younger, this problem is exacerbated.

"We must also object to the bill because it seeks to make these provisions permanent without the full benefit of the temporary 'trial' period included in SB 395. Further, SB 203 eliminates the requirement that a panel be convened to examine the impacts of this law. We see no reason to expand this problematic program indefinitely while removing any notion that the program's outcomes will be the subject of appropriate review."

9) **Prior Legislation**:

a) SB 395 (Lara) Chapter 681, Statutes of 2017 was similar to this bill and required that a youth 15 years of age or younger consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before waiving any of the above-specified rights.

b) SB 1052 (Lara), of the 2015-2016 Legislative Session, was similar to this bill in that it would have required that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving any specified rights. SB 1052 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

#cut50
Alameda; City of
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Anti Recidivism Coalition
California Attorneys for Criminal Justice
California Department of Insurance
California Public Defenders Association
Californians for Safety and Justice
Center on Juvenile and Criminal Justice
Ceres Policy Research
Children Now
Children's Defense Fund-california
Coalition for Engaged Education
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Ella Baker Center for Human Rights
Everychild Foundation
F.u.e.l.- Families United to End Lwop
Human Rights Watch
Immigrant Legal Resource Center
Initiate Justice
John Burton Advocates for Youth
Los Angeles County Chief Executive Office

National Association of Social Workers, California Chapter
National Center for Youth Law
Pacific Juvenile Defender Center
Re:store Justice
San Francisco District Attorney's Office
Silicon Valley De-bug
The Greenlining Institute
The Unusual Suspects Theatre Company
The W. Haywood Burns Institute
Tides Advocacy
Unapologetically Hers
Underground Grit
Youth Law Center

Oppose

California District Attorneys Association
California State Sheriffs' Association
Orange County District Attorney

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

Date of Hearing: August 5, 2020
Counsel: Nikki Moore

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

SB 922 (Chang) – As Amended June 18, 2020

SUMMARY: Permits the tolling of the statute of limitations for the prosecution of a felony offense for specified computer crimes until the discovery of the commission of the offense, but no more than nine years from the commission of the offense, for crimes committed after January 1, 2021 or for crimes for which the statute of limitations has not lapsed as of that date.

EXISTING LAW:

1) Makes it unlawful to:

   a) Knowingly access and without permission alter, damage, delete, destroy, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data. (Pen. Code, § subd. (c)(1).)

   b) Knowingly access and without permission take, copy, or make use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network. (Pen. Code, § subd. (c)(2).)

   c) Knowingly and without permission use or cause to be used computer services. (Pen. Code, § subd. (c)(3).)

   d) Knowingly accesses and without permission add, alter, damage, delete, or destroy any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network. (Pen. Code, § subd. (c)(4).)

   e) Knowingly and without permission disrupt or cause the disruption of computer services or deny or cause the denial of computer services to an authorized user of a computer, computer system, or computer network. (Pen. Code, § subd. (c)(5).)

   f) Knowingly and without permission provide or assist in providing a means of accessing a computer, computer system, or computer network in violation of this section. (Pen. Code, § subd. (c)(6).)

   g) Knowingly and without permission access or cause to be accessed any computer, computer system, or computer network. (Pen. Code, § subd. (c)(7).)

   h) Knowingly introduce any computer contaminant into any computer, computer system, or computer network. (Pen. Code, § subd. (c)(8).)

i) Knowingly and without permission use the internet domain name or profile of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages or posts and thereby damage or cause damage to a computer, computer data, computer system, or computer network. (Pen. Code, § subd. (c)(9).)

j) Knowingly and without permission disrupt or cause the disruption of government computer services or denies or causes the denial of government computer services to an authorized user of a government computer, computer system, or computer network. (Pen. Code, § subd. (c)(10).)

k) Knowingly access and without permission add, alter, damage, delete, or destroy any data, computer software, or computer programs which reside or exist internal or external to a public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § subd. (c)(11).)

l) Knowingly and without permission disrupt or cause the disruption of public safety infrastructure computer system computer services or denies or causes the denial of computer services to an authorized user of a public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § subd. (c)(12).)

m) Knowingly and without permission provide or assist in providing a means of accessing a computer, computer system, or public safety infrastructure computer system computer, computer system, or computer network in violation of this section. (Pen. Code, § subd. (c)(13).)

n) Knowingly introduce any computer contaminant into any public safety infrastructure computer system computer, computer system, or computer network. (Pen. Code, § subd. (c)(14).)

2) States that no action may be brought pursuant to this subdivision unless it is initiated within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later. (Pen. Code, § subd. (e)(5).)

3) Provides that prosecution for crimes punishable by imprisonment for eight years or more must commence within six years after commission of the offense, unless otherwise provided by law. (Pen. Code, § 800.)

4) Provides that prosecution for a felony punishable by imprisonment for less than eight years must commence within three years commission of the offense, except as specified. (Pen. Code, § 801.)

5) Provides that prosecution for crimes involving fraud, breach of a fiduciary duty, embezzlement of funds from an elder or dependent adult, or misconduct by a public official does not start to run until the discovery of the offense and prosecution must be commenced within four years after discovery of the crime or within four years after completion, whichever is later. (Pen. Code, §§ 801.5 & 803, subd. (c).)

6) Provides that the prosecution of a misdemeanor must commence within one year of the commission of the offense, unless otherwise provided by law. (Pen. Code, § 802 subd. (a).)

7) States that, unless otherwise provided by law, a statute of limitations is not tolled or extended for any reason. (Pen. Code, § 803, subd. (a).)

8) States that, for specified crimes, the statute of limitations does not begin to run until the offense has been discovered, or could have reasonably been discovered. (Pen. Code, § 803, subd. (e).)

9) Provides that if more than one statute of limitations period applies to a crime, the time for commencing an action shall be governed by the period that expires later in time. (Pen. Code § 803.6, subd. (a).)

10) States that a prosecution is commenced when one of the following occurs:

   a) An indictment or information is filed;

   b) A complaint charging a misdemeanor or infraction is filed;

   c) The defendant is arraigned on a complaint that charges him or her with a felony; or,

11) An arrest warrant or bench warrant is issued. (Pen. Code, § 804.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Crimes committed in cyberspace have real world consequences. From frozen bank accounts to destroyed or damaged files, cybercrimes have grown in scope and frequency. Hackers and cybercriminals are targeting individuals and families, small businesses and large corporations, and even entire municipalities. Hackers and their crimes become more brazen when they are failed to be apprehended and prosecuted. And while small businesses, schools, and various other institutions move towards more online operations, the COVID-19 pandemic has provide prime opportunity for cybercriminals to strike. Everyone that uses the Internet is at risk of being hacked or a victim of a cybercrime. For unfortunate Californians who find themselves the victim of cybercrime, SB 922 is a step in the right direction towards holding hackers and cybercriminals accountable."

2) **Statute of Limitations**: The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.)

   The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be

unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes. Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in finality represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of the relative interests of the state and the defendant in administering and receiving justice.

More recently, in *Stogner v. California* (2003) 539 U.S. 607, the Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

The amount of time in which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner*, *supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

> The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right

> balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provid[e] predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (*People v. Turner*, *supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

There are, however, some statutes of limitations not necessarily based on the seriousness of the offense. The Legislature has acknowledged that some crimes by their design are difficult to detect and may be immediately undiscoverable upon their completion. So for example, crimes involving fraud, breach of a fiduciary duty, bribes to a public official or employee, and those involving hidden recordings have statutes of limitations which begin to run upon discovery that the crime was committed. (See Pen. Code, § 803, subd. (c), see also Pen. Code, § 803, subd. (e).)

This bill would provide that a charge for the crime of computer hacking may be filed be up to three years after discovery of the crime, but no longer than nine years from the commission of the crime.

3) **Ex Post Facto:** In *Stogner v. United States*, *supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.)

   SB 239 (Chang), of 2019-20 of Legislative Session, is a prior version of this bill. SB 239 did not account for the principles of the Ex Post Facto Clause. However, this bill specifically does not apply to crimes for which the statute of limitations has run.

4) **Argument in Support**: According to *Alameda County District Attorney*, "This straightforward bill would assist in the prosecution of computer related crimes by changing the statute of limitations from 3 years from the time the crime was committed to 3 years from the discovery of the commission of the crime.

   "Currently, the statute of limitations for a computer related crimes including knowingly and without permission accessing any computer, computer system, or computer network or introducing malware to a computer or computer system is 3 years. However, the nature of crime on the internet sometimes prevents speedy prosecution. It is possible, for example, for a crime to be committed on a computer or computer system and not be discovered for years.

   "This bill would provide much needed time for prosecuting these crimes, and prevent an instance of a crime being discovered after the 3 year statute with no available recourse."

5) **Prior Legislation**:

a) SB 239 (Chang), of the 2019-20 Legislative Session, provided that, notwithstanding any other statutes of limitations, for the crime of unauthorized access to computers, a criminal complaint may be filed within three years after the discovery of offense. SB 239 was held in the Assembly Appropriations Committee.

b) AB 32 (Waldron), Chapter 614, Statutes of 2015, increased specified fines related to computer crimes from a maximum of five thousand dollars ($5,000), to a maximum of ten thousand dollars ($10,000), and tolled the statute of limitations for illegally acquiring digital images of a person that displays an intimate body part of a person.

c) AB 1649 (Waldron), Chapter 379, Statutes of 2014, specified the penalties for any person who disrupts or causes the disruption of, adds, alters, damages, destroys, provides or assists in providing a means of accessing, or introduces any computer contaminant into a "government computer system" or a "public safety infrastructure computer system," as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP
Alameda County District Attorney's Office
California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Peace Officers Research Association of California (PORAC)

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: Cheryl Anderson

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

SB 1290 (Durazo) – As Introduced February 21, 2020

SUMMARY: Vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system. Specifically, **this bill**:

1) Provides that the unpaid outstanding balance of any of the following county-assessed or court-ordered costs imposed before January 1, 2018, against the parent, guardian, or other person liable for the support of a minor is vacated and shall be unenforceable and uncollectable if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision as specified:

   a) Reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody (Welf. & Inst. Code, § 207.2);

   b) Costs of support for a minor detained in a juvenile facility (Welf. & Inst. Code, § 903);

   c) Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court (Welf. & Inst. Code, § 903.1);

   d) Registration fee up to $50 for appointed legal counsel (former Welf. & Inst. Code, § 903.15);

   e) Costs of minor's probation supervision, home supervision, or electronic monitoring (Welf. & Inst. Code, § 903.2);

   f) Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release (Welf. & Inst. Code, § 903.25);

   g) Cost of support of a minor placed in out-of-home placement pursuant to a juvenile court order (Welf. & Inst. Code, § 903.4); or

   h) Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid (Welf. & Inst. Code, § 903.5).

2) Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, to cover the costs of drug testing a minor on probation for a drug case (Welf. & Inst. Code, § 729.9) is vacated and shall be unenforceable and uncollectable.

3) Specifies that the foregoing provisions apply to dual status children for purposes of delinquency jurisdiction.

4) Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, for home detention administrative fees and probation drug testing fees (Pen. Code, § 1203.016, 1203.1ab, & 1208.2) against persons age 18 to 21 and under the jurisdiction of the criminal court is vacated and shall be unenforceable and uncollectable.

EXISTING LAW:

1) Prohibits, since January 1, 2018, imposing financial liability for the following county-assessed or court-ordered costs, against the parent, guardian, or other person liable for the support of a minor if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision as specified:

   a) Costs of support for a minor detained in a juvenile facility (Welf. & Inst. Code, § 903);

   b) Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court (Welf. & Inst. Code, § 903.1);

   c) Costs of minor's probation supervision, home supervision, or electronic monitoring (Welf. & Inst. Code, § 903.2);

   d) Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release (Welf. & Inst. Code, § 903.25);

   e) Cost of support of a minor placed in out-of-home placement pursuant to a juvenile court order (Welf. & Inst. Code, § 903.4); or

   f) Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid (Welf. & Inst. Code, § 903.5).

2) Repeals, effective January 1, 2018, the registration fee up to $50 for appointed legal counsel (former Welf. & Inst. Code, § 903.15);

3) Eliminates, effective January 1, 2018, parental liability for reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody (Welf. & Inst. Code, § 207.2);

4) Limits, since January 1, 2018, the recovery of fees to be paid by probationers for drug testing to those persons over 21 years of age and under the jurisdiction of the criminal court. (Welf. & Inst. Code, § 729.9; Pen. Code, § 1203.1ab.)

5) Limits, since January 1, 2018, the recovery of administrative fees to be paid by home detention participants to persons over 21 years of age and under the jurisdiction of the criminal court. (Pen. Code, §§ 1203.016, 1208.2.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Collecting fees from system-involved youth and their families is a regressive, racially discriminatory, and financially unsound way for government to fund public services. Black communities continue to face racial profiling and violence at the hands of law enforcement, and racially disproportionate treatment throughout the system leaves youth of color and their families with significantly more fees. A 2016 study by the Policy Advocacy Clinic at UC Berkeley found that Black youth in Alameda County were more likely to be sentenced to probation, and for longer terms, than their White peers. These longer sentences led to higher fee amounts for families where, on average, a Black youth on probation owed more than twice the amount as a White youth. Without the statewide protections afforded by SB 1290, ongoing juvenile fee collection efforts will continue to be a compounding injustice that disproportionately harms Black and Latinx families and low-income families. By ending the collection of and formally discharging juvenile fees, the state can deliver fully on its promise to relieve California youth and their families of regressive and racially discriminatory debt."

2) **Juvenile Fees**: Effective January 1, 2018, SB 190 (Mitchell), Chapter 678, Statutes of 2017, repealed county authority to charge a number of administrative fees to parents and guardians with a youth in the juvenile justice system and to persons ages 18 to 21 in the criminal (adult) justice system.

> [SB 190] significantly limits the fees counties may charge families of juveniles in the criminal justice system. The law eliminates registration fee for legal counsel for minors, "eliminates [the] liability of a minor or his or her parents … for … costs associated with the filing of a juvenile delinquency petition in juvenile court," and requires counties to pay the for all "support and maintenance of a juvenile delinquency ward." Fees for home-detention participants over twenty-one, drug testing fees for persons over twenty-one, and fees for legal representation and other services provided to the minor's parents are all limited by the statute.
>
> Before the bill was passed, families of minors could be involuntarily charged for home detention fees, drug testing fees, representation fees, and electronic monitoring fees. A study by students of the University of California Berkeley School of Law demonstrated the harm of the previous law. While the fees were originally designed to recuperate high costs, the costs collected barely covered the costs of administering such fees. Further, families of color were disparately disadvantaged by the fees. The new policies set forth in S.B. 190 aim to eliminate

a source of financial harm to vulnerable families, support the reentry of youth leaving the juvenile justice system, and reduce the likelihood that youth will recidivate.

(*Recent Court Decisions and Legislation Affecting Juveniles: Recent Court Decisions and Legislation Affecting Juveniles* (2018) 22 U.C. Davis J. Juv. L. & Pol'y 179, 197-198 [footnotes omitted].)

Although, since January 1, 2018, SB 190 prohibits counties from assessing new fees, it does not require counties to stop collecting previously assessed fees or to vacate existing fee judgments. A recent report published by the University of California, Berkeley Law School's Policy Advocacy Clinic found that 36 of the state's 58 counties had voluntarily stopped collecting juvenile fees assessed prior to January 1, 2018. (UC Berkeley Policy Advocacy Clinic, *Fee Abolition and the Promise of Debt-Free Justice for Young People and Their Families in California: A Status Report on Implementation of Senate Bill 190* (2019) p. 7 < https://www.law.berkeley.edu/wpcontent/uploads/2019/10/SB-190-Implementation-Report11_10_31_19.pdf > [as of June 24, 2020].) The report also found that 23 of the 36 counties no longer collecting juvenile fees had formally discharged outstanding balances. (*Ibid.*) The report noted that the state's remaining 22 counties were continuing to collect those outstanding juvenile fees, with five counties—San Diego, Orange, Riverside, Stanislaus, and Tulare—continuing to collect more than 95% of all outstanding fees. (*Ibid.*)

According to background information provided by the author's office, after Governor Newsom declared a state of emergency in March 2020, six counties paused or ended collection of outstanding juvenile fees. This is consistent with numbers through July 14, 2020, as reported by the Policy Advocacy Clinic, reflecting that 42 of 58 counties have voluntary ended collection of more than $345 million in juvenile fees. Sixteen, however, continue to collect juvenile fees charged to families prior to January 1, 2018, totaling more than $15 million. Of the remaining counties, Tulare is pursuing more than $11 million. (<https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/juvenile-fee-collection-in-california/> [as of July 24, 2020].)

This bill would vacate the outstanding balance of pre-2018 county-assessed or court-ordered costs imposed against the parents or guardians of wards in specified circumstances, minors and adults ages 18 to 21 who were ordered to participate in drug and substance abuse testing, and adults who were 21 years of age and under at the time of their home detention.

3) **The Costs of Juvenile Fee Collection**: According to information provided by the author's office: "California counties that continue to pursue previously assessed fees do not recoup significant revenue because of the decreasing rates of collection and the ongoing costs involved in collecting fees. All six counties that voted to suspend or end collections in 2020 reported annual average collection rates below 5% since the implementation of SB 190.[1] Tulare County, which now has the highest amount of outstanding fees in the state, reports an average annual collection rate below 1% during this same period.[2]"

"[1] San Diego Cty. Item 15; Riverside Cty. Item 3.17; Stanislaus Cty. Consideration & Approval of Financial Report and Related Actions; Orange Cty., Item 25; Email from Ellisha Hardison, Humboldt Cty. Probation (Jun 15, 2020) (on file with authors); Email from Michaela Noland, Admin. Servs. Manager, Lake Cty. Superior Court (Apr. 28, 2020) (on file with authors).

[2] Email from Michelle Marquez, Tulare Cty. Counsel (Jun 26, 2020) (on file with authors)."

4) **Argument in Support**: According to Western Center on Law and Poverty, a sponsor of this bill, "[SB 1290] will end the harmful and costly collection of administrative fees that were assessed against youth and their families in California's juvenile and criminal (adult) legal systems prior to January 1, 2018. To relieve youth, families, and our state's most vulnerable communities of color from the negative consequences of outstanding administrative fees, SB 1290 will vacate all court judgments, stipulated agreements, and other instruments imposing such fees.

[¶]…[¶]

"In abolishing the assessment of new juvenile fees, California became a national model for progressive youth justice. The state should continue to lead by ending collection of regressive and racially discriminatory fees. By ending the collection of all SB 190 prohibited fees and discharging all associated debt, SB 1290 will fully deliver on the promise of debt-free justice for all California youth and their families. For these reasons, we are proud to sponsor SB 1290 and respectfully request your 'Aye' vote."

1) **Related Legislation**:

a) SB 144 (Mitchell) would repeal various administrative fees that agencies and courts are authorized to impose in order to fund elements of the criminal justice system, and would eliminate outstanding debt incurred as a result of the fees. SB 144 is pending hearing in this Committee.

b) AB 227 (Jones-Sawyer) would have authorized a court to waive imposition of a criminal conviction assessment fee, court operations assessment fee or restitution fine based on the court's determination of the defendant's ability to pay. AB 227 was held in the Assembly Appropriations Committee.

c) AB 927 (Jones-Sawyer) would prohibit the court in a criminal or juvenile proceeding involving a misdemeanor or felony from imposing fines, fees, and assessments, without making a finding that the person has the ability to pay. AB 927 was vetoed by the Governor.

d) AB 1348 (Gray) would repeal the 20% state surcharge levied on all criminal fines, except the restitution fine. AB 1348 was held in the Assembly Appropriations Committee.

e) AB 1980 (Gray) is substantially similar to AB 1348. AB 1980 was referred to this Committee.

f) AB 2308 (Carrillo) would make a defendant's inability to pay a compelling and extraordinary reason for a court to not impose a restitution fine upon a conviction of a misdemeanor or felony and would require the court to impose the court facility and court operation assessments unless the court determines that the defendant does not have the ability to pay. AB 2308 was referred to this Committee.

2) **Prior Legislation**:

a) SB 190 (Mitchell), Chapter 678, Statutes of 2017, limited the authority of local agencies to assess and collect specified fees against families of persons subject to the juvenile delinquency system.

b) SB 941 (Mitchell), of the 2015-2016 legislative session, was substantially similar to SB 190. SB 941 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center on Law & Poverty, INC. (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
American Civil Liberties Union
Anti Recidivism Coalition
Aspiranet
California Alliance of Child and Family Services
California Association of Food Banks
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Youth
California Public Defenders Association
Californians for Economic Justice
Center for Responsible Lending
Children's Defense Fund-California
Children Now
Coleman Advocates for Children and Youth
Communities United for Restorative Youth Justice
Community Works
Courage California
Drug Policy Alliance
Friends Committee on Legislation of California
Insight Center for Community Economic Development
John Burton Advocates for Youth
Juvenile Law Center
Lawyers' Committee for Civil Rights
Legal Services for Prisoners with Children
Los Angeles County Public Defenders Union Local 148
Milpa (motivating Individual Leadership for Public Advancement)
National Association of Social Workers, California Chapter
National Center for Youth Law
National Lawyers Guild San Francisco Bay Area Chapter, Doris Brin Walker Legislative Reform Committee
Public Counsel
Public Law Center
San Diego; County of

San Francisco Senior and Disability Action
Santa Cruz Barrios Unidos INC.
St. Anthony Foundation
Youth Alive!

One private individual

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: David Billingsley

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

SB 1123 (Chang) – As Amended July 27, 2020

SUMMARY: Clarifies the definition of elder and dependent adult abuse and requires law enforcement agencies to update their policy manuals with the new definition. Specifically, **this bill**:

1) Clarifies, in the context of elder and dependent adult abuse, definitions of the terms "abandonment," "abduction," "financial abuse," "goods and services necessary to avoid physical harm or mental suffering," "isolation," "mental suffering," "neglect," and "physical abuse" by cross-referencing the Welfare and Institutions Code.

2) Requires every local law enforcement agency, when the agency next undertakes the policy revision process, to revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, the updated, cross-referenced definition of elder and dependent adult abuse.

EXISTING LAW:

1) Makes it an alternate felony/misdemeanor ("wobbler") for a person, entrusted with the care of custody of any elder or dependent adult, to willfully cause the elder to be injured or permit them to be placed in a situation endangering their health. (Pen. Code, § 368, subd. (b)(1).)

2) Defines the following terms:

   a) "Elder" is any person who is 65 years of age or older. (Pen. Code, § 368, subd. (g).)

   b) "Dependent adult" to mean any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" also includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility. (Pen. Code, § 368, subd. (h).)

   c) "Elder and Dependent Adult abuse" is physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. (Pen. Code, § 368.5, subd (c)(1)(D).)

d) "Abandonment" is the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody. (Welf. and Inst. Code, § 15610.05.)

e) "Abduction" is the means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court. (Welf. and Inst. Code, § 15610.06.)

f) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

i) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both;

ii) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; or

iii) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as specified. (Welf. and Inst. Code, § 15610.30.)

g) "Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

i) The provision of medical care for physical and mental health needs.

ii) Assistance in personal hygiene.

iii) Adequate clothing.

iv) Adequately heated and ventilated shelter.

v) Protection from health and safety hazards.

vi) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

vii) Transportation and assistance necessary to secure any of the needs set forth above. (Welf. and Inst. Code, § 15610.35.)

h) "Isolation" means any of the following:

i) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

ii) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

iii) False imprisonment, as defined in Section 236 of the Penal Code.

iv) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors. (Welf. and Inst. Code, § 15610.43.)

i) "Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult. (Welf. and Inst. Code, § 15610.53.)

j) "Neglect" means either of the following:

i) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

ii) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise. (Welf. and Inst. Code, § 15610.57, subd. (a).)

k) "Neglect" includes, but is not limited to, all of the following:

i) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

ii) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

iii) Failure to protect from health and safety hazards.

iv) Failure to prevent malnutrition or dehydration.

v) Failure of an elder or dependent adult to satisfy the needs specified above, inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health. (Welf. and Inst. Code, § 15610.57, subd.

(b).)

3) Authorizes local and state law enforcement agencies with jurisdiction to investigate elder and dependent adult abuse and all other crimes against elder victims and victims with disabilities. (Pen. Code, § 368.5 (a).)

4) Grants adult protective services agencies and local long-term care ombudsman programs also have jurisdiction within their statutory authority to investigate elder and dependent adult abuse and criminal neglect, and may assist local law enforcement agencies in criminal investigations at the law enforcement agencies' request, if consistent with federal law; however, law enforcement agencies retain exclusive responsibility for criminal investigations, notwithstanding any law to the contrary. (Pen. Code, § 368.5 (b).)

5) Requires every local law enforcement agency shall, when the agency next undertakes the policy revision process, revise or include in the portion of its policy manual relating to elder and dependent adult abuse, if that policy manual exists, with information pertaining to the offense and investigation of elder and dependent adult abuse. (Pen. Code, § 368.5 subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Seniors and dependent adults are more vulnerable and more susceptible to physical, emotional, and financial abuse than other populations. According to a study by the National Adult Protective Services Association, one in nine senior or dependent adults have experienced abuse, neglect, or exploitation over the past year.

   "California is bracing for a silver tsunami as its population is aging. Estimates project that by 2030, the 21% of the population will be over the age of 65 and 10% of the population will be over the age of 75. With a growing aging population, protection from abuse, neglect, isolation, and other crimes against the elderly should be a priority for our state.

   "Abuse against elderly or dependent adults can have long lasting effects. Research has shown that forms of physical and mental abuse (which can include social isolation) can lead to an array of physical and mental conditions including heart disease, high blood pressure, weakened immune system, depression, anxiety, and cognitive decline.

   "Currently, California Penal Code 368.5 lacks definitions of physical, mental, and emotional abuse. By aligning the definitions of abuse found in the Welfare and Institutions Code, the legal protections that are afforded the elderly or dependent adult populations will be clear.

   By amending Penal Code 368.5 to align the definitions of elder and dependent adult abuse with those found in the Welfare and Institutions Code, law enforcement agencies will have accurate and unambiguous terms to use in the course of reporting or investigating claims of abuse."

2) **Consistency of "Elder and Dependent Adult Abuse" Definition**: Consistency in the application of the law is a desirable quality. It promotes fairness and equitable treatment.

Currently, elder and dependent adult abuse is defined in Penal Code section 368.5 as "physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm, pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Each of those terms has a specific definition in the Welfare and Institutions Code, but the penal code does not cross-reference those definitions. By adding cross references to the Welfare and Institutions Code, this bill seeks to promote uniform application of the law.

3) **Argument in Support**: According to the *San Diego District Attorney's Office*: "This bill would amend PC 368.5 to define the term 'elder and dependent adult abuse' to align with the definition currently found in the Welfare and Institutions Code (WIC). This definition will be included in the policy manuals and handbooks of all law enforcement agencies.

"SB 1123 will encourage consistent enforcement of elder and dependent adult abuse laws throughout California by requiring local law enforcement agencies to employ best practices in their approach to these cases. Requiring these agencies to revise or include in their policy manuals specified information regarding elder and dependent adult abuse will be an effective step in protecting our elderly.

"In 2017, our office began a formal planning process to coordinate San Diego's regional response to elder abuse. Due to the rise of elder abuse prosecutions, as well as the impending explosion of the elder population, our office brought together countywide stakeholders in November 2017 for a first-ever 'think-tank' of experts, including professionals from all disciplines that serve as touchpoints for elder and dependent adults. Those experts identified gaps and needs in our community and set goals for the future outlined in our San Diego County Elder and Dependent Adult Abuse Elder Abuse Blueprint.

"SB 1123 will help our response team by creating a clear and standard definition of elder and adult abuse. By amending Penal Code 368.5 to align the definitions of elder and dependent adult abuse with those found in the WIC, law enforcement agencies will have accurate and consistent terms to use in the course of reporting or investigating claims of elder abuse."

4) **Prior Legislation**:

a) SB 1191 (Hueso) Chapter 513, Statutes of 2018, required local law enforcement to revise their training policies in regards to the crimes of elder and dependent adult abuse.

b) AB 2623 (Pan), Chaptered 823, Statutes of 2014, expanded the elder and dependent adult abuse training curriculum requirements mandatory for specified peace officers and required the Commission on Peace Officer Standards and Training (POST) to consult with local protective services offices and the Office of the State Long-Term Care Ombudsman when creating new or updated training materials.

c) SB 338 (Morrell), of the 2015-2016 Legislative Session, would have created an alternate felony-misdemeanor offense for causing substantial mental suffering in an elder or dependent adult. SB 338 died in the Senate Public Safety Committee.

d) AB 441 (Wilk), of the 2015-2016 Legislative Session, would have created a sentencing enhancement of two additional years of imprisonment for any person convicted of

identity theft if the victim was 65 years of age or older at the time of the offense. AB 441 failed passage in the Assembly Public Safety Committee.

e) SB 110 (Liu), Chapter 617, Statutes of 2010, authorized every local law enforcement agency that participates in the Peace Officer Standards and Training (POST) program to provide training to its peace officers using a telecourse related to crime victims with disabilities each time that telecourse is update.

f) AB 1819 (Shelley), Chapter 559, Statutes of 2000, required peace officer elder abuse training to include the subjects of physical and psychological abuse of elders and dependent adults.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California Commission on Aging
California District Attorneys Association
Coalition for Elder & Disability Rights (CEDAR)
Ethics Media
Rights Rally
Riverside Sheriffs' Association
San Diego County District Attorney's Office
State Council on Developmental Disabilities
The Arc and United Cerebral Palsy California Collaboration

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: Matthew Fleming

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

SB 1111 (Durazo) – As Amended June 19, 2020

SUMMARY: Requires that any person whose case originated in juvenile court remain in a county juvenile facility until the person turns 21 years of age, with limited exceptions. Specifically, **this bill**:

1) Requires, notwithstanding any other law, that any person whose case originated in juvenile court remain, if the person is held in secure detention, in a county juvenile facility until the person attains 21 years of age, except as provided.

2) Authorizes the probation department to petition the court to house a person who is 19 years of age or older in an adult facility, including a jail or other facility established for the purpose of confinement of adults.

3) Requires the court to hold a hearing upon receipt of a petition to house a person who is 19 years of age or older in an adult facility and provides that there is a rebuttable presumption that the person will be retained in a juvenile facility.

4) Requires the court to determine at the hearing whether the person will be moved to an adult facility and make written findings of its decision based on the totality of the following criteria:

   a) The impact of being held in an adult facility on the physical and mental health and well-being of the person;

   b) The benefits of continued programming at the juvenile facility and whether required education and other services called for in any juvenile court disposition or otherwise required by law or court order can be provided in the adult facility;

   c) The capacity of the adult facility to separate persons under 21 years of age from older adults and to provide them with safe and age-appropriate housing and program opportunities;

   d) The capacity of the juvenile facility to provide needed separation of older youth from younger youth given the youth currently housed in the facility; and,

   e) Evidence demonstrating that the juvenile facility is unable to currently manage the person's needs without posing a significant danger to staff or other youth in the facility.

5) Requires that if a person between 18 and 20 years of age, inclusive, is removed from a juvenile facility, the court, upon the motion of any party and a showing of changed circumstances, to consider the above listed criteria and to determine whether the person should be housed at a juvenile facility.

6) Specifies that this bill is not intended to authorize confinement in a juvenile facility where authority would not otherwise exist.

7) Repeals provisions of law related to the detention of minors in an adult facility.

8) Makes technical and conforming changes to existing law.

EXISTING LAW:

1) Provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime, is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)
2) Provides that in a case in which a minor is alleged to have committed any felony when the minor was 16 years of age or older, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(1).)
3) Provides that in a case in which a minor is alleged to have committed specified offenses when the minor was 14 or 15 years of age, but was not apprehended prior to the end of juvenile court jurisdiction, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)
4) Authorizes the district attorney or other appropriate prosecuting officer to file an accusatory pleading in a court of criminal jurisdiction against a minor who is alleged to have violated a criminal statute or ordinance and who has been declared not a fit and proper subject to be dealt with under the juvenile court law or as to whom charges in a petition in the juvenile court have been transferred to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707.1, subd. (a).)
5) Authorizes the juvenile court, as to a minor alleged to have committed specified violent or serious felony offenses and who has been declared not a fit and proper subject to be dealt with under the juvenile court law, or as to a minor for whom charges in a petition or petitions in the juvenile court will be transferred to a court of criminal, or as to a minor whose case has been filed directly in or transferred to a court of criminal jurisdiction, to order the minor to be delivered to the custody of the sheriff upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall. (Welf. & Inst. Code, § 707.1, subd. (b)(1).)
6) Requires that other minors declared not fit and proper subjects to be dealt with under the juvenile court law, if detained, remain in the juvenile hall pending final disposition by the criminal court or until they attain the age of 18, whichever occurs first. (Welf. & Inst. Code, § 707.1, subd. (b)(1).)
7) Requires that upon attainment of the age of 18 years such a person who is detained in juvenile hall be delivered to the custody of the sheriff unless the court finds that it is in the best interests of the person and the public that he or she be retained in juvenile hall. Prohibits the transfer from taking place until after the court has made its findings if a hearing is requested by the person. (Welf. & Inst. Code, § 707.1, subd. (b)(2).)

8) Prohibits a court, judge, referee, peace officer, or employee of a detention facility from knowingly detaining any minor in a jail or lockup, except as provided. (Welf. & Inst. Code, § 207.1, subd. (a).)

9) Provides that any minor who is alleged to have committed specified violent or serious felony offenses whose case is transferred to a court of criminal jurisdiction after a finding is made that the minor is not a fit and proper subject to be dealt with under the juvenile court law, or any minor who has been transferred to a court of criminal jurisdiction, or any minor who has been charged directly in or transferred to a court of criminal jurisdiction, may be detained in a jail or other secure facility for the confinement of adults if all of the following conditions are met:

   a) The juvenile court or the court of criminal jurisdiction makes a finding that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall;

   b) Contact between the minor and adults in the facility is restricted, as specified; and,

   c) The minor is adequately supervised. (Welf. & Inst. Code, § 207.1, subd. (b).)

10) Provides that a minor may be detained in a jail or other secure facility for the confinement of adults only if the court makes its findings on the record and, in addition, finds that the minor poses a danger to the staff, other minors in the juvenile facility, or to the public because of the minor's failure to respond to the disciplinary control of the juvenile facility, or because the nature of the danger posed by the minor cannot safely be managed by the disciplinary procedures of the juvenile facility. (Welf. & Inst. Code, § 207.6.)

11) Provides that it is unlawful to permit any person under 18 years of age who is detained in or sentenced to any institution in which adults are confined to come or remain in contact with such adults. (Welf. & Inst. Code, § 208, subd. (a).)

12) Provides that, notwithstanding any other law, in any case in which a minor who is detained in or committed to a county juvenile institution attains 18 years of age prior to or during the period of detention or confinement, he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. (Welf. & Inst. Code, § 208.5, subd. (a).)

13) Provides that if continued detention is ordered for a ward under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age, the detained person may be allowed to come into or remain in contact with any other person detained in the institution subject to specified requirements. Requires that the person be advised of his or her ability to petition the court for continued detention in a juvenile facility at the time of his or her attainment of 19 years of age. (Welf. & Inst. Code, § 208.5, subd. (a).)

14) Requires a county to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution established for the purpose of housing juveniles as a suitable place for confinement before the institution is used for the detention or commitment of an individual under the jurisdiction of the juvenile court who is 19 years of age or older but

under 21 years of age where the detained person will come into or remain in contact with persons under 18 years of age who are detained in the institution. Requires the BSCC to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. Requires the BSCC to take into account the available programming, capacity, and safety of the institution as a place for the combined confinement and rehabilitation of individuals under the jurisdiction of the juvenile court who are over 19 years of age and those who are under 19 years of age in its review. (Welf. & Inst. Code, § 208.5, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The vast majority of incarcerated youth in California are held in county-level facilities. SB 1111 creates a thoughtful process for determining whether youth aged 18 to 21, whose cases originated in juvenile court, should be housed in adult jails. Current law is a patchwork of misunderstood and underused statutes, resulting in interruption of education and the continuum of care for transition-age youth, and arbitrary and costly outcomes across the state.

   "Current law on housing youth offenders is confusing, inconsistent, and scattered throughout the code. Some counties interpret the law as allowing youth to be transferred to adult jail at age 18, while others believe such transfer may not occur until age 19. There are separate laws governing youth who have been ordered transferred to adult court, but it is unclear how those laws relate to one another. There is a provision for counties to seek a waiver from the BSCC to hold older youth in juvenile facilities until age 21, but less than a third of counties have done so. As a result, because of their age and where they happen to live, many youth who are doing well in juvenile hall programs are abruptly transferred to adult jails where they are simply "doing time" and exposed to violence and often, networks of criminal activity.

   "Once they are held in an adult jail, youth no longer receive education services or the programming available in juvenile facilities. They face an increased risk of physical and sexual abuse. They suffer with a heightened risk of suicide and mental health issues. They are more likely, simply because of having been housed in an adult facility, to be transferred to adult court or to receive more punitive dispositions.

   "Senate Bill 1111 would reduce the number of transfers from juvenile justice facilities to jail and provide relief for county jails, which are often overcrowded and ill equipped to address the needs of this population. A reduction in the number of jail transfers would limit exposure and aid vital containment efforts. It would also ease fiscal pressure on the corrections system. Also, although there are solid policy reasons that caused introduction of this bill, its proposed mechanisms are important in the COVID-19 context because they would reduce the transmission of disease and ease conditions for staff tasked with monitoring younger inmates in adult facilities."

2) **Transfers from Juvenile to Adult Facilities**: Existing law includes two primary statutes related to the transfer of individuals from county juvenile facilities to county adult facilities after a person has reached the age of majority. The first statute, Welfare and Institutions Code section 707.1 generally requires that minors who are prosecuted as adults remain

housed in a juvenile facility pending conclusion of their criminal case or until they turn 18, whichever occurs first. However, the person may petition the court to remain in a juvenile facility upon turning 18, and may be permitted to remain in the juvenile facility if the court finds that it is in the best interest of the person and the public to do so. Additionally, Welfare and Institutions Code section 707.1 authorizes the transfer of minors who are prosecuted as adults from juvenile hall to county jail "upon a finding that the presence of the minor in the juvenile hall would endanger the safety of the public or be detrimental to the other inmates detained in the juvenile hall."

The second statute, Welfare and Institutions Code section 208.5, provides that when a minor detained in a county juvenile facility turns 18 prior to, or during the period of confinement, the person may be allowed to remain there until the person turns 19. The statute generally requires that upon turning 19, a person in a county juvenile facility be delivered to the custody of the sheriff (i.e., transferred to jail) for the remainder of the time the person remains in custody, unless the juvenile court orders continued detention in a juvenile facility. The statute further provides that if continued detention is ordered for a person who is 19 or 20 years old, the person does not need to be separated from the younger wards housed in the juvenile facility. Welfare and Institutions Code section 208.5 requires that the person be advised of their ability to petition the court for continued detention in a juvenile facility at the time the person turns 19. Subdivision (b) of this section permits a county to seek approval from the BSCC in order to house 19 and 20 years old in the same juvenile facility where wards under 18 are housed.

3) **Revision of Transfer Statutes**: According to the bill's sponsors the existing jail transfer statutes are confusing and outdated which has led to different actions taken by different counties. For example, the sponsors assert that some counties believe that 18 year olds may be transferred from the custody of county juvenile facilities to county adult facilities, while other counties believe that they cannot do so until a youth turns 19. The sponsors of the bill further contend that the transfer of youth to jail is disruptive to youths' education and the receipt of various services as well as harmful to the physical and psychological well-being of young adults. Finally, the sponsors argue that the reforms proposed in this bill are consistent with other recent reforms that recognize that young adults should be afforded certain opportunities given their ongoing development, including the existing Transitional Age Youth Pilot Program which permits certain 18- to 20-year-old offenders to serve their time in juvenile hall instead of jail.

   This bill seeks to revise, consolidate, and simplify various jail transfer statutes. Specifically, this bill would create a rebuttable presumption that any person whose case originated in juvenile court must remain in a county juvenile facility, if the person is held in secure detention, until the person reaches 21 years of age. This bill would also establish a process by which the probation department may petition the court to house a person who is 19 years of age or older in an adult facility. The court is then required to hold a hearing to determine whether the person will be moved to an adult facility and must base its decision on several criteria, including the impact of being housed in an adult facility on the health and well-being of the person and the benefits of continued programming at the juvenile facility. Finally, this bill would establish a process by which a person removed from a juvenile facility, pursuant to the process created by this bill, may be re-housed at a juvenile facility upon a showing of changed circumstances.

Notably, this bill would repeal the authority under existing law of the juvenile court to transfer youth prosecuted as adults to the county jail in cases where housing the youth in a juvenile facility would "endanger the safety of the public or be detrimental" to the other wards in juvenile hall. This provision of the bill is consistent with the bill's revision of Welfare and Institutions Code section 208.5 to create a presumption that individuals whose cases originated in juvenile court will be housed in county juvenile facilities until reaching 21.

4) **COIVD-19 Considerations**: The pandemic of COIVD-19 has infiltrated the California corrections system. As of July 21, 2020 there were nearly 2,000 inmates in California prions with active cases of COVID-19. (California Department of Corrections and Rehabilitation (CDCR) website, available at: https://www.cdcr.ca.gov/covid19/, [as of Jul. 22, 2020].) Data on active cases of COVID-19 in county jails is difficult to track because of the fluid population and other factors. Nonetheless, the Board of State and Community Corrections (BSCC) is currently engaged in efforts to provide significant public information about the number of active cases and deaths resulting from the Coronavirus in local facilities. (BSCC website, available at: http://www.bscc.ca.gov/covid-19-information-and-updates/, [as of Jul. 22, 2020].)

   The Center for Disease Control (CDC) has issued guidance relative to COVID-19 in correctional facilities. (CDC website, available at: https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html, [as of Jul. 22, 2020].) One recommendation advanced by the CDC is to "[s]uspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release), unless necessary for medical evaluation, medical isolation/quarantine, health care, extenuating security concerns, release, or to prevent overcrowding." (*Id.*) The policy of this bill appears to be consistent with the guidance from the CDC in that it would delay transfers for many juveniles until they reach age 21.

5) **Argument in Support**: According to the bill's co-sponsor, the *Pacific Juvenile Defender Center*, "When 18 to 20-year-old youth are held in adult jails, they no longer receive the education and rehabilitative services required in juvenile facilities. For those who are already wards of the juvenile court, they lose the benefit of Welfare and Institutions Code section 202, which requires care, treatment, and guidance in accordance with their individual needs. For youth undergoing proceedings aimed at trying them in adult court, once they have been held in an adult facility, it is much more difficult to argue against transfer and adult type sanctions. And for youth who have been ordered by the court to be transferred to the adult system, being moved to an adult jail while their criminal case is pending prevents them from receiving education and treatment that will help them to build a foundation to weather being handled in the adult system.

   …

   "California's laws allowing youth to be moved to adult jails were written in another era – before we realized the importance of developmentally appropriate services in helping youth to succeed. Also, they were written in piecemeal fashion, and as a result, they are confusing. In one county, officials believe a young person may be moved to the adult jail at 18 and in others they believe it can only happen at age 19. There are additional statutes applying to youth who have been ordered transferred to adult court, but it is unclear how those statutes

relate to one another. Also, there is a statutory process for counties to seek a waiver from the Board of State and Community Corrections (BSCC) to hold older youth in juvenile facilities up to age 21, but unless the county applies for a waiver, the youth may be abruptly moved to an adult jail at age 18 or 19. These disparate interpretations of the law and the waiver process have resulted in justice by geography.

"S.B. 1111 addresses all of these issues. By housing most youth up to age 21 in juvenile facilities, not adult jails, the measure ensures that young people are able to continue receiving state mandated education services and treatment in accordance with juvenile court law. It enables youth to finish programs they started in a juvenile facility without being arbitrarily moved to jail on their birthday. It protects youth from being subjected to the physical and emotional dangers of being held in an adult facility.

...

"Aside from the solid policy goals that led us to seek legislation on these issues, there is a critically important need in the midst of the COVID-19 crisis, to reduce transfer between correctional facilities to help contain the virus. The Centers for Disease Control Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, p. 9, specifically urges jurisdictions to 'Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.' The devastating results of the transfer of inmates from Chino to San Quentin State Prison dramatically demonstrate the need to limit transfers between institutions. S.B. 1111 will help to prevent such situations by providing broad discretion to courts to prevent transfer in consideration of the health and well-being of the young person, and the capacity of the adult facility to receive them."

6) **Prior Legislation**:

a) SB 1391 (Lara) Chapter 1012, Statutes of 2018, repealed the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court in a case in which a minor is alleged to have committed a specified serious offense when he or she was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.

b) SB 439 (Mitchell) Chapter 1006, Statutes of 2018, established 12 years of age as the minimum age for which the juvenile court has jurisdiction and may adjudge a person a ward of the court.

c) SB 1106 (Hill) Chapter 1007, Statutes of 2018, extended the operative date of the Transitional Age Youth pilot program to January 1, 2022.

d) SB 1004 (Hill) Chapter 865, Statutes of 2016 established the Transitional Age Youth pilot program.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Public Defender's Office
Alliance for Boys and Men of Color
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Anti Recidivism Coalition
California Attorneys for Criminal Justice
California Coalition for Youth
California Judges Association
California Public Defenders Association
Ceres Policy Research
Children's Defense Fund-california
Disability Rights California
East Bay Community Law Center
Ella Baker Center for Human Rights
Everychild Foundation
Friends Committee on Legislation of California
Glide
Human Rights Watch
Immigrant Legal Resource Center
Initiate Justice
John Burton Advocates for Youth
Legal Services for Prisoners With Children
Milpa (motivating Individual Leadership for Public Advancement)
National Association of Social Workers, California Chapter
National Center for Youth Law
National Juvenile Justice Network
Pacific Juvenile Defender Center
Re:store Justice
Root & Rebound
San Francisco Public Defender
Silicon Valley De-bug
Soledad Enrichment Action, INC.
The Children's Partnership
The W. Haywood Burns Institute
Underground Grit
Young Women's Freedom Center

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: Cheryl Anderson

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

SB 1290 (Durazo) – As Introduced February 21, 2020

SUMMARY: Vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system. Specifically, **this bill**:

1) Provides that the unpaid outstanding balance of any of the following county-assessed or court-ordered costs imposed before January 1, 2018, against the parent, guardian, or other person liable for the support of a minor is vacated and shall be unenforceable and uncollectable if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision as specified:

    a) Reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody (Welf. & Inst. Code, § 207.2);

    b) Costs of support for a minor detained in a juvenile facility (Welf. & Inst. Code, § 903);

    c) Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court (Welf. & Inst. Code, § 903.1);

    d) Registration fee up to $50 for appointed legal counsel (former Welf. & Inst. Code, § 903.15);

    e) Costs of minor's probation supervision, home supervision, or electronic monitoring (Welf. & Inst. Code, § 903.2);

    f) Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release (Welf. & Inst. Code, § 903.25);

    g) Cost of support of a minor placed in out-of-home placement pursuant to a juvenile court order (Welf. & Inst. Code, § 903.4); or

    h) Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid (Welf. & Inst. Code, § 903.5).

2) Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, to cover the costs of drug testing a minor on probation for a drug case (Welf. & Inst. Code, § 729.9) is vacated and shall be unenforceable and uncollectable.

3) Specifies that the foregoing provisions apply to dual status children for purposes of delinquency jurisdiction.

4) Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, for home detention administrative fees and probation drug testing fees (Pen. Code, § 1203.016, 1203.1ab, & 1208.2) against persons age 18 to 21 and under the jurisdiction of the criminal court is vacated and shall be unenforceable and uncollectable.

EXISTING LAW:

1) Prohibits, since January 1, 2018, imposing financial liability for the following county-assessed or court-ordered costs, against the parent, guardian, or other person liable for the support of a minor if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision as specified:

   a) Costs of support for a minor detained in a juvenile facility (Welf. & Inst. Code, § 903);

   b) Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court (Welf. & Inst. Code, § 903.1);

   c) Costs of minor's probation supervision, home supervision, or electronic monitoring (Welf. & Inst. Code, § 903.2);

   d) Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release (Welf. & Inst. Code, § 903.25);

   e) Cost of support of a minor placed in out-of-home placement pursuant to a juvenile court order (Welf. & Inst. Code, § 903.4); or

   f) Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid (Welf. & Inst. Code, § 903.5).

2) Repeals, effective January 1, 2018, the registration fee up to $50 for appointed legal counsel (former Welf. & Inst. Code, § 903.15);

3) Eliminates, effective January 1, 2018, parental liability for reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody (Welf. & Inst. Code, § 207.2);

4) Limits, since January 1, 2018, the recovery of fees to be paid by probationers for drug testing to those persons over 21 years of age and under the jurisdiction of the criminal court. (Welf. & Inst. Code, § 729.9; Pen. Code, § 1203.1ab.)

5) Limits, since January 1, 2018, the recovery of administrative fees to be paid by home detention participants to persons over 21 years of age and under the jurisdiction of the criminal court. (Pen. Code, §§ 1203.016, 1208.2.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Collecting fees from system-involved youth and their families is a regressive, racially discriminatory, and financially unsound way for government to fund public services. Black communities continue to face racial profiling and violence at the hands of law enforcement, and racially disproportionate treatment throughout the system leaves youth of color and their families with significantly more fees. A 2016 study by the Policy Advocacy Clinic at UC Berkeley found that Black youth in Alameda County were more likely to be sentenced to probation, and for longer terms, than their White peers. These longer sentences led to higher fee amounts for families where, on average, a Black youth on probation owed more than twice the amount as a White youth. Without the statewide protections afforded by SB 1290, ongoing juvenile fee collection efforts will continue to be a compounding injustice that disproportionately harms Black and Latinx families and low-income families. By ending the collection of and formally discharging juvenile fees, the state can deliver fully on its promise to relieve California youth and their families of regressive and racially discriminatory debt."

2) **Juvenile Fees**: Effective January 1, 2018, SB 190 (Mitchell), Chapter 678, Statutes of 2017, repealed county authority to charge a number of administrative fees to parents and guardians with a youth in the juvenile justice system and to persons ages 18 to 21 in the criminal (adult) justice system.

> [SB 190] significantly limits the fees counties may charge families of juveniles in the criminal justice system. The law eliminates registration fee for legal counsel for minors, "eliminates [the] liability of a minor or his or her parents … for … costs associated with the filing of a juvenile delinquency petition in juvenile court," and requires counties to pay the for all "support and maintenance of a juvenile delinquency ward." Fees for home-detention participants over twenty-one, drug testing fees for persons over twenty-one, and fees for legal representation and other services provided to the minor's parents are all limited by the statute.
>
> Before the bill was passed, families of minors could be involuntarily charged for home detention fees, drug testing fees, representation fees, and electronic monitoring fees. A study by students of the University of California Berkeley School of Law demonstrated the harm of the previous law. While the fees were originally designed to recuperate high costs, the costs collected barely covered the costs of administering such fees. Further, families of color were disparately disadvantaged by the fees. The new policies set forth in S.B. 190 aim to eliminate

a source of financial harm to vulnerable families, support the reentry of youth leaving the juvenile justice system, and reduce the likelihood that youth will recidivate.

(*Recent Court Decisions and Legislation Affecting Juveniles: Recent Court Decisions and Legislation Affecting Juveniles* (2018) 22 U.C. Davis J. Juv. L. & Pol'y 179, 197-198 [footnotes omitted].)

Although, since January 1, 2018, SB 190 prohibits counties from assessing new fees, it does not require counties to stop collecting previously assessed fees or to vacate existing fee judgments. A recent report published by the University of California, Berkeley Law School's Policy Advocacy Clinic found that 36 of the state's 58 counties had voluntarily stopped collecting juvenile fees assessed prior to January 1, 2018. (UC Berkeley Policy Advocacy Clinic, *Fee Abolition and the Promise of Debt-Free Justice for Young People and Their Families in California: A Status Report on Implementation of Senate Bill 190* (2019) p. 7 < https://www.law.berkeley.edu/wpcontent/uploads/2019/10/SB-190-Implementation-Report11_10_31_19.pdf > [as of June 24, 2020].) The report also found that 23 of the 36 counties no longer collecting juvenile fees had formally discharged outstanding balances. (*Ibid.*) The report noted that the state's remaining 22 counties were continuing to collect those outstanding juvenile fees, with five counties—San Diego, Orange, Riverside, Stanislaus, and Tulare—continuing to collect more than 95% of all outstanding fees. (*Ibid.*)

According to background information provided by the author's office, after Governor Newsom declared a state of emergency in March 2020, six counties paused or ended collection of outstanding juvenile fees. This is consistent with numbers through July 14, 2020, as reported by the Policy Advocacy Clinic, reflecting that 42 of 58 counties have voluntary ended collection of more than $345 million in juvenile fees. Sixteen, however, continue to collect juvenile fees charged to families prior to January 1, 2018, totaling more than $15 million. Of the remaining counties, Tulare is pursuing more than $11 million. (<https://www.law.berkeley.edu/experiential/clinics/policy-advocacy-clinic/juvenile-fee-collection-in-california/> [as of July 24, 2020].)

This bill would vacate the outstanding balance of pre-2018 county-assessed or court-ordered costs imposed against the parents or guardians of wards in specified circumstances, minors and adults ages 18 to 21 who were ordered to participate in drug and substance abuse testing, and adults who were 21 years of age and under at the time of their home detention.

3) **The Costs of Juvenile Fee Collection**: According to information provided by the author's office: "California counties that continue to pursue previously assessed fees do not recoup significant revenue because of the decreasing rates of collection and the ongoing costs involved in collecting fees. All six counties that voted to suspend or end collections in 2020 reported annual average collection rates below 5% since the implementation of SB 190.[1] Tulare County, which now has the highest amount of outstanding fees in the state, reports an average annual collection rate below 1% during this same period.[2]"

"[1] San Diego Cty. Item 15; Riverside Cty. Item 3.17; Stanislaus Cty. Consideration & Approval of Financial Report and Related Actions; Orange Cty., Item 25; Email from Ellisha Hardison, Humboldt Cty. Probation (Jun 15, 2020) (on file with authors); Email from Michaela Noland, Admin. Servs. Manager, Lake Cty. Superior Court (Apr. 28, 2020) (on file with authors).
[2] Email from Michelle Marquez, Tulare Cty. Counsel (Jun 26, 2020) (on file with authors)."

4) **Argument in Support**: According to Western Center on Law and Poverty, a sponsor of this bill, "[SB 1290] will end the harmful and costly collection of administrative fees that were assessed against youth and their families in California's juvenile and criminal (adult) legal systems prior to January 1, 2018. To relieve youth, families, and our state's most vulnerable communities of color from the negative consequences of outstanding administrative fees, SB 1290 will vacate all court judgments, stipulated agreements, and other instruments imposing such fees.

[¶]...[¶]

"In abolishing the assessment of new juvenile fees, California became a national model for progressive youth justice. The state should continue to lead by ending collection of regressive and racially discriminatory fees. By ending the collection of all SB 190 prohibited fees and discharging all associated debt, SB 1290 will fully deliver on the promise of debt-free justice for all California youth and their families. For these reasons, we are proud to sponsor SB 1290 and respectfully request your 'Aye' vote."

1) **Related Legislation**:

a) SB 144 (Mitchell) would repeal various administrative fees that agencies and courts are authorized to impose in order to fund elements of the criminal justice system, and would eliminate outstanding debt incurred as a result of the fees. SB 144 is pending hearing in this Committee.

b) AB 227 (Jones-Sawyer) would have authorized a court to waive imposition of a criminal conviction assessment fee, court operations assessment fee or restitution fine based on the court's determination of the defendant's ability to pay. AB 227 was held in the Assembly Appropriations Committee.

c) AB 927 (Jones-Sawyer) would prohibit the court in a criminal or juvenile proceeding involving a misdemeanor or felony from imposing fines, fees, and assessments, without making a finding that the person has the ability to pay. AB 927 was vetoed by the Governor.

d) AB 1348 (Gray) would repeal the 20% state surcharge levied on all criminal fines, except the restitution fine. AB 1348 was held in the Assembly Appropriations Committee.

e) AB 1980 (Gray) is substantially similar to AB 1348. AB 1980 was referred to this Committee.

f) AB 2308 (Carrillo) would make a defendant's inability to pay a compelling and extraordinary reason for a court to not impose a restitution fine upon a conviction of a misdemeanor or felony and would require the court to impose the court facility and court operation assessments unless the court determines that the defendant does not have the ability to pay. AB 2308 was referred to this Committee.

2) **Prior Legislation**:

a) SB 190 (Mitchell), Chapter 678, Statutes of 2017, limited the authority of local agencies to assess and collect specified fees against families of persons subject to the juvenile delinquency system.

b) SB 941 (Mitchell), of the 2015-2016 legislative session, was substantially similar to SB 190. SB 941 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center on Law & Poverty, INC. (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
American Civil Liberties Union
Anti Recidivism Coalition
Aspiranet
California Alliance of Child and Family Services
California Association of Food Banks
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Youth
California Public Defenders Association
Californians for Economic Justice
Center for Responsible Lending
Children's Defense Fund-California
Children Now
Coleman Advocates for Children and Youth
Communities United for Restorative Youth Justice
Community Works
Courage California
Drug Policy Alliance
Friends Committee on Legislation of California
Insight Center for Community Economic Development
John Burton Advocates for Youth
Juvenile Law Center
Lawyers' Committee for Civil Rights
Legal Services for Prisoners with Children
Los Angeles County Public Defenders Union Local 148
Milpa (motivating Individual Leadership for Public Advancement)
National Association of Social Workers, California Chapter
National Center for Youth Law
National Lawyers Guild San Francisco Bay Area Chapter, Doris Brin Walker Legislative Reform Committee
Public Counsel
Public Law Center

San Diego; County of
San Francisco Senior and Disability Action
Santa Cruz Barrios Unidos INC.
St. Anthony Foundation
Youth Alive!

One private individual

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: Nikki Moore

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

SB 388 (Galgiani) – As Amended January 6, 2020

SUMMARY: Deletes the provision that permits a local agency to exempt itself from the provisions of law applying to missing person reports, and instead mandates application of the law.

EXISTING LAW:

1) Requires the Attorney General (AG) to maintain the Violent Crime Information Center (VCIC) to assist in the identification and apprehension of persons responsible for specified violent crimes and for the disappearance and exploitation of persons, particularly children and at-risk adults. Provides that the VCIC's programs include assisting local law enforcement agencies and county prosecutors by providing investigative information on persons responsible for specified violent crimes and missing person cases. Provides that the VCIC provide a physical description of persons responsible for violent crimes and missing person cases. (Pen. Code, § 14200.)

2) Requires the AG to establish and maintain a Violent Crime Information Network (VCIN) within VCIC to enable the DOJ to electronically share data, analysis, and findings on violent crime cases and to electronically provide law enforcement agencies with information to assist in the identification, tracking, and apprehension of violent offenders. (Pen. Code, § 14201.)

3) Provides that a law enforcement agency may request a copy of information or data maintained by the DOJ for the purpose of linking an unresolved missing or unidentified person case with another case that was previously unknown to be related to that case, for the purpose of resolving an unsolved missing or unidentified person case. (Pen. Code, § 14201.2.)

4) Requires that the VCIC maintain an online, automated computer system designed to effect an immediate law enforcement response to reports of missing persons. These files must be made available to law enforcement agencies, unless a request by another agency has been made to deny release because release would interfere with an ongoing criminal investigation. (Pen. Code, § 14204, subds. (a) & (b).)

5) Requires that the AG distribute a missing children and at-risk adults bulletin on a quarterly basis to local law enforcement agencies, prosecutors, and public schools. (Pen. Code, § 14204, subd. (c).)

6) Requires that local law enforcement must do the following things in cases of missing persons, unless the governing body of the local agency, by a majority vote, adopts a

resolution expressly making the requirements inoperative:

a) Local police and sheriffs' departments accept any report of a missing person without delay and give priority to the handling of these reports over the handling of reports related to property crimes; (Pen. Code, § 14211, subd. (a).)

b) The California Highway Patrol (CHP) notify any person making a report to the CHP of the local law enforcement agencies with jurisdiction over the address of the missing person or jurisdiction over the last place the person was seen; (Pen. Code, § 14211, subd. (b).)

c) Local police or sheriffs shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person, as specified; (Pen. Code, § 14211, subd. (c).)

d) Local law enforcement must broadcast a "Be on the Lookout" bulletin, without delay, within their jurisdiction if the missing person is under the age of 21-years or if there is evidence that the person is at risk; (Pen. Code, § 14211, subd. (d).)

e) Local law enforcement must, within two hours of the report, transmit the report to the Department of Justice for inclusion in the VCIC and National Crime Information Center databases if the missing person is under the age of 21 or there is evidence that they are at risk; (Pen. Code, § 14211, subd. (e).)

f) Local law enforcement must supplement the electronic report to DOJ within 60-days after the initial electronic transmission with the following: (Pen. Code, § 14211, subd. (f).)

   i) Dental records and treatment notes;

   ii) Fingerprints;

   iii) Photographs;

   iv) Description of physical characteristics;

   v) Description of clothing the person was wearing when last seen;

   vi) Vehicle information; and,

   vii) Information describing any person or vehicle believed to be involved in taking, abducting, or retaining the missing person.

g) Agencies who take a report that are not the local jurisdiction of the residence of the missing person, to, without delay, notify and forward a copy of the report to the police of sheriff's department or departments having jurisdiction of the residence address of the person missing. (Pen. Code, § 14211, subd. (g).)

7) Requires that local law enforcement must do the following things in cases of missing persons, unless the governing body of the local agency, by a majority vote, adopts a

resolution expressly making the requirements inoperative:

a) Local law enforcement agencies, prosecutors, and the CHP are required to use the appropriate AG form when making a report of a missing person. The form shall include a statement authorizing release of the dental or skeletal X-rays and treatment notes of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under the age of 18; (Pen. Code, § 14212, subd. (a).)

b) The form must include instructions that if the person missing is still missing 30-days after the report is made, the release form signed by the next of kin shall be taken to the appropriate medical professional or dentist to obtain dental, skeletal, and treatment notes of that person as specified; (Pen. Code, § 14212, subd. (b).)

c) Dental, skeletal, and treatment notes shall be released by the associated medical professional within 10-days; (Pen. Code, § 14212, subd. (c).)

d) When the person reported missing has been determined by the agency to be an at-risk person, and has not been found within 30 days, the law enforcement agency may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental or skeletal X-rays, or both, and treatment notes, are necessary for the exclusive purpose of furthering the investigation; (Pen. Code, § 14212, subd. (d).)

e) The written declaration, signed by a peace officer, is sufficient authority for the dentist, physician and surgeon, or medical facility to immediately release the missing person's dental or skeletal X-rays, or both, or treatment notes; (Pen. Code, § 14212, subd. (e).)

f) Requires that the AG code and enter the dental or skeletal X-rays, or both, into the VCIC database, which serves as that statewide database for those X-rays, and shall forward the information to the National Crime Information Center; and, (Pen. Code, § 14212, subd. (f).)

g) Requires that the AG code and enter the dental or skeletal X-rays, or both, into the VCIC database, which serves as that statewide database for those X-rays, and shall forward the information to the National Crime Information Center; and, (Pen. Code, § 14212, subd. (f).)

h) When a person reported missing has not been found within 30 days, the sheriff, chief of police, or other law enforcement agency conducting the investigation for the missing person may confer with the coroner or medical examiner prior to the preparation of a missing person report. The coroner or medical examiner shall cooperate with the law enforcement agency. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement agency initiating and conducting the investigation for the missing person may submit a missing person report and the dental or skeletal X-rays, or both, and photograph received to the AG's office in a format acceptable to the AG. (Pen. Code, § 14212, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 388 requires local jurisdictions to adhere to extensive reporting, investigative, and tacking requirements of missing persons already prescribed in state law.

   "In the 2013-14 Legislative Session, I authored SB 846 and SB 1066 that made changes to the Penal Code relating to missing persons. This measure will help ensure those statutes are followed.

   "Currently, governing bodies of local jurisdictions can exempt themselves from Missing Persons Reporting requirements. SB 388 would create statewide consistency regarding local jurisdictions' handling of missing persons cases.

   "It is imperative that all jurisdictions follow the same procedures outlined in the Penal Code to ensure a thorough investigation.SB 388 also ensures that a law enforcement agency will obtain the dental X-rays, skeletal X-rays, and treatment notes of the missing person to further their investigation."

2) **Argument in Support**: According to the *California Statewide Law Enforcement Association*, "In 2018, 43,121 adults were reported missing in California. This number has steadily increased over the past five years, rising by 8 percent since 2013. Existing law requires police and sheriffs' departments to promptly obtain the release of dental and skeletal X-ray records upon acceptance of a missing person report and to broadcast a 'Be on the Lookout' bulletin if the person is under 21 years of age. However, these measures are not required of local jurisdictions. SB 388 would mandate these reporting requirements on a local level, better equipping local law enforcement agencies to both identify found persons and find missing persons."

3) **Prior Legislation**:

   a) SB 1066 (Galgiani), Chapter 437, Statutes of 2014, revised and renumbered several provisions of law relating to missing or unidentified person.

   b) SB 846 (Galgiani), Chapter 432, Statutes of 2014, clarified that local law enforcement has the ability to request information and data maintained by DOJ for the purpose of linking unsolved missing or unidentified person case with another case that was previously unknown to be related to that case, or for the purpose of resolving an unsolved missing or unidentified person case, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Statewide Law Enforcement Association

Opposition

None

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

Date of Hearing: August 5, 2020
Chief Counsel: Gregory Pagan

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

SB 903 (Grove) – As Introduced January 30, 2020

SUMMARY: Requires the proceeds of a fine imposed for grand theft involving agricultural equipment be allocated according to the Rural Crime Prevention Program schedule, which will give the state Controller the ability to properly distribute the funds.

EXISTING LAW:

1) Defines "grand theft" as any theft where the money, labor, or real or personal property taken is in excess of $950, except as specified. (Pen. Code, § 487, subd. (a).)

2) Provides that notwithstanding the value of the property taken, grand theft is committed in any of the following cases: (Penal Code Section 487(b)):

   a) When domestic fowls, avocados, or other farm crops are taken of a value exceeding $250;

   b) When fish or other aquacultural products are taken from a commercial or research operation that is producing that product of a value exceeding $250;

   c) Where money, labor or property is taken by a servant or employee from his or her principal and aggregates $950 or more in any consecutive 12-month period; and,

   d) When the property is taken from the person of another; or, when the property taken is, among other things, an automobile, horse, or firearm. (Pen. Code § 487, subd. (b).)

3) Provides that if the grand theft involves the theft of a firearm, it is punishable by imprisonment in state prison for 16 months, two years or three years. In all other cases, grand theft is punishable by imprisonment in county jail for not more than one year, or by imprisonment in county jail for 16 months, two years or three years. (Penal Code Section 489.)

4) Provides that theft in other cases is petty theft. (Pen. Code, § 488.)

5) Provides that upon conviction for any crime punishable by imprisonment in any jail or prison, to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding $1,000 in cases of misdemeanors, or $10,000 in case of felonies, in addition to the imprisonment prescribed. (Pen. Code, § 672.)

6) Provides that the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare may develop within their respective jurisdictions a Central Valley Rural Crime

Prevention Program, which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office for the purpose of preventing rural crime. (Pen. Code, § 14171, subd. (a).)

7) States that the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo may develop and implement a Central Coast Rural Crime Prevention Program which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office for the purpose of preventing rural crime. (Pen. Code, § 14181, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Support for SB 224 (Grove) of 2019 was overwhelming and bipartisan. The fines collected pursuant to SB 224 (grand theft of agricultural equipment) can only distributed to support current Rural Crime Prevention Programs. However, according the State Controller these funds cannot be distributed without correcting a cross reference to the existing Central Valley and Central Coast Rural Crime Prevention Program fund distribution formula.

   "SB 903 ensures that participating local law enforcement jurisdictions will receive the allocated funds in accordance with the rural crime prevention programs funding formula which was the intent of SB 224 (Grove) of 2019."

2) **Prior Legislation**: SB 224 (Grove), Chapter 119, Statutes of 2019, made the theft of agricultural equipment in excess of $950 grand theft punishable as an alternate felony/misdemeanor and requires the proceeds of any fine imposed following a conviction of the crime to be allocated to the Central Valley Rural Crime Prevention Program or the Central Coast Rural Crime Prevention Program.

3) **Argument in Support**: According to *Betty Yee the California state Controller*. "SB 224 (Grove), Chapter 119, Statutes of 2019 established a separate grand theft statute for agricultural items along with monetary fines. Fines under this law would be allocated by my office to the Rural Crime Prevention Program (RCPP). Specifically, SB 224 listed the Central Valley RCPP and the Central Coast RCCP as the two entities that would receive funding. While SB 224 provided a schedule for the Central Valley Program, it did not include one for the Central Coast Program. Without a statutory payment schedule, my team will be unable to properly distribute the funds."

REGISTERED SUPPORT / OPPOSITION:

Support

Betty Yee, California State Controller
California Farm Bureau Federation
Peace Officers Research Association of California
Western United Dairies
California Cattlemen's Association

Opposition

None

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

Date of Hearing: August 5, 2020
Counsel: David Billingsley

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

SB 315 (Hertzberg) – As Amended July 29, 2020

SUMMARY: Creates the COVID-19 Alternative Adjudication Program, which would result in the dismissal of pending criminal charges after a six month period for an out of custody defendant if the defendant avoids further criminal charges and meets additional criteria. Exempts specified serious felonies and serious misdemeanor charges. Creates a sunset date of January 1, 2022. Specifically, **this bill**:

1) Creates the COVID-19 Alternative Adjudication Program.

2) Sets a sunset date for the Covid -19 Alternative Adjudication Program of January 1, 2022.

3) Directs the court to dismiss pending criminal charges if all of the following criteria are met:

   a) The charge was not resolved by conviction prior to January 1, 2021

   b) The defendant is not charged with any of the following:

      i) A serious or violent felony, specified;

      ii) Violation of a restraining order, as specified, where it is alleged that where the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;

      iii) Dissuading a witness, where it is alleged that when the punishment is imposed because of specified aggravating factors;

      iv) Spousal rape;

      v) Domestic violence, as specified;

      vi) Stalking;

      vii) An offense for which registration as a sex offender is required upon conviction;

      viii) Driving under the influence, as specified;

      ix) Felon in possession of a firearm;

      x) ElderAbuse;

xi) Child abuse or neglect; or

xii) Criminal threats.

c) Six months or more have passed since the person was released from custody on the charge, or,, if the person never in custody on the charge, six months or more have passed since the incident that lead to the charges;

d) The defendant or minor has not been charged with a misdemeanor or felony occurring after the charge at issue was filed. However, a charge remains subject to dismissal under this bill if the defendant or minor was acquitted of the subsequently filed charge or the subsequently filed charge was dismissed, as specified.

e) The defendant or minor does not have a pending violation of the terms of an existing grant of probation, parole, post-release community supervision, or mandatory supervision;

f) The defendant or minor consents to a dismissal pursuant to this section;

g) The court does not find that the defendant or minor poses and unreasonable risk to public safety because there is an unreasonable risk that the defendant will commit a new violent felony, as specified; and

h) Other than the charges filed in the same complaint or relating to the same incident, the defendant or minor has not had any charge previously dismissed under the provisions of this bill.

4) States that if a person would meet the conditions for dismissal except for a pending violation of the terms of an existing grant of probation, parole, post-release community supervision, or mandatory supervision, the court may dismiss the may dismiss the criminal charges.

5) Specifies that a charge reduced by the court from a felony to a misdemeanor may qualify for dismissal pursuant to the provisions of this bill if, after the charge is reduced, it otherwise meets the criteria.

6) States that upon request, the court shall conduct a hearing to determine whether restitution, as specified, is owed to any victim as a result of the alternatively adjudicated offense and, if owed, order its payment prior to dismissing the case.

7) States that if restitution cannot be paid in full, the court shall not dismiss the case unless the defendant or minor agrees that the defendant or minor is liable for the outstanding balance as a civil judgment.

8) States that a defendant's inability to pay restitution due to indigence shall not be grounds for refusing to dismiss a case pursuant to this bill, as long as the defendant of minor agrees that they are liable for the unpaid balance as a civil judgment.

9) Provides that if defense counsel and prosecutor agree, the court may grant a motion to dismiss a charge pursuant to the bill without conducting a hearing.

10) Provides that if a case has been dismissed pursuant to the provisions of this bill, the clerk of the court shall file a record with the Department of Justice (DOJ) indicating the disposition of the case pursuant to this section.

11) Specifies that once the court dismisses the charges, the arrest upon which dismissal pursuant to this section was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with the other provisions of this bill.

12) States that a record filed with DOJ shall indicate the disposition in those cases alternatively adjudicated pursuant to the provisions of this bill.

13) Provides that upon dismissal pursuant to the provisions of this bill, the arrest upon which the charges were based shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified..

14) States that the defendant may indicate in response to any question concerning their prior criminal record that they were not arrested, diverted, or alternatively adjudicated for the offense, except as specified.

15) States that a record pertaining to an arrest resulting in dismissal pursuant to this section shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

16) Requires the defendant to be advised that, regardless of the dismissal pursuant to this section, both of the following apply:

    a) The arrest upon which the dismissal pursuant to this section was based may be disclosed by the DOJ to any peace officer application request and that the provisions of this bill do not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer; and

    b) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as specified.

17) State that a dismissal pursuant to the provisions of this bill shall prevent further prosecution for the same charges.

18) Specifies that the provisions of this bill shall not apply retroactively to any charge resolved by conviction prior to January 1, 2021.

EXISTING LAW:

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In recent years, California's court system has faced an increasingly unmanageable number of cases, negatively impacting access to

justice for many Californians. Much of this logjam is in the criminal system, where, in the 2016-17 fiscal year alone, the state saw nearly a million filings for felonies and misdemeanors. This backlog has only been exacerbated by the COVID-19 pandemic, as courts at every level have postponed or cancelled proceedings. SB 315 allows individuals arrested for misdemeanors, or qualifying low-level felonies, the opportunity to earn a dismissal upon a showing of law-abiding behavior in the community for a period of at least six months. The program only applies to out-of-custody individuals with pending criminal cases, and, like other diversion programs, allows judges to dismiss criminal charges and seal arrest records if defendants perform satisfactorily during the probationary period. According to a forthcoming analysis by the Berkeley Law Policy Clinic, the COVID-19 Alternative Adjudication Program could save state courts between $75-100 million annually."

2) **COVID-19 and Emergency Orders by Governor and Chief Justice:** In response to COVID-19, the Governor and the Chief Justice issued a number of emergency orders affecting the courts, prisons, and jails.

   On March 23, 2020, California Chief Justice Tani G. Cantil-Sakauye on Monday issued a statewide order suspending all jury trials in California's superior courts for 60 days and allowing courts to immediately adopt new rules to address the impact of the COVID-19 pandemic. https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials.

   On March 24, 2020, The Governor imposed a stay on the transfer of county jail inmates to state prison for 30 days.

   On March 30, 2020, the Chief Justice extended the time period provided for the holding of a criminal trial by no more than 60 days from the last date on which the statutory deadline otherwise would have expired; Judicial Council Emergency Order, March 30, 2020.

   On April 6, 2020, the Chief Justice issue an order establishing the COVID-19 emergency bail schedule set bail at $0 for most people accused, but not yet tried, of misdemeanors and lower-level felonies. As with a regular bail schedule, law enforcement could petition a judge to raise or deny bail if there was concern for public safety. Those accused of violent felonies, offenses requiring sex offender registration, domestic violence, stalking, or driving under the influence were not eligible.

   On April 29, 2020, the Chief Justice issued a statewide order further extending deadlines for California's superior courts to hold criminal trials. The order adds a 30-day extension of time, bringing extensions of time to hold criminal trials during the pandemic to a total of 90 days. The order also urged courts to work with justice partners to hold trials earlier if possible, including through the use of remote technology when appropriate. But they must be able to do so while complying with health and safety laws, regulations, and orders to prevent the spread of COVID-19. https://newsroom.courts.ca.gov/news/california-chief-justice-extends-criminal-trial-deadlines

   On June 10, 2020, The Judicial Council of California voted to end the COVID-19 emergency bail schedule.

   In March the Department of Corrections and Rehabilitation(CDCR) released a number of

nonviolent prisoners on early parole. The first group was released up to 30 days early, while the next group was released up to 60 days early. https://www.ocregister.com/2020/03/31/state-prisons-to-release-3500-nonviolent-inmates-early-because-of-coronavirus-threat/

In July, 2020, CDCR, took additional steps to release certain state prison inmates. Specified inmates with less than 180 days left on their sentence will be released. Inmates will be screened and released on a rolling basis in order to continuously create more space in all prisons throughout the pandemic. CDCR is also reviewing for release incarcerated persons with 365 days or less to serve on their sentence, and who reside within identified institutions that house large populations of high-risk such releases are no longer necessary. In July, CDCR estimated that 8,000 inmates could be eligible for release by end of August. That is in addition to CDCR's reduction of about 10,000 persons since the start of the pandemic. https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-systemwide-to-address-covid-19/

According the website for the California Courts, more than 20,000 defendants accused of lower-level offenses have been released before their trials from California's jails since the start of the pandemic, in an effort to help jails and courts from becoming vectors for the spread of COVID-19 between inmates, jail staff and surrounding communities. https://newsroom.courts.ca.gov/news/judicial-council-chief-justice-end-some-emergency-measures-as-california-and-courts-expand-reopening

3) **COVID-19, Incarceration, Prison Overcrowding, and the Courts**: COVID-19 poses a heightened danger to persons involved the criminal justice system. Specifically, jails and prisons make disease mitigation and prevention efforts virtually impossible when detention facilities are at or near capacity. Social distancing and sanitary practices are difficult in close quarters particularly when they lack a ready supply of personal protective equipment and rationed access to sanitary facilities. By their nature, detention facilities are generally designed in a manner to pack the maximum number of people into the smallest space to make them easy to secure and monitor. The spread of COVID-19 in jails and prisons poses a health risk to all Californians, starting first with the employees of jails and prisons, people who are incarcerated, and their family members. The impacts reverberate through secondary institutions including law enforcement agencies and the judicial system. COVID-19 has exacerbated the state's already existing concerns with prison and jail overcrowding.

Courts have struggled to manage how to safely hold court appearances, hearing and trials. Those difficulties involve both in custody and out of custody defendants. It can be difficult to socially distance court staff, attorneys, and parties. Court dockets are typically crowded resulting in packed courtrooms and a high volume of court appearances and hearings on a daily basis.

This bill would allow defendants charged with a misdemeanor(s) (stalking, DUI, domestic violence, sex offenses would be excluded) or a felony that is non violent, non-serious, and non-sex offense to have their charge(s) dismissed. There are some additional specified crimes that would make a person ineligible for the Program which are described above. The bill applies to those individuals who are out of custody and face pending charges at the time the bill would go into effect (January 1, 2021) or are out of custody on an offense committed during the six months following the effective date of the bill. Defendants are excluded from having charges dismissed in they are charged with a new offense and are only entitled to the

benefit of a dismissal of one accusatory pleading. If a defendant is on probation, parole, mandatory supervision, or post-release supervision, a court would have discretion to dismiss charges if they otherwise met the criteria of the Program.

This bill is intended relieve some of the backlog impacting criminal courts because of the disruptions to court operations caused by COVID-19. The provisions of this bill would also provide a mechanism to help reduce the number of people courts sentence to jails or prison. Participation in the COVID-19 Alternative Adjudication Program would also be likely to decrease the number of court appearances because defendants participating in the program would waive time, put their cases off and there would be less contested hearings. This bill is intended to apply to both adult and juvenile proceedings.

4) **Pretrial Diversion and Deferred Entry of Judgment:** Existing law provides avenues for diversion on misdemeanor charges through the court system. The statutory framework allows for diversion by means of deferred entry of judgment or pretrial diversion.

In deferred entry of judgment, a defendant determined by the prosecutor to be eligible for deferred entry of judgment must plead guilty to the underlying drug possession charge. The court then defers entry of judgment and places the defendant in a rehabilitation and education program. If he or she successfully completes the program, the guilty plea is withdrawn and the arrest is deemed to have not occurred. If the defendant fails in the program, the court imposes judgment and sentences the defendant.

In pretrial diversion, the criminal charges against an eligible defendant are set aside and the defendant is placed in a rehabilitation and education program treatment. If the defendants successfully complete the program, the arrest is dismissed and deemed to not have occurred. If the defendant fails in the program, criminal charges are reinstated. Existing law provides that counties can set up a misdemeanor pretrial diversion program if the District Attorney, Courts and the Public Defender agree.

Existing law provides specific pretrial diversion programs for military veterans, mental health, and drug possession. Existing law also authorizes counties to set up additional misdemeanor diversion programs with the concurrence of the criminal justice stakeholders within the county. Generally, pretrial diversion and deferred entry of judgment only apply to misdemeanors. Mental health diversion also allows defendants facing a variety of felony charges to participate in the diversion program. Participation in drug diversion is allowed without any discretion on the part of the court if the defendant meets the criteria for the program. Participation in mental health diversion is based both on qualifying criteria and the discretion of the judge.

The COVID-19 Alternative Adjudication Program is broader than any of the existing diversion programs. The COVID-19 Alternative Adjudication Program is broader because of the range of qualifying crimes (including a wide range of felony offenses). The Program is broader because unlike mental health diversion which also includes many felonies, the judge does not have discretion to admit the defendant into the program. Under the Program described in this bill, the defendant automatically qualifies for dismissal after six months if they meet the criteria of the program. However, the COVID-19 Alternative Adjudication Program is intended specifically to relieve backlog on the criminal courts and medically dangerous conditions in jails and prisons brought on by COVID-19. The bill is limited in its

scope by a sunset date of January 1, 2021.

This bill would to treat defendants with similar charges differently depending on when the offense date occurred. The defendants that would meet the criteria of this bill are better situated by virtue of falling within the provisions of this bill. Presumably the impact of COVID-19 on the criminal justice system over a discrete period of time provides a justification of different treatment of criminal defendants that are otherwise similarly situated.

5) **Custody Status and COVID-19 Alternative Adjudication Program:** The provisions of this bill only apply to defendants that are released from custody or were never taken into custody. Most defendants charged with misdemeanors are not taken into custody by police after they have been arrested. Most defendants with misdemeanor arrests are released with a citation to appear in court. If they are charged with a crime, those defendants arrive in court out of custody. Some of the defendants might be remanded into custody because of prior criminal history, indications that they are a flight risk or present some danger to the community.

   In the wake of Covid-19, the Chief Justice of the California Supreme Court issued an emergency bail schedule on April 6, 2020. The emergency bail schedule established that defendants were not to have bail imposed for most misdemeanor and felony offenses. Among the offenses which were excepted were serious and violent felonies, domestic violence and driving under the influence. Individuals arrested and charged with the offenses subject to the 0$ bail order were not taken into custodial arrest and were presumed to remain out of custody during the pendency of the criminal case. Judges did retain the authority to impose a bail if circumstances warranted.

   The emergency bail order was rescinded on June 10, 2020, allow though courts are allowed to continue the bail program if they choose.

   As mentioned earlier, the COVID-19 Alternative Adjudication does not provide judicial discretion to allow a defendant to participate in the program. However, one of the criteria for a defendant to be eligible for dismissal of charges under the COVID-19 Alternative Adjudication Program is that the defendant was released from custody or never taken into custody. Is there a concern that some judges might choose not to release defendants from custody or remand defendants to custody rather than be required to dismiss charges after six months? This bill is designed to primarily address cases where defendants have been released prior to the date this bill would be enacted. Release decisions will already have been made for that category of cases. However, courts would be aware of the interaction between release and the provisions of this bill for the cohort of defendants that would be eligible for program after the law was enacted and courts were aware of the dynamics of the program.

6) **Argument in Support**: According to the *Immigrant Legal Resource Center*, "The COVID-19 pandemic has caused massive delays and backlog in the California court system, including the mass continuance of thousands of low-level criminal cases. As courtrooms reopen, attempting to provide hearings and jury trials in these tens of thousands of cases statewide will risk spreading the virus among jurors, witnesses, members of law enforcement, parties to the cases, and courtroom personnel and into the communities exacerbating an on-going

public health emergency.

"In order to address this backlog and protect public health, California must identify cases which can be resolved without endangering public safety. SB 315, the COVID-19 Community Health & Safety Relief Act, will help resolve the case backlog and protect public health by allowing judges to dismiss low level criminal cases. To qualify, a person charged with a low-level offense must demonstrate that he or she can remain out of custody without reoffending or endangering public safety, be ordered to pay any victim restitution, and be found by the court to pose a low risk to public safety.

"SB 315 is estimated to offset $165 million in court costs alone, money which could be better spent on providing services to protect Californians from the virus and getting Californians back to work.

7) **Argument in Opposition**: According to *Crime Victims United*, "SB 315 creates an imbalance by totally ignoring the rights for California's victims of crime and usurps their rights as mandated in the California Constitution Article 1 section 28 that was enacted by the people of our state in 2008. Specifically, SB 315 completely rescinds the rights of the crime victims:

   a) Article 1 subsection 2 of the California Constitution guarantees reasonable protection from those who have committed crimes against the public and victims. By releasing defendants without their cases being adjudicated would completely deprive the victim and the communities of California of this right.

   b) Complete and unconditional releasing of a defendant without input from the victim clearly violates subsection (3) of section b.

   c) A crime victim has an absolute right to be heard, to confer with the prosecution after arrest and throughout the proceeding. An outright dismissal after 6 months subsection (0(b)

   d) The Constitution guarantee's the right to restitution. The current bill provides language that the court shall order payment prior to dismissal. However, it does not make it clear that restitution has to be paid prior to dismissal."

8) **Prior Legislation**:

   a) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, established mental health diversion.

   b) SB 215 (Beall), Chapter 1005, Statutes of 2018, modified AB 1810, made defendants ineligible for the diversion program for certain offenses, including murder, voluntary manslaughter, and rape. Authorized a court to require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion, as specified.

   c) SB 8 (Beall), of the 2017-2018 Legislative Session, would have authorized a court to place a defendant in a pretrial diversion program if the court is satisfied the defendant

suffers from a mental disorder, that the defendant's mental disorder played a significant role in the commission of the charged offense, and that the defendant would benefit from mental health treatment. SB 8 was held in the Assembly Appropriations Committee.

d) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

REGISTERED SUPPORT / OPPOSITION:

Support

#cut50
Alameda County Public Defender's Office
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Asian Americans Advancing Justice - California
Asian Law Alliance
California Attorneys for Criminal Justice
California for Safety and Justice
California Public Defenders Association
East Bay Community Law Center
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Glide
Immigrant Legal Resource Center
Initiate Justice
Legal Services for Prisoners With Children
Restore Justice
San Mateo County Participatory Defense
Santa Clara County Office of The Public Defender
Silicon Valley De-bug
The Justice Collaborative, a Project of Tides Advocacy
Tides Advocacy
Uncommon Law
Young Women's Freedom Center

Opposition

Alameda County District Attorney's Office
California District Attorneys Association
Crime Victims United of California
Orange County District Attorney
San Diego County District Attorney's Office

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