**AGENDA**

9:00 a.m. – April 23, 2019
State Capitol, Room 126

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<td>AB 1798 (Levine)</td>
<td>Mr. Fleming</td>
<td>California Racial Justice Act: death penalty.</td>
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**VOTE ONLY**

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Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.
SUMMARY: Establishes the Smart Justice Student Program that would require the Board of State and Community Corrections (BSCC) to solicit proposals and provide funding for education programs among the California State Universities and Community Colleges, for individuals who are or have been incarcerated, or are currently on parole, probation, or other form of supervised release. Specifically, this bill:

1) States that BSCC shall solicit proposals for postsecondary education programs provided by any campus of the University of California, the California State University, or the California Community Colleges to receive funding for providing direct service to justice-involved students, using partnerships with relevant entities.

2) Allows the institutions to subcontract with service providers to meet the nonacademic needs of these students.

3) Specifies that before awarding a grant, BSCC shall evaluate the quality of the proposal for which the grant is to be awarded.

4) Requires at a minimum, each application for a grant to include all of the following:

   a) A description of the proposed program;
   b) A description of the organization’s experience in providing the proposed program;
   c) A description of the financial stability of the organization;
   d) An identification of each component of the program to be provided;
   e) A description of the manner in which the program will be provided;
   f) A description of the recruitment or selection process, or both, for participants in the program;
   g) The proposed quantifiable results and performance thresholds upon which success of the program will be measured;
   h) An itemization of all expenses proposed to be reimbursed under the contract;
   i) The amount of matching funds provided by the academic institution or private or philanthropic partner providing funding; and,
j) A description of all parties to the proposed contract, including prospective investors and philanthropic foundations.

5) Requires each contract to include the following:

a) A requirement that each grant recipient provide matching funds of at least 50 percent of the amount awarded to fund its program. Matching funds may come from the grant recipient’s annual budget or from gifts by private or philanthropic entities; and

b) An objective process by which an independent evaluator, selected by the grantee, will evaluate program outcomes. This process shall include defined performance metrics and a monitoring plan.

6) States that up to 10 percent of the grant funds awarded pursuant to this title may be used by the grant recipient for administrative expenses related to procuring matching funds. The remainder of the grant shall be used for the delivery of services to students.

7) Provides that upon appropriation of funds by the Legislature, the board shall award a grant in an amount of not less than $125,000 and not more than $500,000 to each academic institution selected for the purposes of serving justice-involved students. The total amount of the grants awarded pursuant to this section shall not exceed $25,000,000. For purposes of this section, each campus of the University of California, the California State University, or a community college district is a separate academic institution.

8) Requires BSCC to form an executive steering committee with members from the Office of the President of the University of California, the Office of the Chancellor of the California State University, the California Community Colleges Chancellor’s Office, the California Workforce Development Board, a formerly incarcerated college student or a formerly incarcerated college graduate who represents the nonprofit sector, and, if feasible, a representative from the Governor’s office, to make recommendations to the board regarding the efficacy and viability of proposals.

9) States that each grantee receiving an award shall report annually to the board on the status of its ongoing implementation. The report shall also contain an accounting of the moneys awarded.

10) Specifies that BSCC shall compile the reports and submit a summary report to the Governor and Legislature annually.

11) Establishes a sunset date of January 1, 2025.

12) Defines the following terms:

a) “Justice-involved” means “currently incarcerated in the state prison, formerly incarcerated in a county, state, or federal correctional institution, or currently on supervised probation, parole, post-release community supervision, or mandatory supervision in the state;” and
b) "Postsecondary education" means "career technical education, vocational training, college coursework leading to an associate or bachelors degree, and any other educational program that is delivered to an individual who has already obtained a high school diploma or general equivalency degree."

13) Makes findings and declarations.

EXISTING LAW:

1) States that specified requirements shall be waived community colleges to provide classes to inmates of any county jail, road camp, or state or federal correctional facility. (Ed. Code, § 84810.5, subd. (a)(1).)

2) Specifies that the Department of Corrections and Rehabilitation (CDCR) and the Office of the Chancellor of the California Community Colleges shall enter into an interagency agreement to expand access to community college courses that lead to degrees or certificates that result in enhanced workforce skills or transfer to a four-year university. (Ed. Code, § 84810.7, subd. (a).)

3) States that the courses for inmates in a state correctional facility developed as a result of this agreement will serve to supplement, but not duplicate or supplant, any adult education course opportunities offered at that facility by the Office of Correctional Education of CDCR. (Ed. Code, § 84810.7, subd. (a).)

4) Requires CDCR, in collaboration with the Office of the Chancellor of the California Community Colleges, shall develop metrics for evaluations of the efficacy and success of the programs developed through the interagency agreement established pursuant to this section, conduct the evaluations, and report findings from the evaluations to the Legislature and the Governor. (Ed. Code, § 84810.7, subd. (b).)

5) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California’s adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

6) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. BSCC shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd.
7) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs’ Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board’s Internet Web site. It is the intent of the Legislature that the board promotes collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)

8) Authorizes BSCC to do either of the following:

   a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or

   b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "An estimated two-thirds of job postings require some level of postsecondary education. For incarcerated men and women already disadvantaged in the job market, higher education truly is a key to success after release. Educational attainment, even in a prison setting, has been shown to increase employability, wage-earning, and quality of life for people who are reentering our community. While enrollment and participation in prison-based postsecondary programs is growing, there has been no adequate growth in funding for the institutions running these programs. AB 180 is necessary so that students who are currently or formerly incarcerated can get the support services they need in order to successfully graduate from college and set them up for a career.

   “This bill will provide additional funding for California Community Colleges, Cal State Universities and UCs to better serve these students. Funding will support the development, delivery, and expansion of face-to-face postsecondary programs in state prisons. Funding will also support social services, systems navigation, peer mentorship, and non-academic expenses for justice-involved students enrolled in postsecondary programs in the community.”

2) BSCC: BSCC was established, commencing July 1, 2012, by SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011. "From 2005 through 2012, BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal
standards in the operation of local correctional facilities. It is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (LAO, The 2013-14 Budget: The Governor's Criminal Justice Proposals, p. 44 (Feb. 15, 2013).)

"In creating BSCC, the Legislature added two responsibilities to the board’s core mission: (1) assisting local entities to adopt best practices to improve criminal justice outcomes and (2) collecting and analyzing data related to criminal justice outcomes in the state." (Id. at pp. 44-45.)

3) **College Educational Opportunities in CDCR:** SB 1391 (Hancock), Chapter 695, Statutes of 2014, required CDCR and the Office of the Chancellor of the California Community Colleges, to enter into an interagency agreement to expand access to community college courses that lead to degrees or certificates that result in enhanced workforce skills or transfer to a 4-year university. SB 1391 required that courses for inmates in a state correctional facility developed as a result of the agreement supplement, but not duplicate or supplant, any adult education course opportunities offered at that facility by the Office of Correctional Education of CDCR. In the fall of 2018, nearly 5,000 inmates from all security clearance levels took face-to-face college courses. ([https://prospect.org/article/california-ramps-college-education-behind-bars](https://prospect.org/article/california-ramps-college-education-behind-bars))

This bill seeks to provide additional avenues for individuals that has been involved in the justice system to access higher education. This bill would task BSCC with accepting and approving proposals to establish education programs for people who are or have been incarcerated. The implementation of this bill would require the Legislature to appropriate money to fund the grant program authorized by this bill.

4) **Rand Corporation Report:** The Rand Corporation published a report in 2013, entitled, "Evaluating the Effectiveness of Correctional Education." The report made the following findings:

   a) Correctional education improves inmates' chances of not returning to prison;

   b) Inmates who participate in correctional education programs had a 43 percent lower odds of recidivating than those who did not. This translates to a reduction in the risk of recidivating of 13 percentage points;

   c) It may improve their chances of obtaining employment after release. The odds of obtaining employment post-release among inmates who participated in correctional education was 13 percent higher than the odds for those who did not participate in correctional education;

   d) Inmates exposed to computer-assisted instruction learned slightly more in reading and substantially more in math in the same amount of instructional time; and,

   e) Providing correctional education can be cost-effective when it comes to reducing recidivism. ([https://www.rand.org/pubs/research_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html))
5) **Social Innovation Financing Program:** AB 1837 (Atkins), Chapter 802, Statutes of 2014, enacted the Social Innovation Financing Program, to award grants pursuant to which private investors agree to provide financing to service providers to achieve social outcomes agreed upon in advance and the government agency that is a party to the contractual agreement agrees to pay a return on the investment to the investors if successful programmatic outcomes are achieved by the service provider. This bill amends the statutory sections that authorize the Social Innovation Financing Program. If this bill is enacted, it would repeal the Social Innovation Financing Program.

6) **Argument in Support:** According to the *Anti-Recidivism Coalition*, "Postsecondary education remains largely inaccessible for the eight million justice-involved people living in California today. As of 2018, only four-percent (4%) of formerly incarcerated people had obtained a college degree (compared to 34% of the general population), yet 64% were considered college-eligible. At present, state and federal financial aid are not widely available for individuals who are incarcerated or for those who have a criminal record. This means that college is out of reach for many people with justice-involvement. As institutions of higher education and organizations that advocate for justice-involved people and students, we wish to inform you of the broad economic and societal benefits that creating educational pathways for these individuals can provide to our State and our local communities.

"Studies have shown that providing postsecondary education to individuals impacted by the justice system can yield enormous economic, fiscal, and social benefits for students, communities, and our society at large. Educational attainment, even in a prison setting, has been shown to increase employability, wage-earning, and quality of life for people who are reentering our community. Education also has the potential to improve generational outcomes for families who experience justice-involvement, and to change the culture of incarceration from one of violence to one of rehabilitation and learning.

"Communities of color are the most impacted by inequitable access to education and overrepresentation in the justice system. Black men make up 40% of the prison population yet represent only six-percent (6%) of college students in California. Black and Hispanic women exiting incarceration experience unemployment rates that are five-times higher than the national average and far higher than rates experienced during the Great Depression.

Communities of color are the most impacted by inequitable access to education and "overrepresentation in the justice system. Black men make up 40% of the prison population yet represent only six-percent (6%) of college students in California. Black and Hispanic women exiting incarceration experience unemployment rates that are five-times higher than the national average and far higher than rates experienced during the Great Depression."

7) **Related Legislation:**

a) **AB 1405 (Gloria),** would require CDCR to contract for and fund permanent housing for parolees at risk of homelessness. *AB 1405* is set for hearing on April 24, 2019, in the Assembly Housing and Community Development Committee.

b) **SB 282 (Beall),** would enact the Supportive Housing Program for Persons on Parole to be administered by the Department of Housing and Community Development. *SB 282* is set
for hearing on April 23, 2019 in the Senate Public Safety Committee.

8) **Prior Legislation:**

a) AB 152 (Gallagher) of the 2017-2018 Legislative Session, would have required, commencing July 1, 2018, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2018, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2019. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.

b) SB 1391 (Hancock), Chapter 695, Statutes of 2014, requires CDCR and the Office of the Chancellor of the California Community Colleges, to enter into an interagency agreement to expand access to community college courses that lead to degrees or certificates that result in enhanced workforce skills or transfer to a 4-year university.

c) AB 1837 (Atkins), Chapter 802, Statutes of 2014, enacted the Social Innovation Financing Program, to award grants pursuant to which private investors agree to provide financing to service providers to achieve social outcomes agreed upon in advance and the government agency that is a party to the contractual agreement agrees to pay a return on the investment to the investors if successful programmatic outcomes are achieved by the service provider.

d) AB 1050 (Dickinson), Chapter 270, Statutes of 2013, requires BSCC, in consultation with certain individuals that represent or are selected after conferring with specified stakeholders, to develop definitions of key terms, which include, but are not limited to, "recidivism," "average daily population," "treatment program completion rates," and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices, and evidence-based programs.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Anti-Recidivism Coalition (Co-Sponsor)
California Public Defenders Association
Corrections to College
Five Keys Schools and Programs
Los Angeles Police Protective League
Peralta Community College District
San Diego Community College District
Santa Rosa Junior College Second Chance Program

3 private individuals

**Opposition**
None

**Analysis Prepared by:** David Billingsley / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Chief Counsel: Gregory Pagan

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

AB 243 (Kamlager-Dove) – As Amended April 22, 2019

SUMMARY: Requires the Department of Justice (DOJ) to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported, hate crimes policies. Implementing a school-based hate crimes program, and submitting specified hate crimes information to the national repository of crime data. Specifically, this bill: Requires DOJ, in consultation with subject matter experts, including civil rights organizations, do the following:

1) Maintain and annually update a list of all law enforcement agencies;

2) Every three years, conduct reviews of all law enforcement agencies to evaluate the accuracy of hate crime data provided and agencies’ hate crime policies. During this review, the department shall obtain all of the following:
   a) Hate Crimes statistical data;
   b) Copies of law enforcement agencies’ hate crimes policies; and,
   c) Information regarding the agencies community outreach activities on hate crimes, including mandated hate crimes brochures;

3) Distribute information to all agencies on hate crimes reporting procedures in cooperation with the Commission on Peace Officer Standards and Training (POST);

4) Periodically do outreach to all law enforcement agencies to increase awareness of the DOJ’s Hate Crimes Rapid Response Team, as necessary;

5) Add region-specific data fields to the DOJ hate crimes data base, as recommended by the State Auditor in their 2018 report on hate crimes;

6) Create and provide law enforcement agencies with outreach materials to better engage their communities, to provide updates on local trends relating to and statistics regarding hate crimes committed in their communities, and to provide updates regarding threats in the form of hate crimes in their communities. In complying with this paragraph, the department shall do all of the following:
   a) Provide all outreach materials in the Medi-Cal threshold languages;
b) Provide guidance and best practices for law enforcement agencies to follow when conducting outreach to vulnerable communities about hate crimes within their jurisdictions. This should include collaboration within city and county human relations and human rights commission;

c) Include presentation materials specific to various types of communities historically vulnerable to hate crimes; and,

d) Provide required hate crimes materials to POST for inclusion in its model policy framework developed, as specified.

7) Implement a school based program in conjunction with school districts and local law enforcement agencies aimed at educating students on the negative consequences of, and how to recognize bias, prejudice, harassment, and violence and report all suspected hate crimes to prevent future hate crimes, as recommended by the State Auditor; and,

8) Submit hate crimes reports provided by local law enforcement agencies to the Federal Bureau of Investigation (FBI) for inclusion in the national crime repository for crime data collected for purposes the Uniform Crime Reporting Program, as required by the national Hate Crimes Statistics Act.

EXISTING LAW:

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

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

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

4) Mandates the Commission on Peace Officer Standards and Training (POST) to include a law enforcement training course that, among other things, provides instructions on law enforcement procedures, reporting, and documentation of hate crimes. (Pen. Code, § 13519.6, subds. (a) & (b).)

5) Requires POST to develop a framework and possibly a general order or formal policy regarding hate crimes that all state law enforcement agencies must adopt. The elements of the framework shall include, among other things, a title-by-title specific protocol that agency personnel are required to follow regarding reporting. (Pen. Code, § 13519.6, subd. (c)(4)(E),)

6) Provides that POST must encourage local law enforcement agencies to adopt any such policies. (Pen. Code, § 13519.6, subd. (c).)
7) Directs the Department of Justice (DOJ) to collect, analyze, and make publicly available, information related to criminal statistics. (Pen. Code, § 13010, subds. (a), (e), & (g).)

8) Requires the DOJ to direct, subject to the availability of adequate funding, local law enforcement agencies to report information related to hate crimes to the DOJ in a manner so prescribed. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required by statute. (Pen. Code, § 13023, subd. (a).)

9) Mandates that on or before July 1 of each year, the DOJ shall update the Open Justice Web portal with the information obtained from local law enforcement agencies pursuant to this section. The department shall submit its analysis to the Legislature, as specified. (Pen. Code, § 13023, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In a time when hateful rhetoric and hate crimes run rampant, California must lead by example to protect communities and send a strong message that hate will not be tolerated. In 2017, I requested the State Auditor investigate how California's hate crime laws are being implemented. The findings are in, and they showed us what many of us already know, many hate crimes are going under and misreported in California. The Audit recommended the Department of Justice (DOJ) exercise greater oversight and provide more robust guidance to law enforcement to improve reporting and response to hate crimes, and outreach to communities who are vulnerable. As a state that prides itself on its diversity, California must do better, so that all our community members feel safe. To do so, AB 301 will direct the DOJ to take immediate action on the State Auditor's recommendations."

2) **Background Supplied by Author**: In 2018, the State Auditor released the audit with the key finding that law enforcement has not adequately identified, reported, or responded to hate crimes. Among other findings, the audit found that "law enforcement agencies' inadequate policies and the Department of Justice's (DOJ) lack of oversight have resulted in the underreporting of hate crimes in the DOJ's Hate Crime Database." The audit found that the four surveyed law enforcement agencies failed to report to the DOJ a total of 97 hate crimes, or 14 percent of the hate crimes the agencies identified. As noted by the Auditor, the accurate reporting of hate crimes to the DOJ and then to the Federal Bureau of Investigation is essential to identifying national and statewide trends, preventing future crimes and providing outreach to communities historically targeted by hate crimes. In addition, the audit found that the DOJ should provide more guidance to assist law enforcement agencies with the identification and investigation of hate crimes and outreach to vulnerable communities.

As a whole, these findings show a need for greater guidance and oversight at the DOJ over law enforcement in regards to hate crimes reporting and data collection, hate crime policies, outreach to communities historically vulnerable to hate crimes, coordination among law enforcement agencies, and education to young people in order to improve reporting and prevention of hate crimes.

In addition, as a clearinghouse for the State’s data, the Audit found that the DOJ lacked an accurate list of all the law enforcement agencies in California and region-specific date fields in the hate crime database to show where the hate crimes in the state took place.
3) **Argument in Support:** According to the *Anti-Defamation League*, "AB 301 requires the California Department of Justice to maintain a list of law enforcement agencies within the state, distribute hate crime reporting procedures to these agencies, periodically review the accuracy of reported hate crime data and agency policies for reporting hate crimes, and implement a school-based program to prevent bias and better prepare students to identify and report hate crimes.

"We believe AB 301 will help our State counter hate crimes by facilitating more accurate hate crime data collection and the reporting of such crimes by victims. We thank you for your leadership on this issue."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

- Anti-Recidivism Coalition
- California Attorneys for Criminal Justice
- California Public Defenders Association
- California Tribal Business Alliance
- California Voices for Progress
- Courage Campaign
- Disability Rights California
- Equal Justice Society
- Initiate Justice
- San Francisco Public Defender's Office
- UDW/AFSCME Local 393

**Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
AB 301
Page 1

Date of Hearing: April 23, 2019
Chief Counsel: Gregory Pagan

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

AB 301 (Chu) – As Amended March 26, 2019

SUMMARY: Requires the Department of Justice (DOJ) to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported, hate crimes policies. Implementing a school-based hate crimes program, and submitting specified hate crimes information to the national repository of crime data. Specifically, this bill: Requires DOJ, in consultation with subject matter experts, including civil rights organizations, do the following:

1) Maintain and annually update a list of all law enforcement agencies;

2) Every three years, conduct reviews of all law enforcement agencies to evaluate the accuracy of hate crime data provided and agencies’ hate crime policies. During this review, the department shall obtain all of the following:

   a) Hate Crimes statistical data;

   b) Copies of law enforcement agencies’ hate crimes policies; and,

   c) Information regarding the agencies community outreach activities on hate crimes, including mandated hate crimes brochures;

3) Distribute information to all agencies on hate crimes reporting procedures in cooperation with the Commission on Peace Officer Standards and Training (POST);

4) Periodically do outreach to all law enforcement agencies to increase awareness of the DOJ’s Hate Crimes Rapid Response Team, as necessary;

5) Add region-specific data fields to the DOJ hate crimes data base, as recommended by the State Auditor in their 2018 report on hate crimes;

6) Create and provide law enforcement agencies with outreach materials to better engage their communities, to provide updates on local trends relating to and statistics regarding hate crimes committed in their communities, and to provide updates regarding threats in the form of hate crimes in their communities. In complying with this paragraph, the department shall do all of the following:

   a) Provide all outreach materials in the Medi-Cal threshold languages;
b) Provide guidance and best practices for law enforcement agencies to follow when conducting outreach to vulnerable communities about hate crimes within their jurisdictions. This should include collaboration within city and county human relations and human rights commission;

c) Include presentation materials specific to various types of communities historically vulnerable to hate crimes; and,

d) Provide required hate crimes materials to POST for inclusion in its model policy framework developed, as specified.

7) Implement a school based program in conjunction with school districts and local law enforcement agencies aimed at educating students on the negative consequences of, and how to recognize bias, prejudice, harassment, and violence and report all suspected hate crimes to prevent future hate crimes, as recommended by the State Auditor; and,

8) Submit hate crimes reports provided by local law enforcement agencies to the Federal Bureau of Investigation (FBI) for inclusion in the national crime repository for crime data collected for purposes the Uniform Crime Reporting Program, as required by the national Hate Crimes Statistics Act.

EXISTING LAW:

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

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

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

4) Mandates the Commission on Peace Officer Standards and Training (POST) to include a law enforcement training course that, among other things, provides instructions on law enforcement procedures, reporting, and documentation of hate crimes. (Pen. Code, § 13519.6, subds. (a) & (b).)

5) Requires POST to develop a framework and possibly a general order or formal policy regarding hate crimes that all state law enforcement agencies must adopt. The elements of the framework shall include, among other things, a title-by-title specific protocol that agency personnel are required to follow regarding reporting. (Pen. Code, § 13519.6, subd. (c)(4)(E).)

6) Provides that POST must encourage local law enforcement agencies to adopt any such policies. (Pen. Code, § 13519.6, subd. (c).)
7) Directs the Department of Justice (DOJ) to collect, analyze, and make publicly available, information related to criminal statistics. (Pen. Code, § 13010, subds. (a), (e), & (g).)

8) Requires the DOJ to direct, subject to the availability of adequate funding, local law enforcement agencies to report information related to hate crimes to the DOJ in a manner so prescribed. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required by statute. (Pen. Code, § 13023, subd. (a).)

9) Mandates that on or before July 1 of each year, the DOJ shall update the Open Justice Web portal with the information obtained from local law enforcement agencies pursuant to this section. The department shall submit its analysis to the Legislature, as specified. (Pen. Code, § 13023, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In a time when hateful rhetoric and hate crimes run rampant, California must lead by example to protect communities and send a strong message that hate will not be tolerated. In 2017, I requested the State Auditor investigate how California’s hate crime laws are being implemented. The findings are in, and they showed us what many of us already know, many hate crimes are going under and misrepresented in California. The Audit recommended the Department of Justice (DOJ) exercise greater oversight and provide more robust guidance to law enforcement to improve reporting and response to hate crimes, and outreach to communities who are vulnerable. As a state that prides itself on its diversity, California must do better, so that all our community members feel safe. To do so, AB 301 will direct the DOJ to take immediate action on the State Auditor’s recommendations.”

2) **Background Supplied by Author**: In 2018, the State Auditor released the audit with the key finding that law enforcement has not adequately identified, reported, or responded to hate crimes. Among other findings, the audit found that “law enforcement agencies’ inadequate policies and the Department of Justice’s (DOJ) lack of oversight have resulted in the underreporting of hate crimes in the DOJ’s Hate Crime Database.” The audit found that the four surveyed law enforcement agencies failed to report to the DOJ a total of 97 hate crimes, or 14 percent of the hate crimes the agencies identified. As noted by the Auditor, the accurate reporting of hate crimes to the DOJ and then to the Federal Bureau of Investigation is essential to identifying national and statewide trends, preventing future crimes and providing outreach to communities historically targeted by hate crimes. In addition, the audit found that the DOJ should provide more guidance to assist law enforcement agencies with the identification and investigation of hate crimes and outreach to vulnerable communities.

As a whole, these findings show a need for greater guidance and oversight at the DOJ over law enforcement in regards to hate crimes reporting and data collection, hate crime policies, outreach to communities historically vulnerable to hate crimes, coordination among law enforcement agencies, and education to young people in order to improve reporting and prevention of hate crimes.

In addition, as a clearinghouse for the State’s data, the Audit found that the DOJ lacked an accurate list of all the law enforcement agencies in California and region-specific date fields in the hate crime database to show where the hate crimes in the state took place.
3) **Argument in Support:** According to the *Anti-Defamation League,* "AB 301 requires the California Department of Justice to maintain a list of law enforcement agencies within the state, distribute hate crime reporting procedures to these agencies, periodically review the accuracy of reported hate crime data and agency policies for reporting hate crimes, and implement a school-based program to prevent bias and better prepare students to identify and report hate crimes.

"We believe AB 301 will help our State counter hate crimes by facilitating more accurate hate crime data collection and the reporting of such crimes by victims. We thank you for your leadership on this issue."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

- Anti-Defamation League
- Center for the Study of Hate & Extremism
- Disability Rights California
- Equality California

**Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Counsel: Nikki Moore

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

AB 310 (Santiago) – As Amended March 20, 2019

SUMMARY: Exempts from criminal trial jury service 13 new categories of corrections, probation and parole officers until January 1, 2024. Requires the Judicial Council of California to submit a report to the Legislature detailing the impact of categorical exemptions to jury service on the justice system. Specifically, this bill:

1) Exempts that the following classifications of peace officers employed by the California Department of Corrections and Rehabilitation (CDCR), as designated by Penal Code Section 830.5, from voir dire for jury service in criminal matters:

a) A parole officer employed by CDCR;

b) A parole officer employed by CDCR’s Division of Juvenile Parole Operations (Division);

c) A board coordinating parole agent with the Juvenile Parole Board;

d) A correctional officer employed by CDCR;

e) A correctional officer employed by the Division;

f) Any correctional counselor series employee of CDCR;

g) Any medical technical assistant series employee designated by the Secretary of CDCR or employed by the Department of State Hospitals;

h) Any employee of the Board of Parole Hearings designated by the Secretary of CDCR as a peace officer; and,

i) Any other employee designated as a peace officer by the Secretary of CDCR;

2) Provides that the following classifications of local peace officers as designated by Penal Code Section 830.5, shall not be selected for voir dire for jury service in criminal matters:

a) Probation Officers;

b) Deputy Probation Officers;

c) Any superintendent, supervisor, or employee of an institution operated by a probation department with custodial responsibilities; and,

d) Any transportation officer of a probation department.
3) Sunsets the specified jury exemptions in January 1, 2024.

4) Requires the Judicial Council of California, on or before January 1, 2023, to submit to the Legislature a report on the impact of categorical exemptions to jury service, including the existing and proposed exemptions for peace officers. The report shall specifically address the following:

a) Impacts to court administration created by exemptions from jury service;

b) Impacts to the diversity, including cultural and professional backgrounds, of the jury pool created by exemptions from jury service; and,

c) Impacts on the overall access to justice created by exemptions from jury service, including delays in trial scheduling and dismissals of last-day criminal trials.

5) Permits Judicial Council to utilize representative surveys to generate data for the report.

EXISTING LAW:

1) States that the policy of the State of California is that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the State; that all qualified persons have an obligation to serve as jurors when summoned; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civ. Proc., § 191.)

2) Requires that all persons selected for jury service be selected at random, from sources that include a representative cross section of the population of the area served by the court. (Code Civ. Proc., § 197.)

3) Provides a method for selecting a fair and impartial jury in a criminal jury trial, wherein counsel for the parties has a right to engage in a liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case or the parties before the court. (Code Civ. Proc., § 223.)

4) Presumes a person is eligible for jury service unless they:

a) Are not citizens of the United States;

b) Are under 18 years of age;

c) Are not domiciliaries of the State of California, or residents of the jurisdiction wherein they are summoned to serve;

d) Have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored;

e) Do not hold sufficient knowledge of the English language;

f) Currently serve as a grand or trial juror in any court of this state; or
g) Are currently in conservatorship. (Code Civ. Proc., § 203.)

5) Provides that the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire. (Code Civ. Proc., § 219 (a).)

6) Provides that if a jury commissioner requires a person to complete a questionnaire, the questionnaire shall ask only questions related to juror identification, qualification, and ability to serve as a prospective juror. (Code Civ. Proc., § 205 (a).)

7) Provides that a court may require a prospective juror to complete such additional questionnaires as may be deemed relevant and necessary for assisting in the voir dire process or to ascertain whether a fair cross section of the population is represented as required by law, if such procedures are established by local court rule. (Code Civ. Proc., § 205 (c).)

8) Prohibits from selection for voir dire for jury service in civil and criminal matters the following peace officers:

   a) Any sheriff, undersheriff, or deputy sheriff employed in the capacity by a county government;

   b) Any chief of police, of a city, or a chief, a director, or a chief executive officer of a municipal public safety agency;

   c) A police officer appointed by a person designated in b);

   d) Any police officers or port wardens employed by the San Diego Unified Port District Police or the Harbor District of the City of Los Angeles;

   e) Any marshal or deputy marshal of a superior court or county;

   f) The Attorney General of California;

   g) All special agents and investigators of the Department of Justice;

   h) Any chief, assistant chief, deputy chief, deputy director, and division director of the Department of Justice designated as a peace officer by the Attorney General;

   i) Any deputy sheriff from 32 counties, as specified, employed to perform duties related to custodial responsibilities at any county custodial facility;

   j) Any member of the Department of the Highway Patrol provided that their duty is the enforcement of the law or the protection of state officers, state properties, and the occupants of state properties; and,

   k) A member of the San Francisco Bay Area Rapid Transit District Police Department provided that their duty is the enforcement of the law in or about the property owned by the District. (Code Civ. Proc., § 219 (a).)

9) Prohibits from selection for voir dire for jury service in criminal matters the following peace officers:
a) A member of the University of California Police Department provided that the officer is assigned to the enforcement of the law within one mile of a University of California campus or property owned and administered by the University of California; and

b) A member of the California State University Police Department provided that the officer is assigned to the enforcement of the law within one mile of a California State University campus or property owned and administered by the California State University. (Code Civ. Proc., § 219 (b).)

10) Provides that the courts must establish pretrial assessment services, and provides that services may be performed by court employees or the court may contract for those services with a qualified local public agency with relevant experience. (Pen. Code, § 1320.26 (a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, “It is important that parole, probation, and correctional officers be exempt from jury duty to avoid potential conflicts of interest within our justice system. These officers’ duties include supervising offenders on post release supervision, mandatory supervision, probation, parole, and monitoring people serving time inside a local or state detention facility. As a result, their duties provide them with knowledge that may create a possible conflict of interest regarding court proceedings involving an inmate, parolee, etc. that they may have supervised.

“In addition, pulling these peace officers from duty can significantly impact their respective agencies’ ability to effectively manage and administer programs and supervision and can also put officers in danger. Probation, parole and correctional officers are in positions in which the defendant in a criminal trial could potentially be under their jurisdiction in the future, which puts these officers at risk when their private information is released. While there may be concern surrounding this bill of creating a ‘slippery slope’ in which any person of a certain profession may be exempt from jury service, it is imperative that probation, parole and correctional officers be exempt from jury duty to uphold the integrity of California’s court system and preserve the safety of officers.”


Whether a juror is impartial is discovered through the voir dire process. During voir dire the parties and the judge question prospective jurors in order to learn information about them. The most common and most important questions asked during voir dire is whether the prospective juror knows any of the people associated with the case, including the parties, their witnesses, the attorneys, the judge, and the court staff. In order to ensure a fair and
impartial jury is selected in a criminal jury trial, counsel for the parties have a right to engage in a liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case or the parties before the court. Attitudes about law enforcement, the police, the courts, or the criminal justice system are common areas of questioning and fertile ground for learning information that may support a challenge for cause to eliminate a potential juror.

The theory behind this bill is that the position and views of peace officers, and any one serving a similar function, make those people unconditionally unable to serve on criminal juries without need for examination, a sentiment shared by representatives for peace officers and defendants alike. Justification for existing exemptions from jury service for peace officers, and for the propose exemption for parole and probation officers in this bill, center on the sentiment that an officer may already know a repeat offender or may end up supervising a defendant after trial, making it wholly inappropriate for such person to be on the jury of that individual. Requiring an officer to appear for voir doir is seen as a waste of resources and time, since the officer will likely be dismissed from service in any event due to inherent conflicts.

Impartiality and conflict concerns are at the root of the voir dire process; preemptory and “for cause” challenges are the remedy. The parties’ right to an impartial jury is paramount, and it is inherent in the process that a person with a conflict will be eliminated from the jury pool whether categorical exemptions exist or not. This bill raises the question whether categorical exemptions for peace officers deprive a person engage in law enforcement who is on criminal trial of the opportunity to seat a jury of their peers.

This bill would require the Judicial Council to create a report to determine the impact of exempting categories of professions from jury service, generally. This report will help the Legislature understand the propriety of carving out entire sections of the population from jury service. The justification for categorical exemptions for law enforcement officials are easily stretched to justify exempting criminal attorneys, public defenders, prosecutors, paralegals, and court reporters, expert witnesses, or any court employee and criminal justice professional for that matter, from serving on a criminal jury. However, as the California Judges Association notes, it may be harmful to winnow the jury pool based on broad-sweeping exemptions, and generally, these exemptions should be resisted. In the future, this Legislature may even wish to revert back to the case-by-case examination of all potential jurors and eliminate categorical exemptions from jury service. The report mandated by this bill of Judicial Council to investigate the impact of categorical exemptions to jury service will likely illuminate which approach is more appropriate.

Similar measures to this bill have also attempted to exempt parole and probation officers from civil jury service. This bill would only exempt specified officers from criminal cases, where the justification for this bill are greater. While some impartiality and conflict concerns may arise in civil cases, there is a much broader range of activity in the civil courts that would not implicate these concerns.

3) The Constitutional Problem of Categorically Excluding from Jury Duty Certain Occupations: The Legislature should exercise extreme caution when deciding whether to continue down the path of excluding certain categories of people from jury service.
"The constitutional rule requiring a representative jury bars not only the exclusion of a group, but disproportionate reduction in its members; if some persons with a particular life experience are barred from the jury, others cannot properly represent the perspective of those excluded because the number of persons with that perspective will be disproportionately small." (People v. Harris (1984) 36 Cal. 3d 36, 51.)

It is a fundamental tenet of the U.S. Constitution that a criminal defendant is entitled to trial by an impartial jury drawn from a representative cross-section of the community. (Taylor v. Louisiana (1975) 419 U.S. 522, 530; 16; People v. Wheeler (1978) 22 Cal.3d 258, 272; see also Cal. Const. art. I, §16.) As the Supreme Court stated, “in our heterogeneous society jurors will inevitably belong to diverse and often overlapping groups defined by race, religion, ethnic or national origin, sex, age, education, occupation, economic condition, place of residence, and political affiliation; that it is unrealistic to expect jurors to be devoid of opinions, preconceptions, or even deep-rooted biases derived from their life experiences in such groups; and hence that the only practical way to achieve an overall impartiality is to encourage the representation of a variety of such groups on the jury so that the respective biases of their members, to the extent they are antagonistic, will tend to cancel each other out.” (Wheeler at pp. 276.) The Court held, “the exclusion of prospective jurors solely on the ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community.” (Id. at pp.276-77.) emphasis added.

A defendant may challenge a jury conviction for a violation of the fair-cross-section requirement. To do so the defendant must show (1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” (Duren v. Missouri (1979) 439 U.S. 357, 364.) No litigant has the right to a jury that mirrors the demographic composition of the population, or necessarily includes members of his own group, or is composed of any particular individuals. (Id. at 762.) This is because prospective jurors are subject to for cause and peremptory challenges on grounds of specific bias; but, as the Court warned “we cannot countenance the decimation of the surviving jurors” on the ground of group bias. (Id.) In Sixth Amendment fair-cross-section cases, systematic disproportion itself demonstrates an infringement of the defendant’s interest in a jury chosen from a fair community cross section, no showing of intent to discriminate, for example on the bases of a group’s perceived bias, is required. (Id.)

In California the jury commissioner is required to randomly select qualified prospective jurors for jury panels to be sent to courtrooms for voir dire. The names are selected from various source lists including records from the DMV and registrar of voters. The jury commissioner may send a questionnaire to potential jurors from the source lists only to determine if the potential juror is qualified. The jury commissioner must summon prospective jurors and hear the excuses of jurors summoned. It is left to the discretion of the jury commissioner to accept an excuse without a personal appearance. Unless excused by reason of undue hardship, the summoned prospective jurors shall be available to appear for service. (Code Civ. Proc., § 213.) The Civil Code specifies that it is an undue hardship for a prospective juror, whose services are immediately needed for the protection of the public health and safety, including correctional, probation, and parole officers.
Once summoned, jurors appear for jury duty, and the jury commissioner selects, at random, jurors to be on jury panels to be sent to courtrooms for voir dire. (Code Civ. Proc., § 219.) The only category of people who are excluded from being randomly selected on a jury panel to be sent to a courtroom for voir dire are sheriffs, police, and highway patrol officers in criminal and civil trials, and UC and CSU police in criminal trials. (Code Civ. Proc., § 219.) This is the law despite the fact that this group of individuals may be excused, without a personal appearance, if jury service is an undue hardship because their services are immediately needed for the protection of the public health and safety, and members of this group can also be dismissed for cause during voir dire, if needed.

This bill raises the questions of whether eliminating peace officers from the jury pool deprives the public of a fair cross section of the community being represented in a criminal trial. It could ultimately raise challenges to cases where a person, including a peace officer, may allege that their constitutional right to an impartial jury is diminished due to the categorical exemption of certain occupations.

This bill would add additional occupations, including parole, corrections, and probation officers, to the list of occupations already categorically excluded from jury duty in criminal cases. Proponents of this bill claim that pulling these officers away from their duties can significantly impact the agency’s ability to effectively manage and administer programs and supervision. The persuasiveness of the argument is suspect because a peace officer who is not already statutorily specifically exempt may request to be excused from jury duty on the basis of undue hardship because he or she is immediately needed in a critical public safety function, on a case by case basis. Furthermore, while post-conviction and post-release supervisory officers are an important part of the public safety system, it is unclear if each and every peace officer employed as a probation officer, parole officer, or correctional officer is continuously needed to fulfill a critical public safety function that would justify a blanket exemption from jury duty.

Moreover, a categorical exclusion based on occupation would prohibit individuals who desire to fulfill their civic duty of serving on a jury the opportunity to do so.

4) **Argument in Support:** According to the *California Public Defenders Association*, “AB 310 would enact a modest, but wholly appropriate, change to Code Civ. Proc., § 219, having to do with selection of potential trial jurors. Under subdivision (c) of that section most categories of peace officers are excluded from voir dire in criminal cases. The reasons for this are fairly obvious. In most, but not all cases, the credibility of a fellow officer will be a critical issue in deciding guilt or innocence, and it would be difficult to set aside the natural inclination to side with that officer. Also, many of the investigative issues in such a case may resemble the personal specialized knowledge of the juror-officer in his own job, thereby risking the introduction of extraneous evidence into the jury room.

“Finally, most, if not all, such officers would probably be excused from service in criminal cases anyway, either for cause or peremptorily, and therefore it would be more economical of court time and resources, as well as, of the officers’ time, to not put them through the process in the first place. AB 310 would simply expand the categories of peace officers already excluded from voir dire in criminal cases to include parole officers and correctional officers. The foregoing rationale for excluding peace officers of other categories from criminal voir dire applies with equal force to them. In addition, their direct and almost constant contact
with individuals who have been convicted of criminal offenses raises a legitimate risk that they may have a difficult time entertaining the presumption of innocence for those who are merely accused.”

5) **Argument in Opposition:**

a) According to the *California Judges Association (CJA)*, “AB 310 seeks to expand categorical exemptions to jury service to include additional designated parole and correctional officers, as specified, as exempt from voir dire in civil and criminal matters.

“CJA’s opposition to AB 310 is consistent with its general opposition to exemptions from jury service. Many courts already struggle with the challenges of having enough jurors available for prospective jury service, and the expansion of further exemptions will further complicate this. This is particularly true in counties with smaller populations.

“Existing law and the voir dire process provide adequate opportunity for excuse where allowable. Creating further categorical exemptions harms the diversity of the jury pool and increases the burden on the remaining prospective-juror community.”

b) According to the *Judicial Council*, “The council has a longstanding policy of opposing categorical exemptions from jury service and has continually found that statutorily exempting specific categories of persons from jury duty reduces the number of available jurors, makes it more difficult to select representative juries, and unfairly increases the burden of jury service on other segments of the population. The courts have a constitutional obligation to ensure that jury pools are representative of the community and that there are enough prospective jurors in the courthouse each day to avoid having to dismiss last-day criminal trials for lack of jurors.

“Furthermore, existing law and California Rules of Court make categorical exceptions unnecessary, as both authorize courts to grant a hardship excuse in appropriate circumstances and to make scheduling accommodations without requiring a court appearance. Hardships noted in the promotion of bills like AB 310, including lack of transportation, personal obligation to provide care for another, and that the prospective juror’s services ‘are immediately needed for the protection of the public health and safety,’ would all be grounds constituting undue hardship under California Rules of Court, rule 2.1008.

“Many changes in recent years designed specifically to lessen the burden of jury duty on citizens also render categorical exemptions unnecessary. Such changes include creation of a one day/one trial system statewide, improving the summons process to allow requests for excuses to be made, and adoption of a rule of court to ensure that jurors can request scheduling accommodations without appearing in court.

“Courts must constantly balance the need to ensure access to the justice system with the need to respect jurors’ time. However, while jury service requires sacrifice on the part of citizens, exempting certain classes of individuals based on the burden it might put on them unfairly increases the burden on the others.”
6) Prior Legislation:

a) AB 2240 (Grayson), 2018, was identical to the introduced version of this measure. Governor Brown vetoed the bill.

b) AB 1541 (Kiley), Chapter 302, Statutes of 2017, permits each party’s counsel be calculating to discover bias and prejudice in jury selection, in accord with the circumstances of a particular case or the parties before the court.

c) AB 1708 (Alejo), 2014, was nearly identical to the introduced version of this bill. AB 1708 was held in this committee.

d) SB 1133 (Anderson), 2014, would have exempted from jury service fish and game wardens who were sworn peace officers. AB 1133 failed in the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California (Sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Correctional Peace Officers Association
California Probation Parole and Correctional Association
California Public Defenders Association
California Statewide Law Enforcement Association
Chief Probation Officers of California
Los Angeles County Probation Officers Union, AFSCME Local 685
State Coalition of Probation Organizations

Oppose

California Judges Association
Judicial Council of California

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
AB 329
Page 1

Date of Hearing: April 23, 2019
Counsel: David Billingsley

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

AB 329 (Rodriguez) – As Amended April 8, 2019

SUMMARY: Makes an assault, on the property of a hospital, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or by both that fine and imprisonment. Specifically, this bill:

1) Specifies that when an assault is committed on the property of a public or private hospital, against any person, the assault is punishable by a fine not exceeding $2,000, or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

2) Defines “Hospital” as a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, specified licensure requirements.

3) Allows a health facility, as specified, to post a notice in a conspicuous place in any area of the facility stating substantially the following:

   “WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff, patients, or visitors. Assaults and batteries against our staff, patients, or visitors are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety.”

EXISTING LAW:

1) States that when an assault is committed against the person of a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is member of one of the professions listed above and engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment. (Pen. Code, § 241, subd. (c).)

2) Specifies that when a battery is committed on school property, park property, or the grounds of a public or private hospital, the battery is punishable by a fine not exceeding $2,000, or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment, except as otherwise provided. Pen. Code, § 243.2, subd. (a)(1).)
3) Defines “Hospital” as a facility for the diagnosis, care, and treatment of human illness that is subject to, or specifically exempted from, specified licensure requirements.

4) States that when a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is member of one of the professions listed above engaged in the performance of his or her duties, as specified, the battery is punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 243, subd. (b).)

5) Specifies that when a battery causing injury is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a member of one of the professions listed above, engaged in their duties as specified, the battery is punishable as a misdemeanor, by a fine of not more than $2,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or as a realigned felony, by imprisonment for 16 months, or two or three years in the county jail. (Pen. Code, § 243, subd. (c)(1).)

6) When a battery causing injury is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable as a misdemeanor by a fine of not more than $10,000, or by imprisonment in a county jail not exceeding one year or as a realigned felony by imprisonment in county jail for 16 months, or two or three years, or by both that fine ($10,000) and imprisonment. (Pen. Code, § 243, subd. (c)(2).)

7) States when battery committed upon any person and serious bodily injury is inflicted upon that person the offense is punishable by two, three, or four years in the state prison or by up to one year in the county jail. (Pen. Code, § 243, subd. (d).)

8) Defines "battery" as “the willful and unlawful use of force and violence upon another person”, punishable by up to six months in the county jail; by a fine not to exceed $2,000; or by both fine and imprisonment. (Pen. Code, §§ 242 and 243.)

9) Defines "assault" as an “unlawful attempt, coupled with a present ability, to inflict a violent injury upon the person of another”, and is punishable by a fine not exceeding $1,000; by
imprisonment in the county jail not exceeding six months; or by both. (Pen. Code, §§ 240 and 241.)

10) Defines “injury” as “any physical injury which requires professional medical treatment.

11) Specifies that any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 245, subd. (a)(4).)

12) States that any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years. (Pen. Code, § 12022.7, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Nurses are on the front lines of patient care and, as a result, report the highest rate of workplace assaults. However, the problem is not limited to nurses. Physicians, pharmacists, nurse practitioners, physician assistants, nurses' aides, therapists, technicians, home healthcare workers, social/welfare workers, and emergency medical care personnel are all at risk of violence by patients or visitors. No one is immune to the risk.”

2) Current Law Provides Elevated Penalties for Batteries on Physicians or Nurses Engaged in Rendering Emergency Medical Care Outside a Hospital, Clinic, or Other Health Care Facility and Batteries on Hospital Grounds: Misdemeanor assault and battery are generally punishable by a jail sentence of up to six months, and a fine up to $1000. (Pen. Code, §§ 240, 241, 242, 243.)

Under current law, an assault or battery against physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, when the person committing the offense knows or reasonably should know that the victim is member of one of the professions listed above and engaged in rendering emergency medical care, is a misdemeanor punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, §§ 241, subd. (e), 243, sub. (b).)

Current law also provides elevated penalties for battery committed on the grounds of a hospital. A battery on hospital grounds is punishable by a fine not exceeding $2,000, or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment. (Pen. Code, § 243.2, subd. (a)(1).) Current law does not have a similar elevated penalty for assault on hospital grounds. This bill would treat assault on hospital grounds consistently with the manner in which current law treats battery on hospital grounds.
3) **Steps Hospitals Are Taking to Reduce Violence in Emergency Rooms:** Hospitals are increasingly taking steps to de-escalate potentially violent circumstances. An article from the San Diego Union Tribune, described some of the efforts hospitals are taking to reduce violence in emergency rooms.

The journalist spoke to Dr. Terry Kowalenko as part of the article. Dr. Kowalenko, a Michigan-based emergency physician who has researched ER violence, said that in order to “de-escalate” staff need to know what warning signs are likely to pop up before a patient takes a swing at his or her caregiver. Dr. Kowalenko indicated that having robust security available, and a quiet place for agitated patients to calm down, can all make a big difference in a hospital’s violence rate. “There is a big subset of people who become violent who didn’t come in violent, and often that’s a result of how they felt they were treated or not treated,” said Dr. Kowalenko.


Janie Kramer, chief operating officer of Sharp Memorial Hospital in San Diego, said the facility saw a sharp decrease in physical violence when it moved to 24-7 security and made a significant investment in security cameras. While verbal abuse is still too common, she said having a significant focus on security really has helped. “We do have security in rooms one-on-one with patients if they’re showing signs of violence, and we know that makes a big difference,” Kramer said. (Id.)

The American College of Emergency Physicians conducted a survey which asked emergency room doctors about the subject of assault in emergency departments. Half of the doctors surveyed indicated that the situation could be improved with increased use of security cameras, metal detectors, and increasing visitor screening. The survey was conducted between August 21 -27, or 2018. The survey contacted 3,539 emergency physicians.

4) **Argument in Support:** According to the California Hospital Association, “Creating a safe environment for hospital patients, employees, and visitors is incredibly important to hospitals across the state. Delivering high-quality patient care is vital, and California’s health care providers deserve a safe, healthy setting in which to perform this important work. The California Hospital Association (CHA) and our more than 400 hospital and health system members are pleased to support Assembly Bill (AB) 329 (Rodriguez), which would help to further this goal.

“AB 329, as amended, would strengthen hospitals’ efforts to address health care workplace violence by aligning current enhanced penalties for batteries that occur on hospital property with penalties for assaults that occur on hospital property. It also would clarify that hospitals may post notices about possible criminal penalties to deter violent conduct.

“California hospitals work tirelessly to ensure their facilities are safe, healing environments for all who enter their doors. They have adopted workplace violence prevention plans, conduct training, and undertake facility assessments. They have also taken steps to mitigate risk, such as adopting patient and visitor screening techniques, expanding use of alarms, and
utilizing additional security staff. Unfortunately, the risk of violence remains. Hospitals welcome yet another tool to support their efforts to protect employees and patients.”

5) Argument in Opposition: According to the California Attorneys for Criminal Justice, “AB 329 would make the punishment for an assault committed on the property of a hospital equal to the punishment for assault in a school or park. Assault is already a criminal offense under the current penal code, and this bill simply doubles the existing punishment. CACJ does not believe that increasing penalties will help prevent hospital assaults. Extensive research has found that increasing criminal punishments for these types of offenses does not have the desired deterrent effect on crime. This bill may also have the unintended consequence of further criminalizing patients who may inadvertently harm hospital staff, like during psychotic episodes or withdrawal. While we respect the work of professionals in hospitals, we cannot support this increase in penalty.”

6) Related Legislation: AB 26 (Rodriguez), would require an emergency ambulance provider to provide each emergency ambulance employee, who drives or rides in the ambulance, with body armor and safety equipment to wear during the employee’s work shift. AB 26 is awaiting hearing in the Assembly Labor and Employment Committee.

7) Prior Legislation:

a) AB 172 (Rodriguez) of the 2015-2016 Legislative Session, would have increased the penalties for assault and battery committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, and the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department. AB 172 was vetoed by the Governor.

b) AB 1959 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the felony state prison punishment for assault upon the person of an emergency medical technician with a deadly weapon, firearm, semiautomatic firearm, .50 caliber sniper rifle, or machine gun. AB 1959 was held in on the Suspense File of the Assembly Appropriations Committee.

c) AB 1680 (Rodriguez), Chapter 817, Statutes of 2016, made it a misdemeanor to use a drone to impede specified emergency personnel in the performance of their duties while coping with an emergency.

d) SB 390 (La Malfa), Chapter 249, Statutes of 2011, increased the penalties for assault and battery against the person of a search and rescue member engaged in the performance of his or her duty.

e) SB 406 (Lieu), Chapter 250, Statutes of 2011, increased the penalties for assault and battery against the person of a security officer or custodial assistant engaged in the performance of his or her duty.

REGISTERED SUPPORT / OPPOSITION:
Support

Alliance of Catholic Health Care, Inc.
American Congress of Obstetricians & Gynecologists - District IX
Association of California Healthcare Districts, and Affiliated Entity Alpha Fund
California Chapter of the American College of Emergency Physicians
California Hospital Association
California Orthopedic Association
California Special Districts Association
California State Sheriffs' Association
Scripps Health

242 Private Individuals

Oppose

American Civil Liberties Union of California
California Advocates for Nursing Home Reform
California Attorneys for Criminal Justice
California Public Defenders Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Requires the creation of a statewide tracking system to allow a victim of a sexual assault crime to monitor the status of the processing and testing of a sexual assault forensic exam related to their case. Specifically, this bill:

1) States that it is the intent of the Legislature that the Department of Justice (DOJ) modernize sexual assault evidence supply chain tracking and maintain a statewide sexual assault kit tracking system.

2) States that each city, county, city and county, or state laboratory that participates in the California Combined DNA Index System (CODIS) shall, upon notification by DOJ that a CODIS hit has occurred for forensic evidence collected from a sexual assault kit, enter into the CODIS Hit Outcome Project database (CHOP database) the information required by the department.

3) Requires each law enforcement agency in California that is responsible for the investigation or prosecution of a sexual assault case that involves a DNA match to a California offender to report to DOJ, through the CHOP database, the status and outcome of that investigative lead.

4) Requires DOJ to create a statewide sexual assault kit tracking system that accomplishes the following goals:

   a) Allows the tracking of the location and status of sexual assault kits throughout the criminal justice process, including the initial collection in examinations performed at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and storage after completion of analysis;

   b) Allows qualified health care providers performing sexual assault forensic examinations, law enforcement agencies, prosecutors, crime laboratories, and other entities in the custody of sexual assault kits to update the status and location of sexual assault kits;

   c) Allows victims of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits, and use electronic technology or technologies allowing continuous access;

   d) States that survivors shall be given unique login information to access the status and location of their sexual assault kit at the discretion of the appropriate qualified health care provider or law enforcement agency personnel;
e) Requires documentation if a sexual assault kit is destroyed;

f) States that tracking shall begin when a sexual assault evidence kit is initially entered into the tracking system; and,

g) States that sexual assault kits not bearing a tracking system unique identifier, located at hospitals and law enforcement agencies, shall be provided a unique identifier. The identifier shall be affixed to the sexual assault kit and entered for use by the tracking system.

5) Declares that information collected by the department pursuant to this section is investigatory in nature and is official information, subject to the exemptions from public disclosure under specified provisions of the Evidence Code and the California Public Records Act.

6) Allows DOJ to use a phased implementation process in order to launch the system and facilitate entry and use of the system for required participants. DOJ may phase initial participation according to region, volume, or other appropriate classifications. All entities in the custody of sexual assault kits shall fully participate in the system no later than July 1, 2023.

7) Requires DOJ to submit a report on the current status and plan for launching the system, including the plan for phased implementation, to the Legislature on or before July 1, 2021.

8) States that it is the intent of the Legislature that the use of the tracking system shall not alter the existing chain of custody systems, processes, procedures, rules, regulations, or legal requirements of any participating entity.

9) States that it is the intent of the Legislature that this section does not provide grounds to challenge the admissibility of DNA evidence in court proceedings. Provides that nothing in this section is intended to create a private right of action or claim on the part of any individual, entity, or agency against any city, county, or state law enforcement agency.

10) States that it is the intent of the Legislature that DOJ integrate the electronic sexual assault reporting form and the tracking database to provide a report to qualified health care providers with data on the following:

   a) The number of hits that were generated from the examination performed by a given qualified health care provider;

   b) The number of hits generated by a given specimen type;

   c) The number of hits generated by a given location from which the specimen was collected;

   d) The number of hits that were matched to an individual in CODIS; and,

   e) The number of hits that were matched to an anonymous serial profile in CODIS.
EXISTING LAW:

1) Establishes the Sexual Assault Victims’ DNA Bill of Rights which provides victims of sexual assault with the following rights:

   a) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case;

   b) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice (DOJ) Data Bank of case evidence; and

   c) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code, § 680, subd. (c)(2).)

2) Requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit deoxyribonucleic acid (DNA) samples. (Pen. Code, § 296.)

3) Establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Pen. Code, §§ 295, 295.1.)

4) Encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code, § 680, subd. (b)(6).)

5) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code, § 680, subd. (b)(7)(A)(i).)

6) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code, § 680, subsd. (b)(7)(A)(ii) and (E).)

7) Encourages crime labs to do one of the following:

   a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or

   b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of
8) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Pen. Code, §§ 680, subds. (e) and (f), 803.)

9) Requires each law enforcement agency, medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits shall conduct an audit of all untested sexual assault kits in their possession and shall, no later than July 1, 2019, submit a report to the Department of Justice containing the following information:

a) The total number of untested sexual assault kits in their possession; and

b) For each kit, the following information:

  i) Whether or not the assault was reported to a law enforcement agency.

  ii) For kits other than those described in subparagraph (C), the following data, as applicable:

      (1) The date the kit was collected,

      (2) The date the kit was picked up by a law enforcement agency, for each law enforcement agency that has taken custody of the kit,

      (3) The date the kit was delivered to a crime laboratory, and

      (4) The reason the kit has not been tested, if applicable.

  iii) For kits where the victim has chosen not to pursue prosecution at the time of the audit, only the number of kits.

  iv) The Department of Justice shall, by no later than July 1, 2020, prepare and submit a report to the Legislature summarizing the information received.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “AB 358 incorporates common-sense recommendations from the State Auditor to ensure that our local law enforcement agencies report sexual assault outcomes to the Department of Justice and modernizes rape kit tracking to empower survivors of sexual assault with the tools to track their kit confidentially and on their own terms. This bill builds on previous and current efforts by the State Legislature to ensure that survivors of sexual assault have access to information about the status of their rape kit and that the state has all the data necessary to inform its practices for sexual assault kit testing.”
1) **Existing Sexual Assault Evidence Kits, Databases and Processes:** Sexual assault evidence kits contain evidence collected in a medical forensic exam administered on a person who is the victim of a sexual assault crime. When a person reports a sexual assault, a local law enforcement officer meets with and takes a statement from the victim. If the victim agrees to participate in a sexual assault forensic examination, specially trained health care providers collect biological evidence from the victim's body, and the kit is transferred to local law enforcement. In 2011, DOJ implemented the Rapid DNA Service (RADS) program in 39 counties where DOJ provides forensic services. In RADS jurisdictions, a hospital that performs a sexual assault forensic exam will send DNA evidence directly to DOJ and also to local law enforcement. DOJ crime labs analyze each RADS kit in an attempt to obtain a DNA profile from the kit that could identify or confirm the identity of a suspect and, if DOJ identifies a profile of a suspect, uploads the information to the FBI’s national database, CODIS. (In non-RADS jurisdictions, hospitals only forward DNA evidence to local law enforcement.) If the DNA submitted matches DNA already in CODIS, this is referred to as a “hit.” DOJ uses another system, CHOP, to notify the responsible local law enforcement of the hit in their case.

The CODIS Hit Outcome Project (CHOP) enables agencies to share confidential information about the outcomes of DNA matches; and the Sexual Assault Forensic Evidence Tracking (SAFE-T) database, enables the state to track the collection and processing of sexual assault evidence kits. SAFE-T was created by DOJ in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants.

According to the State Auditor, “DOJ has also established areas in the CHOP system that law enforcement agencies and district attorneys should use to enter information regarding the outcomes of the sexual assault case investigations and, if applicable, prosecutions for the cases associated with hits. For example, for each hit, a law enforcement agency should report whether it investigated the case, whether it made an arrest, and whether it submitted the case to the district attorney for prosecution. The district attorney should then report on the outcomes related to the prosecution of cases that law enforcement submitted, such as whether it filed charges against a suspect and whether the suspect was convicted.” However, it appears that much of this data collection is not done.

2) **Scrutiny of Law Enforcement Collection and Tracking of DNA Evidence:** Public scrutiny of, and attention to California’s management of sexual assault evidence kits was invigorated by a 2014 report by the California State Auditor which found that law enforcement agencies rarely document reasons for not conducting DNA tests on the kits. (California State Auditor, *Sexual Assault Evidence Kits*, October 2014, Available at: https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf.) The report concluded that “[e]ven though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public. (Id. at pp. 23-24.)

Since that report, the Legislature has enacted numerous reforms to require the timely testing
of forensic evidence, and grant victims of sexual assault certain rights to know about the progress of their exam results. In 2015, DOJ created SAFE-T in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants. In 2017, the Legislature passed a law to require all local law enforcement agencies investigating a case involving sexual assault to input specified information relating to the administration of a sexual assault kit into the DOJ’s SAFE-T database within 120 days of collection. The law also requires public laboratories to input an explanation onto SAFE-T if they have not completed DNA testing of a sexual assault kit within 120 days of acquiring the kit.

This year, the Auditor followed up with another report to the Governor, with an update on the DOJ’s progress related to recommendations from the 2014 report. In a report issued in March 2019, the Auditor concluded that DOJ has not made sufficient efforts to obtain case outcome information that could demonstrate the extent of the benefits of testing all collected sexual assault evidence kits. The Auditor reported that DOJ “has obtained minimal amounts of this information because it has not notified many [rapid DNA Service] RADS participants that they should report the information, has not adequately trained participants on how to report, and does not periodically follow up with those that do not report. As a result, it has failed to provide valuable information that the State can use to determine the extent of the benefits of testing all sexual assault kits.” (California State Auditor, Follow-Up Sexual Assault Evidence Kits: California Has Not Obtained the Case Outcome Information That Would More Fully Demonstrate the Benefits of Its Rapid DNA Service Program, March 2019, Available at: https://auditor.ca.gov/pdfs/reports/2018-501.pdf.)

The Auditor stated, “[D]espite having established a database where local law enforcement agencies and district attorneys can report case outcomes, [DOJ] has frequently not obtained key information on the outcomes of sexual assault cases. We found that of the 417 hits generated from profiles uploaded to CODIS during the three years we reviewed, Justice’s CODIS Hit Outcome Project (CHOP) database did not have any case outcome information for 278—67 percent—of them. Additionally, among the cases for which it had partial case outcome information, we found that Justice had not always obtained key information about whether the hits furthered the investigation or prosecution. This information is critical because it can provide key insight into the benefit of increasing the number of sexual assault evidence kits tested in the State.” http://www.auditor.ca.gov/reports/2018-501/summary.html

The Auditor recommended that the Legislature should consider requiring the testing of all sexual assault kits, require law enforcement agencies and district attorneys to report key case outcome data to DOJ, require DOJ to provide training and guidance to those entities on how to report that information, and follow up with entities that do not report.

The Auditor’s position is that it is essential for DOJ to be the main repository for information on sexual assault, and that DOJ should report its findings yearly. In DOJ’s response to the audit follow-up, the Auditor said “[DOJ] asserts that it has fully implemented the recommendation that was the subject of this follow-up, but agreed that it could improve its approach to obtaining case outcome information. However, [DOJ] stated that it will not be able to do so without additional resources.”
On April 3, the Legislature held a Joint Legislative Audit with Senate and Assembly Budget Subcommittee No. 5, to discuss the Auditor's findings. Members discussed the Auditor's recommendations, many of which are incorporated in this bill. The Auditor expressed concerns that even in jurisdictions where RADS is incorporated, compliance with reporting requirements has been inconsistent at best.

3) Argument in Support: According to the Riverside Sheriffs' Association, "AB 358 requires law enforcement agencies to report on DNA hit outcomes from sexual assault forensic evidence matched with profiles in the California Combined DNA Index System (CODIS) to the Department of Justice (DOJ). Additionally, the bill requires the DOJ to modernize its tracking system of DNA rape kits and allow survivors to confidentially track their rape kits via an online portal. AB 358 will improve the hit rate on DNA samples uploaded to the CODIS and provide sexual assault victims with the knowledge that their evidence has properly handled and uploaded into the database."

4) Related Legislation:

a) AB 1496 (Fraizer), would require, for all sexual assault forensic evidence received on and after January 1, 2020, a law enforcement agency to either submit the evidence to a crime lab within 20 days or ensure that a rapid turnaround DNA program is in place, as specified, and would require a crime lab to either process the evidence as soon as practically possible, and no later than 120 days after receiving the evidence, or transmit the evidence to another crime lab for processing, as specified. AB 1496 is pending hearing in the Assembly Appropriations Committee.

b) SB 22 (Leyva), would require a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames. SB 22 is pending in the Senate Appropriations Committee.

5) Prior Legislation:

a) AB 3118 (Chiu), Chapter 950, Statutes of 2018, requires each law enforcement agency, crime lab, medical facility, or any other facility that possesses sexual assault evidence kits to conduct an audit of all kits in their possession and report the findings to the DOJ, as specified.

b) SB 1449 (Leyva), of the 2017-2018 Legislative Session would have required law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, and would have required crime labs to either process the evidence for DNA profiles and upload them into the CODIS or transmit the evidence to another crime lab for processing and uploading. SB 1449 was vetoed by Governor.

c) AB 41 (Chiu), Chapter 694, Statutes of 2017, requires all local law enforcement agencies investigating a case involving sexual assault to input specified information relating to the administration of a sexual assault kit into the DOJ's SAFE-T database within 120 days of collection. It also requires public laboratories to input an explanation onto SAFE-T if
they have not completed DNA testing of a sexual assault kit within 120 days of acquiring the kit.

d) AB 1312 (Gonzalez Fletcher), Chapter 692, Statutes of 2017, requires law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights. Provides additional rights to sexual assault victims, and mandates law enforcement and crime labs to complete tasks related to rape kit evidence.

e) AB 1848 (Chiu), of the 2015-2016 Legislative Session, would have required local law enforcement agencies to conduct an audit of sexual assault kits collected during a period of time, as specified by the DOJ, and to submit data regarding the total number of kits, the amount of kits submitted for DNA testing, the amount not submitted and other information, as specified. AB 1848 was held in the Senate Appropriations Committee.

f) AB 2499 (Maienschein), Chapter 884, Statutes of 2016, requires the DOJ to, in consultation with law enforcement agencies and crime victims groups, establish a process giving location and other information to victims of sexual assault upon inquiry.

g) SB 1079 (Glazer), of the 2015-2016 Legislative Session, would have required the DOJ to maintain a restricted access repository for tracking DNA database hits that local law enforcement agencies could use to share investigative information. SB 1079 was held in the Senate Appropriations Committee.

h) AB 1517 (Skinner), Chapter 874, Statutes of 2014, provided preferred timelines that law enforcement agencies and crime labs should follow when dealing with sexual assault forensic evidence.

i) AB 322 (Portantino), of the 2011-2012 Legislative Session, would have established a pilot project administered by the DOJ. The project would have required ten counties to open and test all rape kits collected from July 1, 2012, to December 31, 2014. AB 322 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support
California Sexual Assault Forensic Examiners Association
National Association of Social Workers, California Chapter
Riverside Sheriffs' Association

Opposition
None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Counsel: David Billingsley

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

AB 362 (Eggman) – As Amended March 11, 2019

As Proposed to be Amended in Committee

SUMMARY: Authorizes the City and County of San Francisco to approve entities to operate an overdose prevention program for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access to referrals to addiction treatment. Establishes a sunset date of January 1, 2026. Specifically, this bill:

1) Permits the City and County of San Francisco to approve entities to establish and operate an overdose prevention program for individuals 18 years of age or older.

2) Requires the city and county, prior to approving a program, to provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting. Requires the notice of the meeting to the public to be sufficient to ensure adequate participation in the meeting by the public. Requires the meetings to be noticed in accordance with all state laws and local ordinances, and as local officials deem appropriate.

3) Requires an entity, in order to be approved, to demonstrate that an overdose prevention program will, at a minimum:
   a) Provide a hygienic space supervised by health care professionals, as specified, where people who use drugs can consume pre-obtained drugs, and provide sterile consumption supplies, as specified;
   
   b) Administer first aid, if needed, monitor participants for potential overdose, and provide treatment as necessary to prevent fatal overdose;
   
   c) Provide access or referrals to substance use disorder treatment, mental health, medical, and social services;
   
   d) Educate participants on the risks of contracting HIV and viral hepatitis;
   
   e) Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or other federally approved drugs, as specified;
   
   f) Educate participants regarding proper disposal of hypodermic needles and syringes;
   
   g) Provide reasonable security of the program site;
   
   h) Establish operating procedures for the program, made available to the public either through a Web site or upon request, including a minimum number of personnel required
to be onsite, and an established relationship with the nearest emergency department of a
general acute care hospital;

i) Train staff members to deliver services offered by the program;

j) Establish a good neighbor policy that facilitates communication from and to local
businesses and residences, to the extent they exist, to address any neighborhood concerns
and complaints; and,

k) Establish a policy for informing local government officials and neighbors about the
approved entity’s complaint procedures, as specified.

4) Requires an approved entity to provide an annual report to the city and county, as specified.

5) Prohibits a person or entity, including, but not limited to, property owners, managers,
employees, volunteers, and clients or participants from being charged with drug-related
crimes, as specified, solely for actions or conduct on the site of an overdose prevention
program approved by the City and County of San Francisco or for conduct relating to the
approval of an entity to operate an overdose prevention program, or the inspection, licensing,
or other regulation of an overdose prevention program approved by the City and County of
San Francisco.

6) States that notwithstanding any other law, a person or entity, including, but not limited to,
property owners, managers, employees, volunteers, clients or participants, and employees of
the City and County of San Francisco acting in the course and scope of employment shall not
be subject to civil, administrative, disciplinary, employment, credentialing, professional
discipline, contractual liability, or medical staff action, sanction, or have their property
subject to forfeiture, or penalty or other liability solely for actions, conduct, or omissions in
compliance with an overdose prevention program approved by the City and County of San
Francisco or for conduct relating to the approval of an entity to operate an overdose
prevention program, or the inspection, licensing, or other regulation of an overdose
prevention program approved by the City and County of San Francisco.

7) Establishes a sunset date of January 1, 2026

EXISTING LAW:

1) Provides that the possession of cocaine, cocaine base, heroin, opium, and other specified
controlled substances, unless the possession is with the prescription of a physician, dentist,
podiatrist, or veterinarian, shall be punished by imprisonment in a county jail for not more
than one year, except as specified. (Health and Saf. Code, § 11350(a).)

2) Makes the possession of methamphetamine and other specified controlled substances, unless
the possession is with the prescription of a physician, dentist, podiatrist, or veterinarian,
punishable by imprisonment in a county jail for a term not to exceed one year, except as
specified. (Health and Saf. Code, § 11377(a).)

3) States that any person who has under his or her management or control any building, room,
space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who
knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution can be punished by imprisonment in the county jail up to three years (Health & Saf. Code, § 11366.5, subd. (a).)

4) Specifies that any person who utilizes a building, room, space, or enclosure specifically designed to prevent law enforcement entry in order to sell, manufacture, or possess for sale any amount of drugs, as specified, shall be punished by imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11366.6.)

5) Provides that until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other blood borne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, the possession solely for personal use of hypodermic needles if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription shall not be criminalized. (Health & Saf. Code, § 11364, subd. (c).)

6) Specifies that notwithstanding any other provision of law and until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other blood borne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, a physician or pharmacist may, without a prescription or a permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist. (Business & Prof. Code, § 4145.5, subd. (b).)

7) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

FISCAL EFFECT: Unknown

COMMENDS:

1) **Author's Statement:** According to the author, "Across the United States, heroin and opioid use and overdose is on the rise. Legislation in many states, including California, has improved access to sterile syringes to prevent HIV and viral hepatitis; broadened the use of the life-saving drug naloxone, which reverses the impact of opiate overdose; and expanded the use of effective treatment and drug diversion programs. However, with over 190 Americans dying every day (more than 13 Californians daily), we must continue to look for innovative strategies for addressing this epidemic.

“This bill would extend the harm reduction strategies we are already using in California by enabling the City and County of San Francisco to permit programs to provide people who use drugs with a safe and hygienic space to use pre-obtained drugs under the supervision of
trained staff, in order to save lives, connect individuals with vital services like detoxification, treatment, medical care, and housing, and reduce public nuisance and safety concerns such as improperly disposed syringes. Approximately 100 such programs are currently operating ten countries around the world (Switzerland, Germany, the Netherlands, Norway, Luxembourg, Spain, Denmark, France, Australia, and Canada).

“In a single year the Canadian facility made more than 2,000 referrals to community-based services like addiction counseling, detoxification, health centers, methadone maintenance therapy, and long-term recovery houses. The research also shows no increase in the number of people who use drugs, drug trafficking or consumption crimes, or relapse rates. Also, a recent study in California projects that a single supervised consumption program could save $3.5 million in San Francisco annually.”

2) **Supervised Injection Facilities and Drug Consumption Rooms**: This bill would authorize the operation of supervised injection services programs in specified counties. Supervised injection facilities and drug consumption rooms are professionally supervised healthcare facilities where drug users can consume drugs in safer conditions. One of their primary goals is to reduce morbidity and mortality by providing a safe environment for more hygienic drug use and by training clients in safer drug use. The drug consumption room seeks to attract hard-to-reach populations of drug users, especially marginalized groups and those who use drugs on the streets or in other risky and unhygienic conditions. At the same time, they seek to reduce drug use in public and improve public amenity in areas surrounding urban drug markets. A further aim is to promote access to social, health and drug treatment facilities. ([http://www.drugwarfacts.org/cms/Safe_Injection#sthash.jb2AsCAE.dpbf](http://www.drugwarfacts.org/cms/Safe_Injection#sthash.jb2AsCAE.dpbf))

Worldwide, at least 90 facilities have been created to permit people to inject illegal drugs under medical supervision. The first opened in Berne, Switzerland, in 1986. A supervised injection site in Vancouver, B.C., is the only such site in North America. (*Id.*)

3) **AB 186 (Eggman), of the 2017-2018 Legislative Session, was Vetoed by Governor Brown**: AB 186 (Eggman), would have authorized the City and County of San Francisco to approve entities to operate an overdose prevention program for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access to referrals to addiction treatment. AB 186 was vetoed by Governor Brown.

As part of his veto message, Governor Brown stated,

“Fundamentally, I do not believe that enabling illegal drug use in government sponsored injection centers—with no corresponding requirement that the user undergo treatment—will reduce drug addiction.

In addition, although this bill creates immunity under state law, it can’t create such immunity under federal law. In fact, the United States Attorney General has already threatened prosecution and it would be irresponsible to expose local officials and health care professionals to potential federal criminal charges.

Our paramount goal must be to reduce the use of illegal drugs and opioids that daily enslaves human beings and wreaks havoc in our communities. California has never had
enough drug treatment programs and does not have enough now. Residential, outpatient
and case management—all are needed, voluntarily undertaken or coercively imposed by
our courts. Both incentives and sanctions are needed. One without the other is futile.”

4) **Philadelphia Safe Consumption Site and Federal Intervention:** In January of 2018,
Philadelphia’s leadership gave permission to establish supervised consumption sites within
the city. Community health leaders planned a supervised consumption site named Safehouse,
with a board of advisers that includes public-health experts.

In February of 2019, the Federal Justice Department filed a civil lawsuit against Safehouse.
The Justice Department has cited a federal law originally meant to stop crack houses. The
Federal Justice Department previously stated, in response to a similar proposal in Vermont,
“It is a crime, not only to use illicit narcotics, but to manage and maintain sites on which such
drugs are used and distributed.” Safehouse argues that the federal crack house statute isn’t
meant to stop medical facilities, like a supervised consumption site, focused on helping
people survive and overcome their addiction. “We have a disagreement on the analysis and
intention of the law,” Ronda Goldfein, vice president and lawyer for Safehouse, told WHYY.
(www.vox.com/policy-and-politics/2019/2/6/18214021/philadelphia-safe-injection-site-
trump-justice-department)

5) **If This Bill Becomes Law, the Conduct Allowed would Still be Criminal Under Federal
Law:** State authorization does not nullify federal drug laws. As a result state authorization
for drug consumption rooms would not prevent them from being shut down by federal law
enforcement agencies. Likewise, state authorization does not provide immunity from federal
criminal proceedings, if federal law enforcement was inclined to pursue them.

21 U.S.C. 844 and 21 U.S.C. 856 are two federal laws which prohibit behavior related to
activity at a drug consumption room.


21 U.S.C 856 prohibits:

(a) knowingly open, lease, rent, use, or maintain any place, whether permanently or
temporarily, for the purpose of manufacturing, distributing, or **using any controlled
substance**;

(b) manage or control any place, whether permanently or temporarily, either as an owner,
lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease,
profit from, or make available for use, with or without compensation, the place for the
purpose of unlawfully manufacturing, storing, distributing, or **using a controlled substance**.

Those sections would criminalize the behavior of both the clients using the facilities and the
owners or operators of the facilities.

6) **Proposed Amendments to be Adopted in Committee:** The proposed amendments specify
that an individual or entities conduct must be in compliance with an overdose prevention
program approved by the City and County of San Francisco, to qualify for immunity from
civil liability.

7) **Argument in Support:** According to the San Francisco Public Defender's Office, "AB 362 would give the City and County of San Francisco the ability to better address the increase in drug overdose deaths, connect people to substance use disorder treatment, and reduce new HIV and hepatitis infections. Twelve Californians die every day of an accidental drug overdose, on average, leaving behind grieving friends and family. AB 362 would allow San Francisco to provide services proven to make our communities safer and healthier.

Overdose prevention programs (OPP) or supervised consumption services (SCS), such as those that could be established under this bill, have been shown to reduce health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths. OPP are sites where individuals are able to use illicit drugs in a clinical setting, with expert supervision and sterile supplies. Over 120 exist around the world in ten countries, including Canada. People who used such a program in Canada were more likely to enter treatment and more likely to stop using drugs.

"The City and County of San Francisco wants and needs these programs. They are supported by the Mayor, the Board of Supervisors, the Sheriff, the District Attorney, the Chamber of Commerce, SF Travel, and 77% of the public, according to a recent poll by the Chamber of Commerce. In 2017, the Board of Supervisors convened a task force to review the issue and the task force unanimously recommended moving forward with the programs to improve public health and safety in San Francisco. An earlier study showed that San Francisco would save $3.5 million per year if one program were opened, or $2.33 for every dollar spent on the services."

8) **Argument in Opposition:** According to the Association for Los Angeles Deputy Sheriffs,

9) **Related Legislation:** SB 689 (Moorlach), would require a city to adopt an ordinance or resolution approving a needle exchange, in order for the Department of Health to authorize an entity to establish a needle exchange. SB 689 is set for hearing in the Senate Health Committee on April 24, 2019.

10) **Prior Legislation:**

a) AB 186 (Eggman), would have authorized the City and County of San Francisco to approve entities to operate an overdose prevention program for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access to referrals to addiction treatment. AB 186 was vetoed by Governor Brown.

b) AB 2495 (Eggman), would have decriminalized conduct connected to use and operation of an adult public health or medical intervention facility that is permitted by state or local health departments and intended to reduce death, disability, or injury due to the use of controlled substances. SB 294 was heard for testimony and returned to the desk.

c) SB 41 (Yee), Chapter 738, Statutes of 2011, authorized a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 or older for human use without a prescription.
d) SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Co-Sponsor)
Harm Reduction Coalition (Co-Sponsor)
Access Support Network
Aids Legal Referral Panel
Alcohol Justice
American Academy of HIV Medicine California/Hawaii Steering Committee
American Civil Liberties Union of California
Any Positive Change Inc.
APLA Health
Asian American Drug Abuse Program, Inc.
Asian Americans Advancing Justice California
C.O.R.E. Medical Clinic, Inc.
Ca Association Of Alcohol And Drug Executives, Inc
California Association of Alcohol and Drug Program Executives, Inc.
California Consortium of Addiction Programs and Professionals
California Medical Association
California Psychiatric Association
California Public Defenders Association
California Society of Addiction Medicine
California State Council of Service Employees
City and County of San Francisco - City Attorney's Office
Coalition on Homelessness, San Francisco
Community Aid and Resources - UCSC
Community Housing Partnership
Consumer Attorneys of California
Courage Campaign
Democratic Socialists of America, San Francisco, Healthcare Committee
Dolores Street Community Services
Drug Policy Action
Ella Baker Center for Human Rights
Face to Face
Friends Committee on Legislation of California
Glide Foundation
Harvey Milk LGTBQ Democratic Club
Health Officers Association of California
Healthright 360
HIV Education and Prevention Project of Alameda County
Hive
Homeless Health Care Los Angeles
Indivisible SF
Larkin Street Youth Services
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
National Health Law Program
Office of the Mayor, San Francisco
PRC
Saint Francis Foundation
San Francisco AIDS Foundation
San Francisco Community Clinic Consortium
San Francisco Community Health Center
San Francisco Drug Users' Union
San Francisco Public Defender's Office
Shanti Project
St. Anthony Foundation
Tarzana Treatment Centers, Inc.
Tenderloin Neighborhood Development Corporation
Tenderloin People's Congress
The Spahr Center
Transitions Clinic Network
UCSF Alliance Health Project

Oppose

Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Correctional Supervisors Organization, Inc.
California Narcotic Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Congress of Racial Equality
International Faith Based Coalition
Los Angeles County Professional Peace Officers Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-362 (Eggman (A))

Mock-up based on Version Number 98 - Amended Assembly 3/11/19
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 11376.6 is added to the Health and Safety Code, to read:

11376.6. (a) Notwithstanding any other law, the City and County of San Francisco may approve entities within its jurisdiction to establish and operate overdose prevention programs for persons 18 years of age or older that satisfy the requirements set forth in subdivision (c).

(b) Prior to approving an entity within its jurisdiction pursuant to subdivision (a), the City and County of San Francisco shall provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting. The notice of the meeting to the public shall be sufficient to ensure adequate participation in the meeting by the public. The meeting shall be noticed in accordance with all state laws and local ordinances, and as local officials deem appropriate.

(c) In order for an entity to be approved to operate an overdose prevention program pursuant to this section, the entity shall demonstrate that it will, at a minimum:

(1) Provide a hygienic space supervised by health care professionals where people who use drugs can consume preobtained drugs. For purposes of this paragraph, “health care professional” includes, but is not limited to, a physician, physician assistant, nurse practitioner, licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed professional clinical counselor, mental health provider, social service provider, or substance use disorder provider, trained in overdose recognition and reversal pursuant to Section 1714.22 of the Civil Code.

(2) Provide sterile consumption supplies, collect used hypodermic needles and syringes, and provide secure hypodermic needle and syringe disposal services.

(3) Administer first aid, if needed, monitor participants for potential overdose, and provide treatment as necessary to prevent fatal overdose.

(4) Provide access or referrals to substance use disorder treatment services, medical services, mental health services, and social services.

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(5) Educate participants on the risks of contracting HIV and viral hepatitis.

(6) Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another overdose reversal medication approved by the United States Food and Drug Administration.

(7) Educate participants regarding proper disposal of hypodermic needles and syringes.

(8) Provide reasonable security of the program site.

(9) Establish operating procedures for the program, made available to the public either through an internet website or upon request, that are publicly noticed, including, but not limited to, standard hours of operation, a minimum number of personnel required to be onsite during those hours of operation, the licensing and training standards for staff present, an established maximum number of individuals who can be served at one time, and an established relationship with the nearest emergency department of a general acute care hospital, as well as eligibility criteria for program participants.

(10) Train staff members to deliver services offered by the program.

(11) Establish a good neighbor policy that facilitates communication from and to local businesses and residences, to the extent they exist, to address any neighborhood concerns and complaints.

(12) Establish a policy for informing local government officials and neighbors about the approved entity’s complaint procedures, and the contact number of the director, manager, or operator of the approved entity.

(d) An entity operating an overdose prevention program under this section shall provide an annual report to the city and county, that shall include all of the following:

(1) The number of program participants.

(2) Aggregate information regarding the characteristics of program participants.

(3) The number of hypodermic needles and syringes distributed for use onsite.

(4) The number of overdoses experienced and the number of overdoses reversed onsite.

(5) The number of persons referred to drug treatment.

(6) The number of individuals directly and formally referred to other services and the type of service.

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(e) Notwithstanding any other law, a person or entity, including, but not limited to, property owners, managers, employees, volunteers, clients or participants, and employees of the City and County of San Francisco acting in the course and scope of employment, shall not be arrested, charged, or prosecuted pursuant to Section 11350, 11364, 11365, 11366, 11366.5, or 11377, or subdivision (a) of Section 11550, including for attempt, aiding and abetting, or conspiracy to commit a violation of any of those sections, or have their property subject to forfeiture, or otherwise be penalized solely for actions, conduct, or omissions on the site of an overdose prevention program approved by the City and County of San Francisco or for conduct relating to the approval of an entity to operate an overdose prevention program, or the inspection, licensing, or other regulation of an overdose prevention program approved by the City and County of San Francisco pursuant to subdivision (a).

(f) Notwithstanding any other law, a person or entity, including, but not limited to, property owners, managers, employees, volunteers, clients or participants, and employees of the City and County of San Francisco acting in the course and scope of employment shall not be subject to civil, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or have their property subject to forfeiture, or penalty or other liability solely for actions, conduct, or omissions on the site of an overdose prevention program approved by the City and County of San Francisco or for conduct relating to the approval of an entity to operate an overdose prevention program, or the inspection, licensing, or other regulation of an overdose prevention program approved by the City and County of San Francisco pursuant to subdivision (a).

(g) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique needs of the City and County of San Francisco.
Date of Hearing: April 23, 2019
Counsel: Sandy Uribe

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

AB 391 (Voepel) – As Amended March 11, 2019

SUMMARY: Decreases the five-day period following the expiration of an auto-rental agreement or lease for the presumption of embezzlement to apply to 48 hours. Specifically, this bill:

1) Provides that if a person who has leased or rented a vehicle willfully and intentionally fails to return it to its owner 48 hours after the agreement has expired, it is presumed that the person has embezzled the vehicle.

2) States that if the owner of a vehicle that has been leased or rented discovers that it was procured by fraud, the owner is not required to wait until the expiration of the lease or rental agreement to make a report to law enforcement.

3) Requires a vehicle lease or rental agreement to contain a disclosure stating that failure to return the vehicle within 48 hours of its expiration may result in the owner reporting the vehicle as stolen, and requires the leasee to provide a method to contact him or her if the vehicle is not returned.

4) Requires the owner of a vehicle that is presumed to have been embezzled to attempt to contact the other party to the lease or rental agreement using the contact method designated in the rental agreement for this purpose.

5) Requires the vehicle owner to inform the other party that if arrangements for the return of the car are not satisfactorily made, the owner may report the car stolen to law enforcement.

6) States that if the owner of a vehicle that is presumed to have been embezzled is unable to contact the other party after a reasonable number of attempts, or if he or she is unable to arrange for the satisfactory return of the vehicle, the owner may report the vehicle as stolen.

7) States that the failure of a vehicle owner to comply with these provisions shall not be deemed an infraction.

8) Makes conforming changes to the provisions related to law enforcement reporting to the Department of Justice (DOJ) Stolen Vehicle System.

EXISTING LAW:

1) Creates a rebuttable presumption that a person has embezzled a leased or rented car if the person willfully and intentionally fails to return the vehicle to its owner within five days after
the lease or rental agreement has expired. (Veh. Code, § 10855.)

2) Provides that any person who drives or takes a vehicle not his or her own, without the owner's consent, and with intent either to permanently or temporarily deprive the owner of his or her title to, or possession, of the vehicle, whether with or without intent to steal it, is guilty of a crime punishable by imprisonment in a county jail for not more than one year, in the county jail pursuant to realignment, or by a fine of up to $5,000, or by both the fine and imprisonment. (Veh. Code, § 10851.)

3) States that a person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to him or her is guilty of theft. (Pen. Code, § 484, subd. (a).)

4) States that if the stolen property is an automobile, then the offense constitutes grand theft. (Pen. Code, § 487, subd. (d)(1).)

5) Punishes grand theft of a vehicle by imprisonment in a county jail not exceeding one year, or in the county jail pursuant to realignment. (Pen. Code, § 489, subd. (c).)

6) Defines “embezzlement” as “the fraudulent appropriation of property by a person to whom it has been intrusted.” (Pen. Code, § 503.)

7) Provides that every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled. (Pen. Code, § 514.)

8) Requires a peace officer who receives a report based on reliable information that a vehicle has been stolen or unlawfully taken, or that a leased or rented vehicle has not been returned within five days after the lease or rental agreement has expired, to immediately report the information to the DOJ Stolen Vehicle System. (Veh. Code, § 10500.)

9) Prohibits a rental company from using, accessing, or obtaining any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, unless the technology is used to locate a stolen, abandoned, or missing rental vehicle after one of the following:

   a) The renter or law enforcement has informed the rental car company that the vehicle is missing or has been stolen or abandoned;

   b) The rental vehicle has not been returned following one week after the contracted return date, or one week following the end of an extension of that return date; or

   c) The rental car company discovers that the vehicle has been stolen or abandoned and, if stolen, reports the vehicle stolen to law enforcement by filing a stolen vehicle report. (Civil Code, § 1936, subd. (n)(1)(i)-(iii).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**
1) **Author's Statement:** According to the author, “AB 391 is a win for everyone—the consumer whose identity is in the process of getting stolen, the rental industry, and the law enforcement. This bill works to create transparency and efficiency in the Rental Car Industry. AB 391 not only updates the outdated process of reporting, but it addresses a problem that occurs across our state.”

2) **Prior Governor's Veto Message:** AB 2169 (Voepel) of the prior legislative session, as amended, and as passed by the Legislature, was identical to this bill. However, AB 2169 was vetoed.

In his veto message, then-Governor Brown stated, “This bill reduces the period of time following the expiration of a vehicle lease or rental agreement from 5 days to 48 hours before the person who has leased the vehicle is presumed to have embezzled the vehicle.

“I understand the importance of enabling car rental companies to protect against those who steal their cars. In this case, however, I believe there are other solutions available that would work better, such as the increased use of GPS technology.”

3) **Argument in Support:** According to the National Insurance Crime Bureau, “When we look at rental car thefts, California leads the nation with 4,698 thefts in 2015, 6,264 in 2016 and 6,712 in 2017.

“Every passing day a vehicle rental company cannot report their vehicle stolen, the likelihood of that vehicle being recovered decreases. As the days pass, stolen rental cars can be taken over the U.S.-Mexico border, dismantled for parts, re-tagged or cloned to sell to unsuspecting buyers, or used in the commission of other illegal acts.

“The California District Attorneys Association, in supporting this legislation last session, opined: ‘Over the last several years, theft of rental vehicles has increased substantially in cities across California, and it is now more important for rental car companies to report possible thefts to law enforcement immediately in order to increase the possibility that the stolen vehicle is located and returned.'

“We encourage the committee to pass AB 391 and allow rental car companies to report stolen and fraudulently procured vehicles in a more timely manner. Decreasing the wait period before a rental car company can report a stolen vehicle will increase the chances that the stolen vehicle is located and returned.”

4) **Argument in Opposition:** According to the California Public Defenders Association, “Under current law, car rental contracts generally contain a clause explaining to the renter that failure to return a car at the originally scheduled time will result in additional charges, and a late return financial penalty. Thus, Californians who rent a vehicle are effectively informed at the time of rental that they may extend the car rental beyond the allotted time, provided they are willing to pay described, pre-set financial penalties.

“Recognizing that renters will not always be able to return their vehicles on the originally scheduled date, current criminal law offers consumers a five day grace period before the car rental company can force police to treat the car as a stolen vehicle. Thus, while still subject to any contractually agreed upon civil penalties, consumer will not face potentially dangerous
law-enforcement intervention until the expiration of the grace period.

"However once the five day grace period has ended, not only are police required to enter the car’s information into the DMV Stolen Vehicle database, but the consumer is presumed as a matter of law to have intended to steal the car, and is thereafter subject to arrest.

“AB 391 proposes to remove the five day grace period for rental returns, and replace it with a strict, 48 hour time limit. Such a reduced time limit is not only arbitrary, but also exponentially increases the risk that honest consumers will be subject to dangerous interactions with the police officers now required to act as repo-men for the car rental industry or forced to arrest law abiding customers based on malfunctioning rental car computer systems....

"Under AB 391, even without computer glitches, a consumer who originally intended to return a rental car on Friday but was unable to do so as a result of illness or some other emergency, could face arrest, criminal charges, and prosecution simply because they returned the car on Sunday afternoon.”

5) Prior Legislation:

a) AB 2169 (Voepel), of the 2017-2018 Legislative Session, would have decreased the five-day period following the expiration of an auto-rental agreement or lease for the presumption of embezzlement to apply to 48 hours. AB 2169 was vetoed.

b) AB 495 (Voepel), of the 2017-2018 legislative session, would have made it a felony for a person, without consent, to rent a vehicle using another person’s personal identifying information or another person’s access card or access card account information. AB 495 was referred to the Assembly Public Safety Committee and its hearing was canceled at the request of author.

c) AB 2051 (O’Donnell), Chapter 183, Statutes of 2016, reorganized the statute regulating rental car agreements and modifies certain regulations that no longer reflect prevailing practices in consumer and industry behavior. AB 2051 would have allowed rental car companies to track missing cars after three days, but that provision was deleted from the bill.

d) AB 2804 (Corbett), Chapter 317, Statutes of 2004, prohibits a rental car company from using, accessing or obtaining information relating to the renter's use of the rental vehicle that was obtained using GPS technology except in specified circumstances, including, among others, when the vehicle is stolen.

REGISTERED SUPPORT / OPPOSITION:

Support

Avis Budget Group, Inc.
California District Attorneys Association
National Insurance Crime Bureau

Opposition

California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Counsel: Sandy Uribe

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

AB 395 (Blanca Rubio) – As Amended April 3, 2019

SUMMARY: Places a number of requirements on procedures and components of investigations of allegations of child abuse or neglect conducted by the Department of Social Services (DSS) and other agencies with oversight authority in certain community care facilities serving foster youth. Specifically, this bill:

1) Requires DSS or another agency with oversight authority over certain community care facilities serving foster youth, as specified, to complete a timely investigation in instances when the agency becomes aware of an allegation of child abuse or neglect.

2) Requires DSS or the oversight agency to cooperate with other agencies, as specified, to coordinate existing duties in connection with the investigation of suspected child abuse or neglect, and, further, allows the agencies to work together to avoid duplicative interviews of the alleged victim or other individuals to reduce trauma and promote efficiency.

3) Requires the investigation by DSS or the oversight agency to be assigned to an investigator who is not the analyst or social worker who licensed or approved the facility or home, or the social worker assigned to the case, or any other party with a possible conflict of interest.

4) Requires the investigation to include, but not be limited to, all of the following, as specified:

a) A face-to-face interview in private with the suspected victim of child abuse or neglect, that, if deemed necessary or appropriate, shall be a forensic interview, and, further, requires all parties involved in investigating reports of child maltreatment, whenever practical, to observe the interview, which shall be digitally recorded;

b) A face-to-face interview with any other child who is believed by the investigator to have knowledge of the alleged incident, and, further, requires, if the child is no longer placed in the home or facility in which the alleged abuse or neglect occurred, the investigator to make reasonable and diligent efforts to locate that child, and, further, encourages the investigator to contact the parent about interviewing the child, as specified;

c) An interview with any adults residing in, or staff present at, the facility at the time of the alleged incident who are believed by the investigator to have knowledge of the incident;

d) Interviews with other individuals who may have knowledge of the alleged incident including the alleged victim’s teachers and doctors;

e) A review of all past complaints concerning the home or facility and the findings and resolution of those complaints; and,
f) A review of the frequency of caseworker visits with the suspected victim of child abuse or neglect during the year of placement in which the alleged abuse or neglect occurred.

5) Requires an investigator, to the best of their ability, to maintain the privacy of all minors and nonminor dependents involved in the investigation.

6) Requires an interview with the suspected victim of abuse or neglect and any other children to be conducted separate and apart from the suspected offender.

7) Prohibits the interview from taking place in the location where the alleged abuse or neglect occurred, or in a location where the suspected offender is present.

8) Requires an investigation conducted by DSS or the oversight agency to be completed no later than 45 days after receiving notice of the allegation of abuse or neglect, subject to an extension of 45 days upon supervisory review and approval.

9) Requires a supervisor to provide in the investigation report a written explanation of why the extension was granted and what actions have been taken in the investigation at the point of granting the extension.

10) Prohibits a child from being placed in the home or facility as long as the investigation remains uncompleted and a determination has not been made.

11) Requires the approving agency or the licensing agency to send a copy of its report to the Office of the State Foster Care Ombudsperson (Ombudsperson) upon completion of the investigation.

12) Requires the Ombudsperson to review a representative sample of the investigations annually and include determinations of the extent to which the investigations complied with the investigation protocols.

13) Allows the Ombudsperson to make recommendations for the improvement of the protocols based on the determinations.

14) Requires DSS to, at a minimum, annually report to the Legislature and post on its internet website a statewide summary of the investigations conducted pursuant to the provisions of this bill, as specified.

15) Restates requirements in existing law that mandate any report of abuse or neglect of a youth be responded to with the same emergency response protocols as any other report, and, further, restates the requirements of mandated reporters to make a report to the appropriate agency designated to receive mandated reports for intake and evaluation of risk, as specified.

16) Specifies that certain agencies, including law enforcement and county welfare departments, who receive a report of alleged child abuse or neglect occurring a specified homes or facilities from a mandated reporter must notify either the licensing office or the agency with oversight over the home or facility, as specified.

17) Requires certain entities authorized to receive mandated reports to develop and implement protocols with licensing offices and agencies with oversight responsibilities over homes and
facilities for coordinating investigations of alleged child abuse and neglect involving children under the jurisdiction of the juvenile court.

18) Includes the Ombudsman among the list of entities to whom reports of suspected child abuse or neglect, and certain information, may be disclosed, but limits this access to instances in which the reported incident of child abuse or neglect involves a foster youth and occurred in a community care facility, as specified.

19) Deletes outdated language from statute and makes technical changes.

EXISTING LAW:

1) Requires reports of suspected child abuse or neglect to be made by mandated reporters to certain entities, including any police department or sheriff’s department, county probation department, or the county welfare department, as specified. (Pen. Code, § 11165.9.)

2) Requires that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, shall report it immediately to a specified child protection agency. (Pen. Code, § 11166, subd. (a).)

3) Defines a mandated reporter as an individual required to report suspected or known instances of child abuse and neglect, and includes, teachers, social workers, probation officer, firefighters, and physicians, among others. (Pen. Code, § 11165.7, subd. (a).)

4) Requires, when an entity receives a report of suspected abuse or neglect from a mandated reporter, the entity to notify the licensing office with jurisdiction over the facility of certain information, as specified. (Pen. Code, 11166.1, subd. (a).)

5) Establishes the Community Care Facilities Act, which allows for the licensure and oversight of out of home placements for abused and neglected children by DSS. (Health & Saf. Code, § 1500 et seq.)

6) Establishes the Community Care Licensing Division (CCLD) within DSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. (Health & Saf. Code, §§ 1502, 1522.)

7) Establishes the Office of the State Foster Care Ombudsperson in order to provide children who are placed in foster care with a means to resolve issues related to their care, placement, or services. (Welf. & Inst. Code, § 16160 et seq.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, “Allowing children to remain in potentially unsafe conditions in foster care for up to 180 days while investigators complete their findings is egregious, and as we have seen recently – sometimes fatal. We have an obligation to these children who have already experienced unthinkable hardships and are vulnerable to further
emotional harm. AB 395 will protect the health and safety of children in out-of-home care by requiring the Community Care Licensing Division (CCLD) to complete investigations of abuse or neglect within 30 days of the receipt of the allegation. This bill also establishes critical standards and protocols by which CCLD must abide when conducting investigations of abuse or neglect in out-of-home care.”

2) **Office of Inspector General (OIG) Report:** In 2015 The United States Senate Committee on Finance outlined concerns about foster care systems throughout the country as highlighted in several cases where children in foster care had died. To determine whether there were vulnerabilities in the complaint and investigation process, the U.S. Department of Health and Human Services OIG reviewed foster care agencies in several states including California. (See Gloria Jarmon, September 2017, *California Did Not Always Ensure that Allegations and Referrals of Abuse and Neglect of Children Eligible for Title IV-E Foster Care Payments Were Properly Recorded, Investigated and Resolved*, p. 1., available at: https://oig.hhs.gov/oas/reports/region9/91601000.asp .)

In September 2017, the OIG released a report pertaining to California, based on an audit of 100 cases. The report found that California did not always ensure that allegations and referrals of abuse and neglect for foster youth were properly recorded, investigated, and resolved in accordance with state requirements. (OIG report, *supra*, p. 6.) Specifically, the OIG found that the licensing division did not: accurately record or investigate one complaint; refer priority I and II complaints to the investigations branch, complete investigations in a timely manner, conduct onsite inspections within 10 days, associate an employee of a community care facility with the facility, and adequately clear plan of correction deficiencies. (*Ibid.*)

The OIG made several recommendations. They included: developing an action plan to ensure that complaint investigations are completed in a timely manner; following existing policies and procedures and developing additional ones; ensuring that the new complaint system currently under development includes certain functionalities; and providing analysts and their supervisors with periodic mandatory investigation training to reinforce their knowledge of the laws, regulations, policies, and procedures, and best practices. (OIG report, *supra*, p. 13.)

This bill would establish stricter standards for investigations of abuse or neglect in out of home care facilities. Specifically, this bill would require: completion of investigations in a timely manner; inter-agency cooperation; specific interview protocol, notification to the foster care ombudsperson; and removal of the child from the home or placement while the investigation is on-going.

3) **Argument in Support:** According to the *National Center for Youth Law*, the sponsor of this bill, “Following media reports of children who died while in foster care, the Department of Health and Human Services, Office of Inspector General (OIG) investigated whether the California Department of Social Services, Community Care Licensing Division (CCLD) ensured that allegations and referrals of abuse and neglect were recorded, investigated, and resolved as required by Federal law. The report, issued in 2017, discovered CCLD failed to record, investigate, and resolve complaints of abuse or neglect in out-of-home care. For example, it noted that in ten percent of the complaints examined ‘approximately 2-15 months passed in which no activities were noted to indicate that the complaints were being actively
investigated.’ The most serious allegations, Priority I and Priority II complaints involving sexual and physical abuse, took an average 172-180 days to be completed and were not properly crossreported. The OIG emphasized that this failure to conduct timely investigations ‘potentially [places] children’s health and safety at risk.’

“This risk to children’s health and safety can be severe, even fatal. A recent lawsuit filed in San Diego confirms that the responses to reports of abuse of children in foster care is not limited to group homes or other facilities. The lawsuit points to two young boys who were repeatedly sexually abused by their foster parent and it had been reported 14 times. An ad hoc committee of the County of San Diego Child Abuse Prevention Coordinating Council (CAPCC) were formed at the request of the Board of Supervisors and the Chief Administrative Officer following high profile reports of children in foster care being sexually abused. The committee examined County of San Diego Child Welfare Services and published recommendations to improve system-wide policies, programs, and practices. AB 395 includes the committee’s recommendations related to improving investigations.

“The prompt initiation and completion of child abuse and neglect investigations is important for the collection of information and evidence, but more importantly, prevents repeat maltreatment of the child and helps to prevent the same person from victimizing other children.

“Improvements to the investigation timeline and process are needed to guarantee proper response to abuse and neglect for children in foster care, independent of their placement type. This bill establishes standards for investigations of abuse or neglect in out-of-home care.”

4) Related Legislation:

a) AB 1450 (Lackey), would require every county to establish an on-line database to for specified agencies to track the reporting of substantiated allegations of child abuse and neglect by 2030. AB 1450 failed passage in this Committee, but has been granted reconsideration.

b) SB 360 (Hill), would require a clergy member to report child abuse or neglect, including when the clergy member acquires the knowledge or reasonable suspicion of child abuse or neglect during a penitential communication. SB 360 is pending in the Senate Appropriations Committee.

5) Prior Legislation:

a) AB 2323 (Rubio), of the 2017-2018 Legislative Session, was substantially similar to this bill and would have created timelines and listed certain requirements which an investigation of a report of child abuse or neglect that involved a foster child in a community care facility must comply, and would have included the Office of the State Foster Care Ombudsperson among the entities to whom reports of suspected child abuse or neglect and information may be disclosed. AB 2323 was held on the Assembly Appropriations Committee suspense file.
b) AB 2149 (Longville), Chapter 833, Statutes of 2004, required DSS to create procedures for responding to incidents and complaints against group home facilities, and imposed requirements on DSS relating to the provision of inspection reports.

REGISTERED SUPPORT / OPPOSITION:

Support

National Center for Youth Law (Sponsor)
Advokids
CA Council of Community Behavioral Health Agencies
California Lawyers Association - Family Law Section
California State PTA
Children Now
Children's Advocacy Centers of California
Children's Advocacy Institute
Children's Legal Services of San Diego
John Burton Advocates for Youth
Phenomenal Families

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Counsel: David Billingsley

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

AB 410 (Nazarian) – As Amended April 22, 2019

SUMMARY: Creates the crime of participating in a “motor vehicle sideshow,” defined as an event in which two or more persons block or impede traffic on a highway for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators. Specifically, this bill:

1) States that a person who actively participates in, or aids and abets, a motor vehicle sideshow, as defined, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed 90 days, by a fine not less than $355 nor more than $1000, or by both that imprisonment and fine.

2) Specifies that a second or subsequent conviction of participating in a motor vehicle sideshow, within a five-year period, is a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed six months, by a fine of not less than $500 nor more than $1000, or by both imprisonment and fine.

3) Provides that a person convicted of a violation of this participating in a motor vehicle sideshow that proximately causes bodily injury to a person other than the driver is guilty of a misdemeanor, punishable by imprisonment in county jail not to exceed six months, by a fine of not less than $500 nor more than $1000, or by both imprisonment and fine.

4) States that a second or subsequent conviction of participating in a motor vehicle sideshow causing bodily injury to another person, within a five-year period, is a misdemeanor, punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed $1000, or by both imprisonment and fine, or a felony, punishable by imprisonment up to three years in the county jail, by a fine not less than $500 nor more than $1000, or by both that fine and imprisonment.

5) Defines “Motor vehicle sideshow” as “an event in which two or more persons block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.”

6) States that participants in a motor vehicle sideshow include drivers or passengers of the involved motor vehicles, and any pedestrians, drivers, or passengers who barricade or prevent access to a highway or other property where the motor vehicle sideshow is being performed. An aider or abettor to a motor vehicle sideshow includes any person who organizes, facilitates, encourages, or promotes a motor vehicle sideshow.
7) Specifies that liability for a violation of participating in a motor vehicle sideshow shall not be imposed upon a person who is merely present as a spectator at a place where a violation is occurring.

8) States that a magistrate presented with the affidavit of a peace officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, was an instrumentality used in the peace officer’s presence in violation of this section, shall issue a warrant or order authorizing any peace officer to immediately seize and cause the removal of the vehicle. The warrant or court order may be entered into a computerized database. A vehicle so impounded may be impounded for a period not to exceed 30 days.

9) Provides that the impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded.

10) States that failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days’ impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing. The law enforcement agency shall be open to issue a release to the registered owner or legal owner, or the agent of either, whenever the agency is open to serve the public for nonemergency business.

11) Requires an impounding agency to release a vehicle to the registered owner or the registered owner’s agent prior to the end of the impoundment period, without the need to obtain authorization from the magistrate authorizing the vehicle’s seizure, under any of the following circumstances:

a) If the vehicle is stolen;

b) If the vehicle is subject to bailment and the violation of this section was committed by an employee of a business establishment, including a parking service or repair garage; or

c) If the registered owner of the vehicle causes a peace officer to reasonably believe, based on the totality of the circumstances, that the registered owner was not the person who violated this section, the agency shall immediately release the vehicle to the registered owner or the registered owner’s agent.

12) States that a vehicle shall not be released pursuant to this subdivision, except upon presentation of the registered owner’s or agent’s currently valid driver’s license to operate the vehicle and proof of current vehicle registration, or upon order of the court.

13) Specifies that if a vehicle is impounded pursuant to this section, the magistrate ordering the storage shall provide the vehicle’s registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage.

14) Provides that a notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours after issuance of the warrant or court order, excluding
weekends and holidays, by the person or agency executing the warrant or court order, and shall include all of the following information:

a) The name, address, and telephone number of the agency providing the notice;

b) The location of the place of storage and a description of the vehicle, which shall include, if available, the name or make, the manufacturer, the license plate number, and the mileage of the vehicle;

c) A copy of the warrant or court order and the peace officer’s affidavit, as described; and

d) A statement that, in order to receive their poststorage hearing, the owners, or their agents, are required to request the hearing from the magistrate issuing the warrant or court order in person, in writing, or by telephone, within 10 days of the date of the notice.

15) Requires the poststorage hearing to be conducted within two court days after receipt of the request for the hearing.

16) States that at the hearing, the magistrate may order the vehicle released if the magistrate finds that any of the circumstances described that allow release of a vehicle by the impounding agency apply.

17) States that the magistrate may also consider releasing the vehicle when the magistrate finds that the continued impoundment will cause undue hardship to persons dependent upon the vehicle for employment or to a person with a community property interest in the vehicle or if the public safety considerations for continued impoundment do not outweigh the possessory interest in the vehicle.

18) Specifies that failure of either the registered or legal owner, or the registered or legal owner’s agent, to request, or to attend, a scheduled hearing satisfies the poststorage hearing requirement.

19) States that the agency employing the peace officer who caused the magistrate to issue the warrant or court order shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

20) Provides that the registered owner or the registered owner’s agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges, as specified.

21) Requires a vehicle removed and seized, as specified to be released to the legal owner of the vehicle or the legal owner’s agent prior to the end of the impoundment period without the need to obtain authorization from the magistrate authorizing the seizure of the vehicle if all of the following conditions are met:

a) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person; not
the registered owner, holding a financial interest in the vehicle;

b) The legal owner or the legal owner’s agent pays all towing and storage fees related to the seizure of the vehicle;

c) The legal owner or the legal owner’s agent presents to the impounding agency a specified documents; and

d) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner’s agent to retrieve the vehicle, provided all conditions are satisfied.

22) Specifies that a legal owner who obtains release of the vehicle shall not release the vehicle to the registered owner or the person who was listed as the registered owner when the vehicle was impounded, unless a registered owner is a rental car agency, until the expiration of the impoundment period or until the termination of the impoundment period by court order.

23) States that the legal owner shall not relinquish the vehicle to the registered owner or the person who was listed as the registered owner when the vehicle was impounded until the registered owner presents their valid driver’s license.

24) States that prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and the administrative charges, as specified, that were incurred by the legal owner in connection with obtaining the custody of the vehicle.

25) Provides that any legal owner who knowingly releases a vehicle to a registered owner or the person in possession of the vehicle at the time of the impoundment or any agent of the registered owner in violation of the provisions of this bill is guilty of a misdemeanor and subject to a fine in the amount $2,000 in addition to any other penalties established by law.

26) States that the legal owner, registered owner, or person in possession of the vehicle shall not change or attempt to change the name of the legal owner or the registered owner on the records of the department until the vehicle is released from the impoundment.

27) Requires a vehicle impounded and seized, as specified, to be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

28) Allows the owner of a rental vehicle that was seized to continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver who used the vehicle that was seized until 30 days after the date that the vehicle was seized.

29) Specifies that the rental car agency may require the person to whom the vehicle was rented and who committed the violation of this section to pay all towing and storage charges related to the impoundment and any administrative charges that were incurred by the rental car
agency in connection with obtaining custody of the vehicle.

30) States that notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment and the administrative charges and any parking fines, penalties, and administrative fees incurred by the registered owner.

31) Provides that the impounding agency, including any storage facility acting on behalf of the impounding agency, shall comply with this section and shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner’s agent, provided the release complies with the provisions of this section.

32) Specifies that the legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or the legal owner’s agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending those claims.

33) States that an impounding agency shall not refuse to issue a release to a legal owner or the agent of a legal owner on the grounds that it previously issued a release.

EXISTING LAW:

1) Specifies that it is a crime for a person to engage in a motor vehicle speed contest on a highway (Veh. Code, § 23109, subd. (a).)

2) States that a person shall not aid or abet in any motor vehicle speed contest. (Veh. Code, § 23109, subd. (b).)

3) Specifies that it is a crime to engage in a motor vehicle exhibition of speed on a highway, and a person shall not aid or abet in a motor vehicle exhibition of speed on any highway. (Veh. Code, § 23109, subd. (c).)

4) Specifies that it is a crime for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon any highway. (Veh. Code, § 23109, subd. (d).)

5) Provides that a person convicted of a motor vehicle speed contest shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than $355 nor more than $1,000, or by both that fine and imprisonment. That person shall also be required to perform 40 hours of community service. The court may order the privilege to operate a motor vehicle suspended for 90 days to six months. (Veh. Code, § 23109, subd. (e)(1).)

6) Provides that if a person is convicted of a motor vehicle speed contest and that violation proximately causes bodily injury to a person other than the driver, the person convicted shall be punished by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than $500 nor more $1,000, or by both that fine and
imprisonment. (Veh. Code, § 23109, subd. (e)(2).)

7) States that if a person is convicted of a motor vehicle speed contest for an offense that occurred within five years of the date of a prior offense that resulted in a conviction of a violation of motor vehicle speed contest, that person shall be punished by imprisonment in a county jail for not less than four days nor more than six months, and by a fine of not less than $500 nor more than one thousand dollars $1,000. (Veh. Code, § 23109, subd. (f)(1).)

8) Provides that if the most recent offense within the five-year period causes bodily injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of not less than five hundred dollars $500 nor more than $1,000. (Veh. Code, § 23109, subd. (f)(2).)

9) States that if the most recent offense within the five-year period proximately causes serious bodily injury, as specified, to a person other than the driver, a person convicted of that second violation shall be imprisoned in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a fine of not less than $500 nor more than $1,000. (Veh. Code, § 23109, subd. (f)(3).)

10) Specifies that if a person is convicted of a second offense within five years, the court shall order the privilege to operate a motor vehicle of the person suspended for a period of six months, as specified. (Veh. Code, § 23109, subd. (f)(4).)

11) States that if a person is convicted of motor vehicle speed contest and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner’s expense for not less than one day nor more than 30 days. (Veh. Code, § 23109, subd. (h).)

12) Provides that a person who aids and abets a motor vehicle speed contest, engages in, or aides and abets, a motor vehicle speed exhibition, or for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway, in any manner obstruct or place a barricade or obstruction upon any highway, shall be punished by imprisonment in a county jail for not more than 90 days, by a fine of not more than five hundred dollars $500, or by both that fine and imprisonment. (Veh. Code, § 23109, subd. (i).)

13) States that a person convicted of reckless driving that proximately causes one or more serious injuries, as specified, to a person other than the driver, shall be guilty of a felony, punishable by imprisonment in the county jail, or guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than $220 nor more than one thousand dollars $1,000, or by both that fine and imprisonment. (Veh. Code, § 23105, subd. (a).)

14) Provides that whenever reckless driving of a vehicle proximately causes bodily injury to a person other than the driver, the person driving the vehicle shall be guilty of a misdemeanor and punished by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than $220 nor more than $1,000, or by both the fine and imprisonment. (Veh. Code, § 23104, subd. (a).)

15) Specifies that person convicted of reckless driving that proximately causes great bodily injury, as defined, to a person other than the driver, who previously has been convicted of a
specified violation of reckless driving or driving under the influence, shall be guilty of a felony punished by imprisonment county jail up to three years, or guilty of a misdemeanor and punished by imprisonment in the county jail for not less than 30 days nor more than six months or by a fine of not less than two $220 nor more than $1,000 or by both the fine and imprisonment. (Veh. Code, §, 23104, subd. (b).)

16) Specifies that whenever a peace officer determines that a person was engaged in a motor vehicle speed contest, reckless driving, or exhibition of speed, the peace officer may immediately arrest and take into custody that person and may impound the vehicle. A motor vehicle so seized may be impounded for up to 30 days. (Veh. Code, §23109.2.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Clearly defining a motor vehicle sideshow will deter participation and keep our roads safer. As social media evolves and creates new avenues for event organizers, law enforcement should be given clear direction on how to combat the proliferation of motor vehicle sideshows. AB 410 is a simple and necessary step to protect public safety. Through clear definitions and penalties, this policy will reaffirm California’s commitment to stop reckless behavior."

2) Current Law Already Criminalizes the Behavior Described by This Bill: This bill would define “Motor vehicle sideshow” as an event in which two or more persons block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

The conduct described in the definition of “motor vehicle sideshow” is covered by existing law. Current law already makes it a crime to engage in motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving. (Veh. Code, § 23109, 23103.) In addition, current law specifies that it is a crime to obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon any highway, facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition of speed. (Veh. Code, § 23109, subd. (d).) An exhibition of speed includes any conduct where the person accelerates or drives at a rate of speed that is dangerous and unsafe in order to show off or make an impression on someone else. (CalCrim 2202.) An individual who commits any of those crimes and cause bodily injury, is subject to elevated punishment. Any person that aids or abets one of those crimes, is criminally liable to the same extent at the driver of the car. A person aids and abets when they know of the perpetrator’s unlawful purpose and he or she intends to, and does in fact, aid, facility, or encourage the perpetrator’s commission of that crime.

Violations based exhibition of speed, speed contests, and reckless driving are generally punishable as misdemeanors. However, current law provides elevated penalties if those crimes result in bodily injury. A person can be charged and convicted for a felony under specified circumstances involving great bodily injury. Current law specifies circumstances
under which vehicles involved in such crimes can be impounded.

3) **Danger that This Bill Could Criminalize Behavior That Does Not Involve Any Criminal Intent:** This bill would potentially create criminal liability for individuals who are present at a sideshow, but have no intent to encourage or facilitate any criminal action.

The bill states that “participants in a motor vehicle sideshow include drivers or passengers of the involved motor vehicles, and any pedestrians, drivers, or passengers who barricade or prevent access to a highway or other property where the motor vehicle sideshow is being performed.”

Pedestrians who are present at a sideshow might “prevent access to a highway” by virtue of being at the location where a sideshow is taking place, but not have any intent to prevent access or otherwise facilitate a sideshow. The same is true or drivers and passengers that get stuck in or near a sideshow. This contains language which seeks to limit liability for some that is merely present as a spectator. The bill states that, “Liability for a violation of this section shall not be imposed upon a person who is merely present as a spectator at a place where a violation is occurring.” However, it is not clear how such language interacts with the other provisions of this bill.

4) **Vehicle Impoundment:** This bill would provide for a vehicle impound procedure based on a declaration submitted by a police officer that a vehicle was involved in a motor vehicle sideshow. There is the opportunity for a registered owner to have a post impoundment hearing. The impound procedures for this bill have been adopted from an existing statute from the vehicle code involving impoundment in cases involving reckless driving or evading an officer. Existing law also provides impound procedures for vehicles involved in exhibitions of speed and motor vehicle speed contests. Recognizing that the impound language of this bill is consistent with impound procedures found in current law, the impound procedures of this bill raise due process concerns. The impound procedure does not require any showing that the registered owner was the person driving the car at the time of the conduct in question. This bill would only require a “reasonable belief” that the vehicle had been involved in a motor vehicle sideshow. The impound procedure in this bill does not provide for a hearing regarding impound prior to the time the vehicle is impounded. This bill would allow impoundment without any requirement for a criminal charge to be filed against the registered owner, or criminal conviction obtained against the registered owner. Without such requirements, there is concern that registered owners that did not engage in criminal behavior will be punished by the loss of their vehicle.

5) **Argument in Support:** According to the Los Angeles Police Protective League, “According to the Los Angeles Times, 179 people have died in Los Angeles County between 2000 and 2017 in incidents where street racing was suspected. The Times notes that from July 2016 to July 2017, the California Highway Patrol recorded nearly 700 racing incidents in Los Angeles County. Those races involved roughly 17,000 vehicles and 22,000 people. Popular culture and social media have exacerbated the rise in street racing and other illegal activities on our roads and highways, including sideshows.

“While many reckless driving activities are illegal, organizing a sideshow is not considered a crime. Additionally, law enforcement agencies can wind up paying for impound fees on cars taken during sideshows when there is no clear conviction. Law enforcement agencies can be
responsible for towing and storage costs incurred as a result of vehicle impoundment if criminal charges are not filed by the district attorney because of a lack of evidence, or if the charges are otherwise dismissed by the court. Current law also affords the owner of the vehicle the ability to retrieve it within days of impoundment.

“AB 410 would define a sideshow as a demonstration of automotive stunts organized by two or more people often occurring on a public street, highway, or private property open to the general public to block or impede traffic. It would specify that common activities at sideshows include motor vehicle stunting, motor vehicle speed contests, reckless driving, and speed chases. Clearly defining a motor vehicle sideshow will deter participation, support law enforcement, and keep our roads safer. As social media evolves and creates new avenues for event organizers, law enforcement should be given clear direction on how to combat the proliferation of motor vehicle sideshows.”

6) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, “The behavior addressed under AB 410 is already subject to criminal penalties under existing law, Vehicle Code Section 2310 imposes criminal penalties for reckless driving. Under section 23104 those penalties are increased if the act results in bodily injury, and felony penalties are available for a second or subsequent conviction if the act results in great bodily injury. Section 23109 makes it a crime to engage in a motor vehicle speed contest; again the penalties are increased if great bodily injury results. Under Penal code section 31, person who aid or abet the commission of these crimes can also be held criminally liable. The vehicles used in commission of these offenses can be seized and impounded for up to thirty days. (Vehicle Code section 23109.2.)

“AB 410 would greatly increase these penalties. Under AB 410, a first conviction of participating in a sideshow could result in imprisonment for up to a year and a fine of up to $10,000; a second conviction would be a wobbler. Participation in a sideshow when it causes bodily injury would be a felony. Moreover, these heightened penalties could be applied to person who only involvement was to promote the sideshow – perhaps someone who shared a post about it on Facebook – or even to a pedestrian who stood in the street, thereby helping to prevent access to a street or other property.

“Increasing the sentences for those who participate in sideshows will do nothing to stop these events from happening. Research has shown that the severity of punishment does not generally have an increased effect on deterrence. Rather, studies have concluded that the certainty of punishment – that someone will be punished for a particular crime – has a greater deterrent effect than the severity of the punishment itself. An increased sentence will only unnecessarily send people to prison or jail for longer periods of time, requiring increased state spending with no benefit to public safety.”

7) **Related Legislation:** AB 1407 (Friedman), would require that a vehicle be impounded for 30 days if the vehicle's registered owner is convicted of second or subsequent offense for reckless driving or engaging in a speed contest while operating the vehicle. AB 1407 is awaiting hearing in the Assembly Appropriations Committee.

8) **Prior Legislation:**
a) AB 1393 (Friedman), of the 2017-2018 Legislative Session, would have required that a vehicle be impounded for 30 days if the vehicle's registered owner is convicted of second or subsequent offense for reckless driving or engaging in a speed contest while operating the vehicle. AB 1393 was vetoed by Governor Brown.

b) AB 2876 (Jones-Sawyer), Chapter 592, Statutes of 2018, clarifies that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing statute.

c) AB 1206 (Bocanegra), Chapter 531, Statutes of 2017, authorized a two-year pilot program in the Cities of Los Angeles, Oakland, and Sacramento to permit law enforcement officers to tow vehicles used in the commission, or attempted commission of specified offenses related to prostitution.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
Los Angeles County Sheriff Department
Los Angeles Police Protective League

Oppose

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Deletes the term “at-risk” to describe youth and replace it with the term “at-promise” for purposes of various sections of the Education and Penal Codes, and makes other non-substantive technical changes.

EXISTING LAW:

1) Establishes the Governor’s Mentoring Partnership, and for the purposes of this chapter, defines “at-risk youth” as an individual under 21 years of age whose environment increases their chance of academic failure, alcohol and other drug use, involvement in the criminal justice system, or teen pregnancy. (Welf. & Inst. Code, § 2104.)

2) Establishes the California Gang, Crime, and Violence Prevention Partnership Program, administered by the Department of Justice for the purposes of reducing gang, criminal activity, and youth violence in communities with a disproportionate at-risk youth population and defines “at-risk youth” as youth who live in a high-crime or high-violence neighborhood; live in a low-economic neighborhood; are excessively absent from school or are doing poorly in school; come from a socially dysfunctional family; have had one or more contacts with the police; have entered the juvenile justice system; are current or former gang members; have one or more family members living at home who are current or former members of a gang; or are identified as wards of the court. (Pen. Code, § 13825.2.)

3) Authorizes counties to establish an At-Risk Youth Early Intervention Program, designed to assess and serve families with children who have chronic behavioral problems that place the child at risk of becoming a ward of the juvenile court and allows a minor to be referred to the program if at risk of justice system involvement due to chronic disobedience to parents, curfew violations, repeat truancy, incidents of running away from home, experimentation with drugs or alcohol, or other serious behavior problem. (Welf. & Inst. Code, § 601.5.)

4) Establishes the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Grant Program, provides that not less than 20 percent of the funds shall be available for development of at risk youth recreational facilities, and defines “at-risk youth” as persons who have not attained the age of 21 years and are at high risk of being involved in, or are involved in, one or more of the following: gangs, juvenile delinquency, criminal activity, substance abuse, adolescent pregnancy, or school failure or dropout. (Pub. Res. Code, § 5096.334.)
5) Expresses the purpose of Part D of the federal Every Student Succeeds Act, the Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At Risk, and includes numerous provisions which use the term "at risk" to refer to students. (Section 1401, 20 U.S.C. 6421).

FISCAL EFFECT: None

COMMENTS:

1) **Author's Statement:** According to the author, "Our education and justice systems have adopted the term ‘at-risk’ to label youth living in difficult situations. This term comes from a mindset of deficit that focuses on these students’ faults. As a state, we need to transition from a stigma-provoking label and move towards ‘at-promise.’ By using a more positive approach, we encourage individuals working with our most vulnerable youth to empower them and emphasize their immense potential to succeed."

2) **Defining “At-Promise:** A 2006 research brief, published in Child Trends, notes that “the term ‘at risk’ is used frequently to describe children and youth and has a strong intuitive meaning. However, the term has no consistent definition and can be viewed as stigmatizing certain groups. Nevertheless, it is widely used. The positive side of this confusion is that program providers have some leeway in how they define ‘at risk’ for their programs.”

According to the Faces for the Future Coalition, “as a nation and society, we often unfairly view youth from underserved communities through a deficit lens. Frequent terms used to describe these young people include ‘at risk’ and ‘marginalized,’ referring generally to young people who face situational circumstances that we believe will inevitably lead to their personal and professional failures. Labeling youth as ‘at-risk’ presumes that these children will have poor outcomes, despite never having been given a chance to prove otherwise. Moreover, these terms perpetuate destructive stereotypes of young people in our country, missing the mark completely in defining who these young people truly are and what they can contribute to our world.

Those of us who work with youth from difficult backgrounds prefer the term ‘at-promise youth.’ ‘At Promise’ references the extraordinary raw potential every young person possesses. The term views youth through a strength-based perspective. It also helps to fill in some of the details missing in the former labels, reminding us that youth have natural gifts and innate potential for greatness.”

3) **Argument in Support:** According to the *Los Angeles County Office of Education*, “Society uses ‘at risk’ to describe students living in precarious situations that increases their chances of failure in academics, drug use, and involvement with gangs or the criminal justice system. For decades, this term has been reserved for those from disadvantaged backgrounds, which includes single-parent households, low-income communities, English learners, and children in foster care.

“There is a shared understanding that the words we use to describe people can adversely affect the way we treat them, even if it is with the best of intentions. People-first language helps individuals feel respected and seen beyond their situation. AB 413 redirects our educational efforts toward recognition of the importance of eliminating the deficit mindset
that is too pervasive in schools, agencies, and communities across the country. This bill supports California’s work at addressing trauma, building meaningful relationships and hearing the cares and challenges of students and their families.”

4) Argument in Opposition: According to the California Right to Life Committee, INC., ”AB 413 assume that a less threatening term would be welcome by students and alike. Names are important and do signify concepts. Removing ‘at risk’ and ‘high risk’ for ‘at promise’ and ‘high promise’ signals that students should feel better about themselves and that their behavior will adapt to this feel good idea. Will voters and citizens and families experience a better life as a result?

“Our elected representatives propose plans each legislative session to solve social problems. We voters are not observing much success with such bills and law. CRLC does believe that these legislative endeavors are giving false hope to Californians.”

5) Prior Legislation: ACR 197 (Jones-Sawyer), Chapter 106, Statutes of 2018, encourages the people of the State of California to recognize the potential possibilities of our children, instead of focusing on their deficits.

REGISTERED SUPPORT / OPPOSITION:

Support

SIATech (Sponsor)
Los Angeles County Superintendent of Schools (Co-Sponsor)
Office of the Riverside County Superintendent of Schools

1 Private Individual

Oppose

California Right to Life Committee, Inc.

Analysis Prepared by:  Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Requires the University of California Firearm Violence Research Center to develop education and training programs for medical and mental health providers on the prevention of firearm-related injury and death and would apply those programs to the University of California (UC) to the extent that the Regents of the University of California choose to do so. Specifically, this bill:

1) Requires the University of California Firearm Violence Research Center ("the center") at UC Davis to develop multifaceted education and training programs for medical and mental health providers on the prevention of firearm-related injury and death.

2) Requires the center to develop education and training programs that address all of the following:

a) The epidemiology of firearm-related injury and death, including the scope of the problem in California and nationwide, individual and societal determinants of risk, and effective prevention strategies for all types of firearm-related injury and death, including suicide, homicide, and unintentional injury and death;

b) The role of health care providers in preventing firearm-related harm, including how to assess individual patients for risk of firearm-related injury and death;

c) Best practices for conversations about firearm ownership, access, and storage;

d) Appropriate tools for practitioner intervention with patients at risk for firearm-related injury or death, including, but not limited to, education on safer storage practices, gun violence restraining orders, and mental health interventions; and,

e) Relevant laws and policies related to prevention of firearm-related injury and death and to the role of health care providers in preventing firearm-related harm.

3) Requires the center to launch a comprehensive dissemination program to promote participation in these education and training programs among practicing physicians, mental health care professionals, physician assistants, nurse practitioners, nurses, health professional students, and other relevant professional groups in the state.

4) Requires the center to develop curricular materials for medical and mental health care practitioners in practice and in training, tailored to the profession and suitable for use through a variety of methods.
5) Requires educators from the center to provide didactic education in person and by remote link at medical education institutions, and recruit and train additional health professionals to provide such education.

6) Requires the center to develop education and training resources on firearm-related injury and death, including but not limited to, continuing medical education videos, additional training modules, a website with current information on relevant research and legislation, and handouts and written materials for clinicians to provide to patients.

7) Shall requires the center to serve as a resource for the many professional and educational organizations in the state whose members seek to advance their knowledge of firearm-related injury and death and effective prevention measures.

8) Shall requires the center to conduct rigorous research to further identify specific gaps in knowledge and structural barriers that prevent counseling and other interventions, and to evaluate the education and training program.

9) Shall requires the center to incorporate the research findings into the design and implementation of the program to support the mission of the center to deliver content to health care providers and patients that is effective in guiding clinical decisions and reducing firearm-related injury and death.

10) Requires that on or before December 31, 2020, and annually thereafter, the University of California shall transmit programmatic and financial reports on this program to the Legislature, including reporting on funding and expenditures by source, participation data, program accomplishments, and the future direction of the program.

11) States that these provisions shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make any of these provisions applicable to the university.

EXISTING LAW:

1) Makes the following findings and declarations:

   a) Firearm violence is a significant public health and public safety problem in California and nationwide. Nationally, rates of fatal firearm violence have remained essentially unchanged for more than a decade, as declines in homicide have been offset by increases in suicide;

   b) California has been the site of some of the nation's most infamous mass shootings, such as those at a McDonald's in San Ysidro, at Cleveland Elementary School in Stockton, near the University of California, Santa Barbara in Isla Vista, and most recently at the Inland Regional Center in San Bernardino. Yet public mass shootings account for less than 1 percent of firearm violence. In 2014, there were 2,939 firearm-related deaths in California, including 1,582 suicides, 1,230 homicides, 89 deaths by legal intervention, and 38 unintentional or undetermined deaths. In communities where firearm violence is a frequent occurrence, the very structure of daily life is affected;
c) Nationwide, the annual societal cost of firearm violence was estimated at $229,000,000,000 in 2012. A significant share of this burden falls on California. In 2013, the Office of Statewide Health Planning and Development noted that government-sponsored insurance programs covered nearly two-thirds of the costs of hospitalizations for firearm assaults in California, and about one-half of the costs of hospitalizations for unintentional injuries or those resulting from deliberate self-harm;

d) California has been a leader in responding to this continuing crisis. However, although rates of fatal firearm violence in California are well below average for the 50 states, they are not low enough;

e) Too little is known about firearm violence and its prevention. This is in substantial part because too little research has been done. The need for more research and more sophisticated research has repeatedly been emphasized. Because there has been so little support for research, only a small number of trained investigators are available;

f) When confronted by other major health and social problems, California and the nation have mounted effective responses, coupling an expanded research effort with policy reform in the public’s interest. Motor vehicle accidents, cancer, heart disease, and tobacco use are all examples of the benefits of this approach; and,

g) Federal funding for firearm violence research through the federal Centers for Disease Control and Prevention has been virtually eliminated by Congress since 1996, leaving a major gap that must be filled by other sources. (Pen. Code, § 14230.)

2) States that it is the intent of the Legislature to establish a center for research into firearm-related violence and that the center be administered by the University of California pursuant to the following principles:

a) Interdisciplinary work of the center shall address the following:

i) The nature of firearm violence, including individual and societal determinants of risk for involvement in firearm violence, whether as a victim or a perpetrator.

ii) The individual, community, and societal consequences of firearm violence.

iii) Prevention and treatment of firearm violence at the individual, community, and societal levels.

b) The center shall conduct basic, translational, and transformative research with a mission to provide the scientific evidence on which sound firearm violence prevention policies and programs can be based. Its research shall include, but not be limited to, the effectiveness of existing laws and policies intended to reduce firearm violence, including the criminal misuse of firearms, and efforts to promote the responsible ownership and use of firearms;

c) The center shall work on a continuing basis with policymakers in the Legislature and state agencies to identify, implement, and evaluate innovative firearm violence prevention policies and programs;
d) To help ensure a long-term and successful effort to understand and prevent firearm violence, the center shall recruit and provide specialized training opportunities for new researchers, including experienced investigators in related fields who are beginning work on firearm violence, young investigators who have completed their education, postdoctoral scholars, doctoral students, and undergraduates;

e) As a supplement to its own research, the center may administer a small grant program for research on firearm violence. All research funds shall be awarded on the basis of scientific merit as determined by an open, competitive peer review process that assures objectivity, consistency, and high quality. All qualified investigators, regardless of institutional affiliation, shall have equal access and opportunity to compete for the funds; and,

f) The peer review process for the selection of grants awarded under this program shall be modeled on the process used by the National Institutes of Health in its grant-making process. (Pen. Code, § 14231.)

3) States that the provisions of law pertaining to the center for research into firearm-related violence shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make any of these provisions applicable to the university. (Pen. Code, § 14232.)

4) Defines the "Regents of the University of California" as the following:

a) The Board of Regents of the University of California;

b) The standing and special committees or subcommittees of the Board of Regents; and,

c) An advisory board, advisory commission, advisory committee, advisory subcommittee, study group, task force, or similar multimember advisory body of the Board of Regents that has continuing subject matter jurisdiction in the area of compensation, if created by formal action of the Board of Regents or of any member of the Board of Regents, and if the advisory body so created consists of one or more regents, other than ex officio members of the Board of Regents. (Ed. Code, § 92020.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "California experiences unacceptably high rates of firearm-related death and injury. In 2017, the Centers for Disease Control and Prevention reported 3,184 firearm-related deaths in California including 1,610 suicides and 1,435 homicides. Furthermore, mass shootings are changing the character of public life in the state. Just last November, a mass shooting at Borderline Bar and Grill in Thousand Oaks, California resulted in 12 deaths.

"While we rely on health care providers to save lives after gun violence, we should also acknowledge their unique ability to help prevent these tragedies in the first place. Last year, the American College of Physicians published a position paper on reducing firearm injuries
and deaths in the United States that 'recommends a public health approach to firearms-related violence and the prevention of firearm injuries and deaths' and encourages physicians to 'discuss with their patients the risks that may be associated with having a firearm in the home and recommend ways to mitigate such risks.' While many health care providers recognize their responsibility to help prevent firearm-related injury and death, many cite lack of knowledge regarding when and how to counsel patients as a principal barrier to action. A position statement adopted by the California Medical Association Board of Trustees on July 28, 2017, states that "expanded education and training are needed to improve clinician familiarity with the benefits and risks of firearm ownership, safety practices, and communication with patients about firearm violence.

"AB 521 recognizes that health care providers are uniquely positioned to help prevent firearm-related harm and that the University of California Firearm Violence Research Center is uniquely qualified to equip them with the education, training, and resources needed to identify patients at risk for such harm, provide evidence-based counseling to mitigate risk, and intervene in situations of imminent danger."

2) **University of California Firearms Violence Research Center:** In 2016, the Legislature passed budget trailer bill AB 1602. Among other things, AB 1602 authorized the creation of a research center focused on firearm violence at the University of California. The Violence Prevention Research Program at UC Davis was designated as the home of the new research center.

The research center’s mission with respect to firearm violence has three elements:

a) To conduct research and develop sound scientific evidence on the nature, causes, consequences, and prevention of firearm violence;

b) To disseminate that evidence and promote the adoption of evidence-based firearm violence prevention measures; and,

c) To expand and extend such efforts through education and training in firearm violence research and its applications. (UC Davis Violence Prevention Research Program website, available at: [https://health.ucdavis.edu/vprp/](https://health.ucdavis.edu/vprp/), [as of Apr. 16, 2019].)

According to the UC Davis website, the research center has recruited faculty members who have made long term commitments to conducting firearm violence research. Those faculty include investigators, postdoctoral research fellows, statisticians, and analysts.

The purpose of this bill is to require the research center to design training programs for medical and mental health providers on the prevention of firearm-related injury and death. The University of California would only be required to implement these training programs to the extent that the Regents of the University of California direct it to do so via resolution.

3) **Argument in Support:** According to *Brady California United Against Gun Violence*:

"California experiences unacceptably high rates of firearm-related death and injury. In 2017, the Centers for Disease Control and Prevention reported 3,184 firearm-related deaths in California. Over half of these deaths were suicide by firearm and research shows that of people who die by suicide, almost half had contact with their primary care provider in the"
month before death, and three out of every four had contact with their primary care provider in the year before death.

"Last year, the American College of Physicians published a position paper on reducing firearm injuries and deaths in the United States that ‘recommends a public health approach to firearms-related violence and the prevention of firearm injuries and deaths.’ While many health care providers recognize their responsibility to help prevent firearm-related injury and death, many cite lack of knowledge regarding when and how to counsel patients as a principal barrier to action. A position statement adopted by the California Medical Association Board of Trustees on July 28, 2017, states that ‘expanded education and training are needed to improve clinician familiarity with the benefits and risks of firearm ownership, safety practices, and communication with patients about firearm violence.’

“AB 521 recognizes that health care providers are uniquely positioned to help prevent firearm-related harm and would equip them with the education, training, and resources needed to identify patients at risk for such harm, provide evidence-based counseling to mitigate risk, and intervene in situations of imminent danger.”

4) Related Legislation:

a) AB 18 (Levine) would codify the California Violence Intervention and Prevention grant program (CalVIP) and would impose a $25 excise tax on firearms to fund that program. AB 18 is pending hearing in the Assembly Committee on Revenue and Taxation.

b) AB 1603 (Wicks) would also codify the CalVIP grant program. AB 1603 is pending in the Assembly Appropriations Committee.

c) AB 656 (E. Garcia) would establish the Office of Healthy and Safe Communities under the supervision of the Governor and the Surgeon General of California, which would provide a comprehensive violence prevention strategy. AB 656 is pending hearing in the

5) Prior Legislation: AB 1602 (Committee on Budget) Chapter 24, Statutes of 2016, this budget trailer bill established the provisions of law pertaining to the firearm violence research center at the University of California.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Community Transformations
American College Of Physicians, California Chapter
Brady California United Against Gun Violence
California Public Health Association - North
Coalition Against Gun Violence, A Santa Barbara County Coalition
Psychiatrists for Gun Violence Prevention
San Francisco Bay Area Physicians for Social Responsibility
Scrubs Addressing the Firearm Epidemic
UCSF Chapter of SAFE
Women Against Gun Violence

2 private individuals

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
Date of Hearing: April 23, 2019
Counsel: Matthew Fleming

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

AB 580 (Lackey) – As Amended April 1, 2019

SUMMARY: Requires that the district attorney in the relevant jurisdiction be given at least 30 days’ notice prior to the governor acting upon an application for a commutation of a death sentence. Specifically, this bill:

1) Requires that at least 30 days before a Governor acts upon an application for commutation of a death sentence, that the applicant for commutation provide written, signed notice of his or her intent to apply for commutation to the district attorney in the county where the death sentence was imposed, and present proof of that service to the Governor.

2) Requires, upon request, the Board of Parole Hearings (BPH) to provide any family member of a victim of a crime that resulted in a death sentence to be given at least 25 days’ notice before the Governor acts upon any application for commutation of a sentence of death.

3) Specifies that a request for notice by a family member of a victim of a crime that resulted in a death sentence is to be made to the Department of Corrections and Rehabilitation (CDCR) and that CDCR is to verify the identity of the requester.

4) Requires the Governor to ensure that a victim’s family has been provided with notice by the BPH, if requested, and that the family has had an opportunity to submit a recommendation to the Governor prior to acting on an application for commutation of a death sentence.

5) Authorizes any family member of a victim of a crime that resulted in a death sentence to request a public hearing before the BPH regarding the proposed commutation.

6) Requires that the public hearing requested by a family member take place within 90 days of the request and that the BPH submit a recommendation to the Governor within 30 days of that hearing, including any written letters by the victim’s family members.

7) Prohibits a commutation of a death sentence from taking effect until the BPH has submitted its recommendation, or 30 days after the public hearing, whichever is earlier.

EXISTING LAW:

1) Provides that subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence except in cases of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reason for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, four judges
concurring. (Cal. Const. Art. V, § 8(a).)

2) Provides that the BPH may report to the Governor from time to time, the names of all persons imprisoned in any state prison, who in its judgment ought to have a commutation of sentence, or be pardoned or set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects. (Pen. Code, § 4801, subd. (a).)

3) States that in the case of a person twice convicted of a felony, the application for pardon or commutation of sentence shall be made directly to the Governor, who shall transmit all papers and documents relied upon in support of and in opposition to the application to the BPH. (Pen. Code, § 4802.)

4) Provides that when an application is made to the Governor for pardon or commutation of sentence, or when an application is forwarded to the BPH, he or she may require the judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him or it, without delay, with a summarized statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing said application, together with his recommendations for or against his granting of the same and his reason for such recommendation. (Pen. Code, § 4803.)

5) Requires that at least 10 days before the Governor acts upon any application for a commutation of sentence, written notice of the intention to apply therefor, signed by the person applying, shall be served upon the district attorney in the county where the conviction was had, and proof, by affidavit, of the service must be presented to the Governor. (Pen. Code, § 4805, subd. (a).)

6) States that the 10 day notice requirement is not applicable in the following two situations:

   a) When there is imminent danger of the death of the person convicted or imprisoned; and,

   b) When the term of imprisonment of the applicant is within 10 days of its expiration. (Pen. Code, § 4806.)

7) Requires the Governor to annually file a written report with the Legislature that shall include each application that was granted for each case of reprieve, pardon, or commutation by the Governor, or his or her predecessor in office, during the immediately preceding regular session of the Legislature, stating the name of the person convicted, the crime of which the person was convicted, the sentence and its date, the date of the reprieve, pardon, or commutation, and the reason for granting the same. (Pen. Code § 4807.)

8) Requires the BPH, upon request from the Governor, to investigate and report on all applications for reprieves, pardons, and commutations of sentence and make such recommendations to the Governor with reference thereto as it may seem advisable. (Pen. Code, § 4812, subd (a).)

9) Requires the BPH, upon request of the Governor to investigate an application for commutation of sentence, to examine and consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in
connection therewith, and have power to employ assistants and take testimony and to
examine witnesses under oath and to do any and all things necessary to make a full and
complete investigation of and concerning all applications referred to it. (Ibid.)

10) Authorizes members of the BPH to administer oaths. (Ibid.)

11) Allows the BPH to make recommendations to the Governor at any time regarding
applications for pardon or commutation, and the Governor may request investigation into
candidates for pardon or commutation at any time. (Pen. Code, § 4812, subd. (b).)

12) Allows the BPH to consider expedited review of an application for pardon or commutation if
the applicant identifies an urgent need for the pardon or commutation, including, but not
limited to, a pending deportation order or deportation proceeding. (Pen. Code, § 4812, subd.
(c).)

13) Requires the BPH to provide electronic or written notification to an applicant after the board
receives the application, and when the board has issued a recommendation on the application.
(Pen. Code, § 4812, subd. (d).)

14) Specifies that an applicant is eligible for a pardon, commutation, or certificate of
rehabilitation without regard to his or her immigration status. (Pen. Code, § 4812, subd. (e).)

15) Requires that in the case of applications of persons twice convicted of a felony, the BPH,
after investigation, to transmit its written recommendation upon such application to the
Governor, together with all papers filed in connection with the application. (Pen. Code, §
4813.)

16) Provides that murder is the unlawful killing of a human being, or a fetus, with malice
aforethought. (Pen. Code, § 187.)

17) Provides that malice aforethought may be express or implied. Malice aforethought is
expressed when the perpetrator manifests a deliberate intention to take the life of another
human. Malice aforethought is implied when there was "no considerable provocation" for
the killing, or when the circumstances surrounding the killing show "an abandoned and
malignant heart." (Pen. Code, § 188.)

18) Classifies murder according to degrees, either first degree or second degree. (Pen. Code, §
189.)

19) Specifies that first-degree murder with "special circumstances" (Pen. Code, § 190.2) is
punishable by death, or in the state prison for life without the possibility of parole (LWOP).
(Pen. Code, § 190.)

20) Limits imposition of the death penalty to those first-degree murder cases where the trial jury
finds true at least one "special circumstance." Currently, the Penal Code lists 22 separate
categories of "special circumstances":

a) The murder was intentional and carried out for financial gain;
b) The defendant was convicted previously of first- or second-degree murder;

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

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

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

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

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

h) The victim was a federal law enforcement officer who was intentionally killed [the same as Item (g) above];

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

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

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

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

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

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

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

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

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

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

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

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

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

v) The defendant intentionally killed the victim while actively participating in a criminal street gang. (Pen. Code, § 190.2.)

21) Requires three separate findings at the trial in order to qualify for the death penalty: (a) guilty of first-degree murder, (b) a finding that at least one of the charged "special circumstances" is true, and (c) the jury's determination that death is appropriate rather than LWOP. The first two findings occur when the jury deliberates at the close of the "guilt phase." (Pen. Code, §§ 190.1 and 190.4.) The penalty determination takes place during the "penalty phase" where either the judge or jury considers factors in aggravation or mitigation. (Pen. Code, § 190.3.) If the jury fixes the penalty at death, the judge still retains the power to reject the jury's penalty verdict and impose LWOP. (Pen. Code, § 190.4(e).)

22) Provides that during the penalty phase of a death penalty trial, the prosecution and the defendant may present evidence relevant to aggravation, mitigation, and sentence. In determining the penalty to be imposed, the trier of fact may take into account any relevant enumerated factors. Such factors in aggravation or mitigation include:

a) The circumstances of the crime and the existence of any special circumstances;

b) The presence or absence of threats or the actual use of force or violence;

c) Prior felony convictions;

d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance;

e) Whether or not the victim was a participant or consented to the homicidal act;

f) Whether or not the offense was committed under circumstances that the defendant believed to be a moral justification or extenuation of his or her conduct.

g) Whether or not the defendant acted under extreme duress or under the substantial domination of another person;

h) Whether or not at the time of the offense, the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the law was impaired
as a result of mental disease, defect, or the effects of intoxication;

i) The age of the defendant at the time of the crime;

j) Whether or not the defendant was an accomplice and his or her participation in the offense was relatively minor; or,

k) Any other circumstance that extenuates the gravity of the crime, though not a legal excuse for the crime. (Pen. Code, § 190.3.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, “These people who are on death row have committed over 1,000 atrocities. The people on death row are not the victims. They have raped, kidnapped, tortured, killed law enforcement, and even murdered their own children. AB 580 empowers the families of victims; it shows that their loved ones have not been forgotten.”

2) **The Death Penalty in California**: California has a long and somewhat complicated history with the death penalty. The first death sentence imposed in California is believed to have occurred in the late 1700’s, before California was a state of the Union. Between then and 1967, approximately 700 executions were carried out. Methods for execution have varied during that time, from firing squad to hanging to gas chambers, and most recently, lethal injection.

   In the late 1960’s, the death penalty came under scrutiny by various state and federal courts. Beginning in 1967, there were no executions in California for 25 years. In February 1972, the California Supreme Court found that the death penalty constituted cruel and unusual punishment under the California state constitution and 107 condemned inmates were resentenced to life with the possibility of parole and removed from California’s death row. Later that year, the United States Supreme Court held that the death penalty was unconstitutional as it was being administered at that time in a number of states in the case of *Furman v. Georgia* (1972) 408 U.S. 238. Three years later, the United States Supreme Court reaffirmed the use of the death penalty, setting forth fea

   California voters approved Proposition 7 in November 1978, reaffirming the death penalty. Prop 7 provided the death penalty statute under which California currently operates. Hundreds of people have been sentenced to the death penalty since that time. There are currently 737 inmates on death row. (https://sites.cdc.ca.gov/capital-punishment/wp-content/uploads/sites/15/2019/03/Condemned-Inmate-List-Secure.pdf.) Despite the large number of people on death row, the actually execution of death sentences has been sparing. No executions were carried out between the enactment of Prop 7 in 1978 and 1992. Since that time, exactly 13 executions have taken place in the state of California. (https://sites.cdc.ca.gov/capital-punishment/inmates-executed-1978-to-present/.)

3) **Proposition 66, the Death Penalty Procedures Initiative**: Proposition 66, the Death Penalty Procedures Initiative (Prop 66) was passed by the people of California in 2016. The
initiative included a series of findings and declarations to the effect that California's death penalty system is inefficient, wasteful, and subject to protracted delay, thereby denying murder victims and their families justice and due process. Prop 66, among other things, enacted a series of statutory reforms aimed at expediting the review process for capital cases in order to reduce the delay between the time of judgment and execution. Specifically, Prop 66 changed the death penalty procedures to speed up the appeals process by putting trial courts in charge of initial petitions challenging death penalty convictions, establishing a timeframe for death penalty review, and requiring more appointed attorneys who do not necessarily have death penalty experience, to work on death penalty cases. Under prop 66, completion of the appeals and habeas corpus process in death cases are required to be completed within five years. Also on the ballot in 2016 was Proposition 62, the Repeal the Death Penalty Initiative (Prop 62). Prop 66 and Prop 62 were not compatible measures. Therefore, if both were approved by a majority of voters, then the one with the most "yes" votes would have superseded the other. Prop 62 failed and Prop 66 was passed.

4) **Executive Order N-09-19:** On March 13, 2019, Governor Newsom signed an executive order placing a moratorium on the death penalty. Executive Order N-09-19 declared, among other things that “California’s death penalty system is unfair, unjust, wasteful, protracted and does not make our state safer.” (available at: https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf, [as of Apr. 17, 2019].) The Governor ordered a moratorium on the death penalty in the form of a reprise for all people sentenced to death in the state. The order specified that the moratorium does not provide for the release of any person, repealed California’s lethal injection protocol and closed the death chamber at San Quentin State Prison.

Shortly after the governor’s executive order, the California Supreme Court issued an order affirming a death sentence in the case of *People v. Potts.* (S072161, Mar. 28, 2019, available at: https://www.courts.ca.gov/opinions/documents/S072161.PDF, [as of Apr. 17, 2019].) In that case, two justices wrote in a concurring opinion that “California’s death penalty is an expensive and dysfunctional system that does not deliver justice or closure in a timely manner, if at all.” (*Id.,* J. Liu concurring, at 2.) The justices further stated that Prop 66 “promised more than the system can deliver.” (*Ibid.*) *Potts* was a case in which the death penalty was originally imposed in 1998. The California Supreme Court’s holding concluded the direct appeal, but the habeas corpus process has yet to begin. (*Ibid.*)

5) **Commuation of a Death Sentence:** The California Constitution gives to the Governor the right to grant commutations of sentence, including a sentence of death. For inmates who have been sentenced to the death penalty, the effect of a commutation is usually to reduce that penalty to life without the possibility of parole.

The California Constitution also gives the Legislature the power to set the application procedure for a commutation of sentence. AB 648 (Block), Statutes of 2011, enacted Penal Code Section 4805, which contains the application procedures for a commutation. Under existing law, a district attorney must have at least ten days’ notice prior to the governor acting upon an application for commutation of a sentence. Furthermore, the district attorney is required to make reasonable efforts to notify the family of any victim of the person whose sentence is to be commuted. As amended in the Assembly on April 6, 2011 AB 648 would have required 30 days’ notice be given to the district attorney prior to acting upon an application for commutation. AB 648 was subsequently amended in the Senate to require ten
days’ notice. The Senate version of the bill was enacted into law in 2011. Since its enactment, Penal Code Section 4805 has never been amended.

By statute, the BPH may report to the Governor the names of any person imprisoned in state prison, who in its judgment ought to have a commutation of sentence. The BPH is expressly authorized to make recommendations to the Governor at any time regarding applications for pardon or commutation. Additionally, upon request of the Governor, the BPH is obligated to investigate and report on all applications for reprieves, pardons, and commutations of sentence. Under these circumstances, the board is required to make recommendations to the Governor for each of these cases.

In addition to a review by both the BPH and the Governor, cases in which a person was twice-convicted of a felony require the approval of the California Supreme Court before the Governor can grant the person a commutation. The California Supreme Court recently explained its role in the pardon and commutation process. (Procedures for Considering Requests for Recommendations Concerning Applications for Pardon or Commutation (2018) 4 Cal. 5th 897.) Although California-specific data was not readily available, according to a publication by the Bureau of Justice Statistics within the United States Department of Justice, more than two thirds of the inmates on death row in the United States have prior felony convictions. (Capital Punishment, 2012 Statistical Tables, May 2014, available at: https://deathpenaltyinfo.org/documents/cp12st.pdf, [as of Apr. 17, 2019].)

6) The Need for this Bill: This bill would require that the district attorney in the relevant jurisdiction receive at least 30 days’ notice prior to the Governor acting on an application to commute a death sentence. This is an increase of 20 days on the current requirement. The BPH would be required to provide at least 25 days’ notice to the family members of victims, prior to the Governor acting on an application for commutation of a death sentence as well. In addition, the Governor would also be required to ensure that the BPH had provided notice to the family of the victim, and that, if requested, the family has had an opportunity to submit a recommendation on the commutation. Finally, this bill would authorize a victim of a family member to request a public hearing before the BPH, establish deadlines for when that hearing must take place, and prevent the Governor’s order of commutation from taking effect prior to the completion of the hearing and subsequent recommendation from the BPH.

According to the proponents of this measure, these additional notice requirements and formal proceedings for a commutation of a death sentence are necessary because death sentences should require a more thorough review than commutations of other sentences. Proponents state that the process to commute a death sentence should be longer and held to a higher standard of review as compared with other non-death sentence commutations.

Given the fact that most applications for commutation by death row inmates are already subject to a review by the Governor, the BPH, and the California Supreme Court, it seems unlikely that an additional 20 days’ notice to the district attorney, notice to the victim’s family by the BPH, and additional formal proceedings which effectively stay a Governor’s order of commutation, will result in a meaningful change in how applications for commutations are decided. The commutation process will take more time and resources, but it is not clear that the provisions of this bill would require more or different information to be examined above and beyond what is already reviewed under existing law. Even in cases in which the California Supreme Court takes no part of the commutation decision – because the
defendant does not have two felony convictions – the legal process for affirming the death penalty is lengthy and produces thousands of pages of police reports, court records, and witness testimony. Victims of family members routinely testify during the guilt phase of a death penalty trial and sometimes in habeas corpus proceedings as well. Therefore, their statements are part of the official transcripts of the case. Upon request of the Governor, the BPH must review all of the case records prior to making its recommendation on a commutation of sentence, and the BPH possesses the statutory authority to take additional sworn testimony from witnesses, including family members of victims if it chooses to do so.

7) **Argument in Support:** According to the *Peace Officers Research Association*: “AB 580 increases the period before the Governor can act on an application for commutation of a death sentence from 10 days to 30 days. In addition, this bill increases the notification period from 10 days to 30 days in which a copy of an application for commutation of a death sentence is submitted to the district attorney of the county where the conviction was had. Furthermore, the Board of Parole Hearings shall notify the family of the victim(s) at least 25 days before a decision is made on an application for commutation of a death sentence. Lastly, the victim’s family may request a hearing before the Board of Parole Hearings regarding the proposed commutation.

“The special circumstances surrounding the conviction should require a special, more thorough review for commutation. Crimes that carry a penalty of death should be held to a higher standard of review, considering its special circumstances. The review of an application for commutation of a death sentence should be longer than ten days and should provide the victim(s) or family of the victim(s) ample time to provide a recommendation to the Governor. Lastly, the victim(s) or victim(s) family should have the right to request a special hearing regarding the proposed commutation.”

8) **Argument in Opposition:** According to the *Ella Baker Center for Human Rights*: “AB 580 would impose unique and burdensome requirements on defense counsel and the Board of Parole Hearings in cases where a person sentenced to death seeks clemency. Specifically, the bill requires the Board of Parole Hearings to provide duplicate notice to victims’ family members, permits family member to force the Board to hold a hearing, and requires the Board to prepare a report and provide additional materials to the Governor. Finally, the bill states that any commutation of sentence by the Governor shall not “take effect” until 30 days after the Board submits its report.

“This bill is unnecessary as state law already requires that notice be given to victims’ family members through the District Attorneys prior to the Governor taking action on any request for clemency, including in cases where a person has been sentenced to death. There is no reason to require the Board of Parole Hearings to provide duplicate notice. Similarly, the Governor already has the authority to request a report and recommendation from the Board of Parole Hearings on any request for clemency. It is simply a waste of the Board’s limited time and taxpayer dollars to force the Board to prepare additional reports and hold additional hearings. The Board is already overburdened by the many people waiting for parole hearings. The Board’s limited time and resources should be focused on the important task of parole review, to ensure that people who are ready to come home are reunited with their families and communities as soon as possible.”
9) **Related Legislation:**

a) ACA 12 (Levine) would amend the California Constitution to delete that provision and instead would prohibit the death penalty from being imposed as a punishment for any violation of law. ACA 12 is pending referral in the Assembly Rules Committee.

b) AB 1798 (Levine) would prohibit a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race if the court makes a finding that race was a significant factor in seeking or imposing the death penalty. AB 1798 is set for hearing in the Assembly Public Safety Committee on April 23rd.

c) SCR 38 (Jones) would condemn the actions of the Governor in signing Executive Order N-09-19 (moratorium on the death penalty) and would urge the Attorney General to take all necessary actions to enforce the death penalty. SCR 38 is pending referral in the Senate Rules Committee.

10) **Prior Legislation:**

a) AB 2845 (Bonta) Chapter 824, Statutes of 2018, required BPH to consider expediting review of an application if the application indicates an urgent need for the pardon or commutation, and required BPH to notify applicants after the receipt of an application and when it has issued a recommendation on the application.

b) AB 648 (Block) Chapter 437, Statutes of 2011, enacted Penal Code Section 4805 which requires that at least 10 days before the Governor acts upon any application for a pardon or commutation of sentence, the application must be served upon the district attorney in the county where the conviction was had.

c) SB 490 (Hancock) of the 2011-2012 Legislative Session would have abolished the death penalty, and provided instead for imprisonment in the state prison for life without the possibility of parole. SB 490 died in the Assembly Appropriations Committee.

d) AB 1512 (Aroner) of the 2001-2002 Legislative session, would have prohibited the application of the death penalty for people determined to be intellectually disabled. AB 1512 died in the Assembly Appropriations Committee suspense file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Peace Officers Research Association of California

**Oppose**

American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Bend the Arc: Jewish Action
California Attorneys for Criminal Justice
California Public Defenders Association
Death Penalty Focus
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
PowerPAC.org
The Dream Corps

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