AGENDA

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

PART II

AB 615 (Brough) – AB 1216 (Bauer-Kahan)
Date of Hearing: April 23, 2019
Counsel: David Billingsley

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

AB 615 (Brough) – As Amended March 13, 2019

SUMMARY: Provides that a licensed alcoholism or drug abuse recovery facility, and other individuals connected to the facility, as specified, who pays for client referrals, is guilty of a crime, punishable as a felony. Specifically, this bill:

1) Makes it a crime, punishable as a felony, if a licensed alcoholism or drug abuse recovery facility, and other individuals connected to the program, as specified, willfully gives or receives money or anything of value for the referral of a person who is seeking recovery and treatment services.

2) Makes it a crime, punishable as a felony, if a licensed alcoholism or drug abuse recovery facility, and other individual connected to the program as specified, who willfully violates any rule or order established by Department of Health Care Services (DHCS) to implement the prohibition on giving or receiving something of value for patient referrals.

3) Provides that a person convicted for the conduct described above, is punishable by a fine of up to $10,000 or imprisoned in county jail for 16 months, two, or three years, or by both fine and imprisonment.

4) States that a person shall not be imprisoned for the violation of any rule or order, as described by this bill, unless it is proven that this person had knowledge of the rule or order.

EXISTING LAW:

1) Specifies the following persons, programs, or entities shall not give or receive remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services:

   a) An alcoholism or drug abuse recovery and treatment facility licensed under this part;

   b) An owner, partner, officer, or director, or shareholder who holds an interest of at least 10 percent in an alcoholism or drug abuse recovery and treatment facility licensed under this part;

   c) A person employed by, or working for, an alcoholism or drug abuse recovery and treatment facility licensed under this part, including, but not limited to, registered and certified counselors and licensed professionals providing counseling services;
d) An alcohol or other drug program certified by the department in accordance with the alcohol or other drug certification standards, as specified;

e) An owner, partner, officer, or director, or shareholder who holds an interest of at least 10 percent in an alcohol or other drug program certified by the department in accordance with the alcohol or other drug certification standards, as specified; or

f) A person employed by, or working for, an alcohol or other drug program certified by the department in accordance with the alcohol or other drug certification standards, as specified, including, but not limited to, registered and certified counselors and licensed professionals providing counseling services. (Health and Saf. Code, § 11831.6, subd. (a)(1)-(6).)

2) The Department of Health Care Services (DHCS) may investigate allegations that a person gave or received money for the referral of a person who is seeking substance abuse services. (Health and Saf. Code, § 11831.7, subd. (a).)

3) DHCS may, upon finding a violation of the conduct described above, or any regulation adopted pursuant to that section, do any of the following:

a) Assess a penalty upon an alcoholism or drug abuse recovery and treatment facility licensed, as specified;

b) Suspend or revoke the license of an alcoholism or drug abuse recovery and treatment facility licensed, as specified, or deny an application for licensure, extension of the licensing period, or modification to a license;

c) Assess a penalty upon an alcohol or other drug program certified by the department in accordance with the alcohol or other drug certification standards, as specified;

d) Suspend or revoke the certification of an alcohol or other drug program certified by the department in accordance with the alcohol or other drug certification standards, as specified;

e) Suspend or revoke the registration or certification of a counselor. (Health and Saf. Code, § 11831.7, subd. (a)(1)-(5).)

4) States that DHCS may investigate allegations against a licensed professional providing counseling services at an alcoholism or drug abuse recovery and treatment program licensed, certified, or funded under this part, and recommend disciplinary actions, including, but not limited to, termination of employment at a program and suspension and revocation of licensure by the respective licensing board. (Health and Saf. Code, § 11831.7, subd. (b)

5) Specifies that the offer, delivery, receipt, or acceptance by physician or other specified health care licensee, of any rebate, refund, commission, or other consideration, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful. (Bus. and Prof. Code, § 650, subd.
6) States that the conduct described above is punishable upon a first conviction by
imprisonment in a county jail for not more than one year, or by imprisonment in county jail
up to three years, or by a fine not exceeding $50,000, or by both that imprisonment and fine.
A second or subsequent conviction is punishable by imprisonment up to three years in county
jail, or by that imprisonment and a fine of $50,000. (Bus. and Prof. Code, § 650, subd. (h).)

7) Makes it a crime to offer or payment of "any remuneration, including, but not restricted to,
any kickback, bribe, or rebate . . . to refer any individual to a person for the furnishing or
arranging for furnishing of any service," or "[t]o purchase, lease, order or arrange for or
recommend the purchasing, leasing or ordering of any goods, facility, service or
merchandise," for which payment may be made by Medi-Cal is punishable upon a first
conviction by imprisonment in a county jail for not longer than one year or imprisonment up
to three years in the county jail, or by a fine not exceeding $10,000, or by both that
imprisonment and fine. A second or subsequent conviction shall be punishable by
imprisonment up to three years in the county jail. (Welf. and Inst. Code, § 14107.2, subd.
(a)(1).)

8) Establishes DHCS to license adult alcoholism or drug abuse recovery or treatment facilities.
Permits new licenses to be issued for a period of two years, and requires DHCS to conduct
onsite program visits for compliance at least once during the two year licensing period.
(Health and Saf. Code, § 11834.01.)

9) Defines "alcoholism or drug abuse recovery or treatment facility" as any premise, place, or
building that provides 24-hour residential nonmedical services to adults who are recovering
from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need
alcohol, drug, or alcohol and drug recovery treatment or detoxification services. (Health and
Saf. Code, § 11834.02, subd. (a).)

10) States that in addition to the penalties of suspension or revocation of a license issued, as
specified, DHCS may also levy a civil penalty for violation of laws or regulations concerning
substance abuse treatment facilities. (Health and Saf. Code, § 11834.34, subd. (a).)

11) Specifies that the amount of the civil penalty, as determined by the department, shall not be
less than $250 or more than $500 per day for each violation, except where the nature or
seriousness of the violation or the frequency of the violation warrants a higher penalty or an
immediate civil penalty assessment, or both, as determined by the department. In no event
shall a civil penalty assessment exceed one thousand dollars $1,000 per day. (Health and Saf.
Code, § 11834.34, subd. (a)(1).)

12) Provides that a licensee that is cited for repeating the same violation within 24 months of the
first violation is subject to an immediate civil penalty of $500 and $750 for each day the
violation continues until the deficiency is corrected. (Health and Saf. Code, § 11834.34,
subd. (a)(2).)

13) Allows a licensee that commits repeat violations, as specified, to be subject to an immediate
civil penalty of $500 and $1,000 for each day the violation continues until the deficiency is
corrected.

FISCAL EFFECT: Unknown:

COMMENTS:

1) **Author's Statement:** According to the Author, "The opioid epidemic is a nationwide scourge that claimed approximately 1,925 lives in California in 2016. Drug and opioid overdoses are currently in the top 20 causes of death statewide. Patient brokers see this epidemic as an opportunity to take advantage of a vulnerable population. Across California, these brokers walk the streets to find people with addiction problems to lure them to treatment centers and sober living homes in exchange for bribes.

"Current law allows the Department of Health Care Services to assess penalties and suspend or revoke a licenses or certification as a result of patient brokering. Since statute does not define the penalties for this act, AB 615 would increase penalties by making patient brokering a crime. Other large states that deal with patient brokering have similar or harsher penalties. If California wants to deter this practice from happening in the future, we need to increase the penalties for patient brokering instead of it being a slap on the wrist."

2) **Background:** Treatment facilities provide 24- hour non-medical care and specialize in providing services to chemically dependent adults who do not require treatment in an acute-care medical facility on an inpatient, intensive outpatient, outpatient, and partial hospitalization basis. These facilities range in size from six-bed facilities in residential neighborhoods to centers that accommodate more than 100 beds. The basic services provided by facilities include group, individual and educational sessions, alcoholism or drug abuse, recovery and treatment planning. Detoxification services are also provided and are defined by the DHCS as services to support and assist an individual in the alcohol and/or drug withdrawal process and to explore plans for continued treatment. These services can be provided by a variety of health care providers such as alcohol and drug counselors, mental health therapists, social workers, psychologists, nurses, and physicians.

3) **Treatment Facility Licensing and Certification:** DHCS has sole authority to license facilities that have seven or more treatment beds and provide 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug misuse or abuse. Licensure is required when at least one of the following services is provided: detoxification; group sessions; individual sessions; educational sessions; or, alcoholism or other drug abuse recovery or treatment planning. Additionally, facilities may be subject to other types of permits, clearances, business taxes, or local fees that may be required by the cities or counties in which the facilities are located. Many facilities licensed by DHCS are also certified by DHCS. Certification by DHCS identifies those facilities which exceed minimum levels of service quality and are in substantial compliance with State program standards, specifically the Alcohol and/or Other Drug Certification Standards. DHCS does not license alcohol and drug residential treatment programs with six or less beds, known as "sober living homes"(SLHs).

4) **The Legislature Addressed Payment by Substance Abuse Programs for Patient Referrals in 2018 with SB 1228 (Lara):** SB 1228 (Lara), Chapter 792, Statutes of 2018, prohibited a licensed alcohol and drug abuse recovery and treatment facility, and certified
counselors and licensed professionals, from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services, as specified. SB 1128 provided DHCS the authority to punish such violations with monetary penalties and license suspension or revocations.

SB 1228 allows DHCS, upon finding a violation for giving kick-backs for patient referrals to substance abuse treatment programs, to do any of the following:

a) Assess a penalty upon an alcoholism or drug abuse recovery and treatment facility licensed or certified, as specified;

b) Suspend or revoke the license of an alcoholism or drug abuse recovery and treatment facility licensed as specified, or deny an application for licensure, extension of the licensing period, or modification to a license; and,

c) Suspend or revoke the registration or certification of a counselor. (Health and Saf. Code, § 11831.7, subd. (a)(1)-(5).)

This bill would allow a felony charge, punishable by up to three years in county jail and up to $10,000, to engage in the same conduct that this Legislature addressed last year by passing SB 1228.

5) **This Bill Would Make it a Crime to Violate Any Rule or Order DHCS Creates Regarding Patient Brokering by Substance Abuse Treatment Facilities:** Regulatory agencies are authorized to establish rules and regulations regarding their subject area if that authority has been properly delegated to the agency by the Legislature. This bill would delegate to DHCS the authority to enact rules and regulations that would be enforceable with criminal charges. This bill would make a violation of any rule or order implementing the existing law that prohibits kick backs for patient referrals for substance abuse treatment, a crime.

Creating crimes for violations of rules and orders propagated by DHCS raises the question as to whether the Legislature would improperly be delegating its authority to establish laws governing criminal liability. The doctrine of nondelegation is the theory that one branch of government must not authorize another entity to exercise the power or function which it is constitutionally authorized to exercise itself. “... the purpose of the doctrine that legislative power cannot be delegated is to assure that ‘truly fundamental issues [will] be resolved by the Legislature’ and that a ’grant of authority [is] . . . accompanied by safeguards adequate to prevent its abuse.’” (Kugler v. Yocom, 69 Cal. 2d 371, 376–77.)

This Legislature has already delegated regulatory authority to DHCS to implement the prohibition on patient brokering by substance abuse treatment programs. A delegation for the agency to establish civil regulations is appropriate within the Legislative guidelines provided to DHCS. If this bill is passed, this Legislature would essentially be directing that DHCS make criminal law surrounding patient brokering for substance abuse treatment programs, because any rule or order established by DHCS regarding patient broker would carry criminal penalties if they were violated. Does the Legislature have the ability to extend the power of a regulatory agency to include the ability to establish regulations that are
criminal in nature? If the Legislature has this ability, should it extend this power to a regulatory agency?

Creating crimes based on orders and regulations issued by DHCS also raises concerns about providing proper notice that such conduct is criminal. This bill does include language that requires an individual not be imprisoned for a conviction for a criminal offense based a violation of a rule or order unless it is proven that this person had knowledge of the rule or order. Such language does slightly soften the impact of a criminal conviction when a defendant in unaware of regulations promulgated by DHCS regarding patient brokering. However, it doesn’t prevent the individual from being convicted of a felony and suffering all the other consequences such a conviction carries.

6) Argument in Support: According to the Orange County Board of Supervisors, “California has more than 2,000 licensed facilities and man more unregulated recovery homes according to the State Department of Health Care Services. Of these facilities 15% are located in Orange County. A comprehensive investigation by the Southern California News Group found that the state’s difficulty in regulating the industry makes it too easy for almost anyone to open a treatment center and charge health insurers for hundreds of thousands of dollars per client, without any requirements to ensure qualified people are providing safe care and treatment.

“On January 1, 2019, state law went into effect, SB 1228, that would prohibit patient brokering. State law provides the Department of Health Care Services with the authority to investigate allegations of patient brokering and upon finding a violation of these requirements, authorizes the department to take specified actions against the alcoholism or drug abuse recovery or treatment facility, including suspending or revoking the facility license. AB 615 would increase these penalties and seeks to protect those who are seeking treatment and are often at their most vulnerable.”

7) Argument in Opposition: According to the American Civil Liberties Union of California, “AB 615 needlessly creates new criminal penalties for actions already subject to severe consequences. Just last year, the enactment of AB 1228 (Lara) made it unlawful for certain persons, programs or entities to give or receive remuneration or anything of value for a referral of a person to an alcoholism or drug abuse recovery treatment program – to give or receive kickbacks or bribes for referring someone to a particular program. Violations of this prohibition can be punished by assessment of a penalty, suspension or revocation of a program or facility’s license, or suspension or revocation of a counselor’s license. (Health and Safety Code §11831.7.) The Department of Health Care Services can also investigate allegations against a licensed professional and recommend disciplinary actions including termination of employment. (Id.)

“The law creating these penalties has been in effect for less than four months, not enough time to assess whether the penalties will be effective in deterring this behavior. Yet AB 615 proposes new criminal penalties, which will place an additional burden on our already overtaxed criminal justice system, without giving the existing law time to work.”
8) Related Legislation:

a) AB 704 (Patterson) would require a person who has frequent contact with clients of an RTF to be subject to a criminal record review. AB 704 is pending in the Assembly Appropriations Committee.

b) AB 919 (Petrie-Norris) would establish an enforcement program within DHCS to focus on the oversight duties related to patient brokering activities conducted by an RTF or an AOD program licensed or certified by the DHCS. AB 919 is pending in the Assembly Health Committee.

c) SB 589 (Bates) would prohibit an operator of a licensed RTF, a certified AOD, a recovery residence, or a third party that provides any form of advertising or marketing services to any of those entities, from engaging in various acts, including making a false or misleading statement about the entity’s products, goods, services, or geographical locations. Authorizes the department to investigate allegations of a violation of these provisions and to sanctions available, as specified. SB 589 is pending in the Senate Health Committee.

9) Previous Legislation:

a) SB 1228 (Lara), Chapter 792, Statutes of 2018, prohibits a licensed alcohol and other drug abuse recovery and treatment facility, and certified counselors and licensed professionals, from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services, as specified.

b) AB 3162 (Friedman), Chapter 775, Statutes of 2018, requires new single licenses to operate a treatment facility to be provisional for one year, as specified and increases the civil penalties for license suspensions, revocations, and violations, as specified.

c) SB 902 (Bates), of 2017-2018 Legislative Session, would have required DHCS to conduct a state and federal level criminal history background check for an applicant before issuing a treatment facility license and, subsequent to initial licensure, for any manager, consultant, or employee of a facility, and other related provisions, as specified. SB 902 was held under submission in the Senate Appropriations Committee.

d) SB 992 (Hernandez), Chapter 784, Statutes of 2018, requires DHCS licensed and certified programs to disclose business relationships, as specified, and makes changes to current licensing law to improve client treatment and provide DHCS more oversight authority over licensed treatment facilities. Requires DHCS to develop a program, after stakeholder input, for the voluntary registration of recovery residences, as specified.

e) SB 1268 (Bradford), of 2017-2018 Legislative Session, would have prohibited certain persons, programs, or entities, including a licensed treatment facility and persons employed by, or working for, that program, from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services, as specified. SB 1268 was held under submission in the Senate Appropriations Committee.
f) SB 1290 (Bates), of 2017-2018 Legislative Session, would have made it unlawful for any licensee, operator, manager, consultant, employee, or patient of a licensed treatment facility, or any other person to, among other things, offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, or engage in any split-fee arrangement to induce the referral of a patient or patronage to or from an licensed treatment facility, or to solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe in return for referring a patient or patronage to or from a licensed treatment facility, and other provisions as specified. SB 1290 was held under submission in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Advocates for Responsible Treatment
County Behavioral Health Directors Association
Orange County Board of Supervisors
Orange County Sheriff-Coroner

Oppose

American Civil Liberties Union of California

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Requires the Department of Public Health (DPH) to collect and analyze data, in conjunction with the Department of Justice, on violent deaths and requires that information reported to the California Electronic Violent Death Reporting System (CEVDRS) shall list a decedent’s sexual orientation and gender identity. Specifically, this bill:

1) Declares that data about deaths by violent homicide and suicide involving members of the LGBTQ community is an effective tool for evaluating the magnitude and trends of homicide and suicide in the LGBTQ community.

2) Requires DPH to collect data from the existing California Electronic Death Reporting System on violent deaths by homicide or suicide that lists the victim’s sexual orientation and gender identity.

3) Requires, by January 1, 2020, that the Attorney General convene a stakeholder workgroup to develop data standards and categories related to tracking the sexual orientation and gender identity of persons who die violent deaths. States that the workgroup shall include individuals representing the DPH, including staff who administer CEVDRS, district attorneys, local law enforcement agencies, and advocates for the LGBTQ community.

4) Suggests the datafiles that should be collected regarding sexual orientation include: bisexual, heterosexual, homosexual, other, and unknown. States that data on gender identity may include the following subcategories: cisgender female or male, transgender female or male, and gender nonconforming.

5) Requires, by January 1, 2021, that the Attorney General direct local law enforcement agencies to report the sexual orientation and gender identity of a person who dies a violent death, as defined.

6) By July 1, 2022, and every July 1 thereafter, the Department of Justice shall update the OpenJustice Web portal with information obtained from local law enforcement agencies regarding sexual orientation and gender identity.

EXISTING LAW:

1) Requires each death to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within eight calendar days after death and prior to any disposition of the human remains. (Health & Saf. Code, § 102775.)
2) Requires the State Department of Health Services to implement an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information. (Health & Saf. Code, § 102778.)

3) Requires the coroner to state on the certificate of death the disease or condition directly leading to death, antecedent causes, other significant conditions contributing to death and other medical and health section data as may be required on the certificate, and the hour and day on which death occurred. (Health & Saf. Code, § 102860.)

4) Requires DPH, to the extent that funding is appropriated or available, to establish and maintain the CEVDRS, which collects data from death certificates, law enforcement reports, and coroner or medical examiner reports. Requires a summary and analysis of information collected in CEVDRS to be posted by DPH or an entity designated by DPH. (Health & Saf. Code, § 131230.)

5) Permits, to the extent funding is available, a local agency designated by DPH to analyze CEVDRS data to report data on the circumstances surrounding all violent deaths from investigative reports and, when available, laboratory toxicology reports that can be used by DPH to conduct public health surveillance and epidemiology. Permits this data to be aggregated and submitted to the CDC and NVDRS if provided individual identifying information is removed. (Health & Saf. Code, § 131230.)

6) Requires DOJ to annually interpret and present crime statistics, required to be reported by law enforcement and other agencies and information, to the Governor. (Pen. Code, §§ 13010, subd. (g), 13020.)

7) Requires DOJ to interpret and present statistics and information to the Legislature and to those in charge or concerned with of the apprehension, prosecution, and treatment of the criminals and delinquents. (Pen. Code, § 13012(b).)

8) Allows the Attorney General to issue special reports on crime statistics. (Pen. Code, § 13010, subd. (g).)

9) Requires DOJ to maintain a data set, updated annually, that contains the number of crimes reported, number of clearances and clearance rates in California as reported by individual law enforcement agencies for required-to-be-reported crimes. The data set shall be made available through a prominently displayed hypertext link on the Department’s Internet Web site or through the Department’s OpenJustice data portal. (Pen. Code, §§ 13012, 13013.)

10) Requires DOJ to perform the following duties concerning the investigation and prosecution of homicide cases:

   a) Collect information on all persons who are the victims of, and all persons who are charged with, homicide;

   b) Adopt and distribute as a written form or by electronic means to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms that will include information to be provided to the department; and
c) Compile, collate, index, and maintain an electronic file of the information regarding victims of and those charged with homicide into a report available to the public. (Pen. Code, §13014.)

11) Requires local law enforcement agencies to report to DOJ, in a manner prescribed by the Attorney General, any information that may be required relative to hate crimes so that the Department can report, on or before July 1 of each year, the Department’s analysis to the Legislature. (Pen. Code, §§ 422.55, 13023.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author’s Statement:** According to the author, “Mortality statistics are used to formulate public health and safety policies in order to improve quality of life and reduce preventable deaths. Comprehensive demographic data allows us to analyze disparities in mortality among demographic groups. For example, military veterans as a group are known to have a statistically higher rate of suicide. The United States Department of Veterans Affairs (VA) has used veteran death statistics to understand, bring awareness to, and inform plans to address veteran suicide. The VA regularly compiles reports on veteran suicide, and has used this information to develop and fine-tune suicide prevention programs. It is only possible for the VA to write these reports and draw conclusions about the effectiveness of their programs by collecting and analyzing raw data.

“While it is suspected that LGBTQ individuals are subject to higher rates of suicide and homicide, there is a gap in our understanding due to non-existent data. Unlike veteran status or ethnicity, the sexual orientation or transgender identity of deceased LGBTQ individuals are only captured in special circumstances. By gathering mortality data with regard to sexual orientation and transgender identity, we can begin to learn who the most vulnerable citizens are in the LGBTQ community and allocate resources that will reduce the amount of preventable deaths.”

2) **Background:** According to the author, “We are institutionally deprived of statistical data regarding violent death of LGBTQ individuals. California operates CalEVDRS, the California Electronic Violent Death Reporting System, which is a useful tool for compiling data which informs public health and safety policy. In CalEVDRS, Violent deaths are recorded with demographic information (and not identifying information) that allows researchers to analyze preventable mortality by demographic categories. Unfortunately, sexual orientation and transgender identity are not systematically captured on death certificates, in coroner reports or in most police reports, so there is very little reliable data for those who are seeking to understand violent death in the LGBTQ Community.”

3) **CalEVDRS:** CalEVDRS uses California’s Electronic Death Registration System (CA-EDRS), created in 2005 to allow counties to file death certificates online instead of mailing paper forms. Using funds from The David and Lucile Packard Foundation, DPH created a violent death supplement to death certificates in CA-EDRS, which captures information from coroners on violent death. Law enforcement data for homicides are linked using Supplementary Homicide Reports from the California Department of Justice.
This bill would require additional data—a decedent’s sexual orientation and gender identity—be reported through CalEVDQRS which will create the data to be analyzed by the working group established by this bill.

4) **Questions Raised by this Bill:** This bill poses implementation questions, which will be addressed by the workgroup established by this bill to determine best practices for collecting data on gender identity and sexual orientation.

One outstanding issue is how to establish the appropriate procedure for a reporting law enforcement agency to determine and report a person’s sexual orientation and gender identity at the time of death, recognizing that sexual orientation and gender identity may be fluid throughout a person’s life.

Existing provisions of law provide guidance for a person completing a death certificate in properly determining a person’s sex. The information may be collected from one of multiple sources, including a driver’s license, a social security record, a court order approving a name or gender change, a passport, an advanced health care directive, or proof of clinical treatment for gender transition. If none of these documents are available, the decedent’s family member or person in control of the disposition of the decedent’s remains may report the gender; the process also accounts for disputes among individuals with equal rights to the person’s remains regarding a person’s proper gender assignment.

This bill uses the terms cisgender and gender nonconforming but does not define the terms. The author may want to consider defining these terms as they are not common parlance.

5) **Argument in Support:** According to the *California Teachers Association*: “Mortality statistics are used to formulate public health and safety policies in order to improve quality of life and reduce preventable deaths. Comprehensive demographic data allows us to analyze disparities in mortality among demographic groups. Although LGBTQ+ individuals are subject to higher rate of suicide and homicide, there is a gap in our understanding due to insufficient data. Gathering comprehensive mortality data with regards to sexual orientation and transgender identity, we can begin to learn who the most valuable citizens are in the LGBTQ+ community and allocate resources that will reduce the amount of preventable deaths.

“The two major sources of demographic information for violent death report or death certificates and death investigator reports. Thus, if sexual orientation and gender identity information were reported on the sources routinely, there would be more data available for capture data on the violent deaths involving the LGBTQ+ community. A 2018 article published in the *American Journal of Public Health* entitled “Collecting Sexual Orientation and Gender Identity Information of Death,” reports on a number of methodologies that have been deployed in different regions to enable death investigators to be able to collect this information. This article reports that during violent deaths, the death investigators are trying to elicit sensitive information and sometimes conflicting information about the victim, thus they are likely the best position to individuals to collect information about sexual orientation and gender identity.

“Although, the data is collected if available, there is currently no systemic or routine practice for collecting information about an individual’s sexual orientation or gender identity at the
time of death. As a result, the mortality data for LGBT individuals is largely unknown. Thus, it is difficult to understand potential problem specifically related to the health and Public Safety of these communities. Violent deaths and suicides are likely elevated in LGBT communities, but without more comprehensive and reliable population data, prevention efforts can fall short. CTA believes that appropriate agencies should use their authority to prevent abusive behavior and criminal activities in society and deplores all incidents of hate crimes.”

6) Prior Legislation:

a) AB 242 (Arambula), Chapter 222, Statutes of 2017, requires that veteran status is recorded on death certificates and that the DPH publishes a yearly report on veteran suicide.

b) SB 877 (Pan), Chapter 712, Statutes of 2016, established the CVDRS which is used to track and analyze the context of mortality by violent deaths to the extent that funding is available.

c) AB 1577 (Atkins), Chapter 631, Statutes of 2014, requires that the person completing a death certificate list the sex that reflects an individual’s gender identity at the time of death.

REGISTERED SUPPORT / OPPOSITION:

Equality California (Co-Sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Teachers Association
Desert Aids Project
The Trevor Project

Opposition

None

Analysis Prepared by:  Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Requires the Board of State and Community Corrections (BSCC) to contract with a research entity to conduct a study on the efficacy and impacts on the use of pepper spray in juvenile facilities. Specifically, this bill:

1) Requires the BSCC to contract with a research entity to conduct a study on the efficacy and impacts on the use of pepper spray in juvenile halls, and other juvenile detention facilities.

2) Requires the study to examine, at a minimum, the following:
   a) The impacts of pepper spray on youth in county juvenile facilities in California;
   b) The impacts of pepper spray on institutional staff in county juvenile facilities in California;
   c) The use of pepper spray in mitigating physical altercations between one or more youth and between one or more youth and institutional staff;
   d) Best practices for training on the use of pepper spray; and,
   e) Best practices on de-escalation.

3) States that the study must be submitted to the BSCC, and the Assembly and Senate Public Safety Committees by January 1, 2022.

4) Requires the research entity that will conduct the study to meet the following requirements:
   a) Has the ability to work in a national scope;
   b) Has a research focus on institutional care for youth;
   c) Is nonpartisan; and,
   d) Has not previously taken a policy position on, or made recommendations regarding, the use of pepper spray in juvenile facilities.

EXISTING LAW:

1) Provides that the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment. (Welf. & Inst. Code, § 851.)
2) Provides that in order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that those wards may be kept under direct supervision of the court, and in order to more advantageously apply the salutary effect of a safe and supportive home and family environment upon them, and also in order to secure a better classification and segregation of those wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self-discipline in those wards, juvenile ranches or camps may be established, as provided in this article. (Welf. & Inst. Code, § 880.)

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

4) Specifies that at a minimum, each facility shall develop policy statements which:

   a) Define the term "force," and address the escalation and appropriate level of force, while emphasizing the need to avoid the use of force whenever possible and using only that force necessary to ensure the safety of youth, staff and others;

   b) Describe the requirements for staff to report the use of force, and to take affirmative action to stop the inappropriate use of force;

   c) Define the role, notification, and follow-up procedures of medical and mental health staff concerning the use of force; and,

   d) Define the training which shall be provided and required for the use of force, which shall include: known medical conditions that would contraindicate certain types of force; acceptable chemical agents; methods of application; signs or symptoms that should result in immediate referral to medical or mental health staff; requirements of the decontamination of chemical agents, if such agents are utilized; and appropriate response if the current use of force is ineffective. (Code of Regulations, Title 15, § 1357, subd. (a)(1)-(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "The use of Oleoresin Capsicum (OC) spray has been a tool in juvenile institutional settings in order to de-escalate violent altercations between youth and help protect the safety of youth and staff in the event of assaults. In California, it is used in some jurisdictions while not used in others, decided as a matter of local policy and practice.

   "Many officers can point to incidences where the use of the spray has successfully deescalated violent altercations between youth and ultimately helped keep both youth and staff safer during the incident by preventing the need for officers to physically intervene in the person-to-person violence."
“While the issue of OC has been studied in some capacities, the issue has never been systematically studied relative to juvenile facilities to determine, through data and research, the effectiveness of OC spray as a harm reduction agent in juvenile institutions as well as impacts to youth and staff. This bill seeks to establish a comprehensive, independent study to look at the use of OC spray in county juvenile institutions, impacts on youth, impacts on staff, best practices on decontamination and training, and an analysis of impacts of laws in other states to provide important information for policy makers in determining what if any changes are needed to the use of OC.

“As an industry and profession that values and relies upon research-based approaches to public safety and data driven decision making, we strongly believe this is an issue that requires an in-depth study in order to inform decision makers so that sound policies and determinations can be made about the use of OC spray.”

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

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

3) Use of Pepper Spray in Juvenile Facilities: While pepper spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use is not as common in juvenile correctional agencies. There is concern about the health hazards of pepper spray and concern about the negative impact on staff-youth relationships, the key to successful juvenile rehabilitative programming. Very few states authorize its use and in the states that allow its use in policy, most prohibit the use except as a last resort and with many conditions and few facilities put it into practice. Thirty-five states no longer allow pepper spray in juvenile detention halls. Only California, Illinois, Indiana, Minnesota, South Carolina and Texas allow employees to routinely carry canisters. The remaining states allow its use in some capacity, but employees do not routinely carry it. (http://sanfrancisco.cbslocal.com/2018/02/07/california-considers-barring-pepper-spray-youth-detention-facilities/)

The Council of Juvenile Corrective Administrators (Council) explored the use of pepper spray in juvenile facilities in an issue brief published in 2011. The Council concluded that overreliance on restraints, whether they are chemical, physical, mechanical or other, compromised relationships between staff and youths, one of the critical features of safe facilities. (http://cjca.net/attachments/article/172/CJCA_Issue_Brief_OC_Spray.pdf) The issue brief examined the policies of State’s regarding use of pepper spray in juvenile facilities and reviewed studies on the use of pepper spray. The Council noted that while few academic studies have focused specifically on pepper spray use in juvenile settings, recent research on other types of restraint use (physical and mechanical) in juvenile confinement settings shows
that applying restraints disrupts correctional climates by creating anger and feelings of unfair use of authority, in addition to negatively impacting staff. One recent study found that restraints are often applied as punishment rather than in response to immediate threats of violence. Youth in juvenile facilities have described incidents of restraint as causing physical and emotional pain. Another study found that facilities with high numbers of restraint incidents are more likely to have higher rates of safety problems, including youth and staff injury, suicidal behavior, youths injured by staff and fear among youths. (Id.)

4) **Argument in Support:** According to the *Chief Probation Officers of California*, the sponsors of this bill, “The use of Oleoresin Capsicum (OC) spray has been a tool in juvenile institutional settings in order to de-escalate violent altercations between youth and help protect the safety of youth and staff in the event of assaults. In California, it is used in some jurisdictions while not used in others, decided as a matter of local policy and practice.

“Many officers can point to incidences where the use of the spray has successfully deescalated violent altercations between youth and ultimately helped keep both youth and staff safer during the incident by preventing the need for officers to physically intervene in the person-to-person violence.

“While the issue of OC has been studied in some capacities, the issue has never been systematically studied relative to California juvenile facilities to determine, through data and research, the effectiveness of OC spray as a harm reduction agent in juvenile institutions as well as impacts to youth and staff.

“This bill seeks to establish a comprehensive, independent study to look at the use of OC spray in county juvenile institutions, impacts on youth, impacts on staff, best practices on decontamination and training, and an analysis of impacts of laws in other states to provide important information for policy makers in determining what, if any, changes are needed to the use of OC.

“As an industry and profession that values and relies upon research-based approaches to public safety and data driven decision making, we strongly believe this is an issue that requires an in-depth study in order to inform decision makers so that sound policies and determinations can be made about the use of OC spray.”

5) **Argument in Opposition:** According to the *Pacific Juvenile Defender Center*, “Currently, there are no requirements that juvenile facilities collect or publish data on whether they use pepper spray, how often they use it, or under what circumstances. The only way for the public to learn about this is to do a formal Public Records Act request. Our experience has been that when such data comes to light, it often reveals troubling practices such as pepper spray being used on youth who are suicidal or in mental health crises, who simply fail to follow verbal instructions, youth with underlying medical issues that contraindicate the use of chemical agents, or youth who could easily have been handled in a different, less painful way.

“Because this information is critically important to policy development and corrective action, we strongly prefer A.B. 1321, which calls for each county to submit data on a series of elements of pepper spray use in their facility on a quarterly basis. In contrast, A.B. 696 calls only generally for a study of the impacts of pepper spray on youth and institutional staff, and
the use of pepper spray in mitigating physical altercations. The A.B. 696 study is not going to provide pinpointed data from which counties and interested stakeholders can see what is happening with pepper spray and formulate action plans where needed.

"Further, A.B. 696 lacks any follow up action in relation to the study. In contrast, A.B. 1321 requires, in addition to the pinpointed data, that the BSCC conduct inspections of juvenile facilities in the top quartile of chemical agent use, and provide training and technical assistance regarding de-escalation techniques and alternatives to the use of chemical agents.

"The requirements set forth in A.B. 696 with respect to the entity who will do the study are puzzling. The entity must be one that is nonpartisan, and has not previously taken a policy position on, or made recommendations regarding, the use of pepper spray in juvenile facilities. It may be difficult to find such an entity because even the Council of Juvenile Correctional Administrators – an organization of people who run juvenile facilities – has come out against pepper spray use.

"In any event, we have difficulty understanding why the Legislative Analyst’s Office, which is the entity designated in A.B. 1321 to do the study, is not a suitable entity. They are neutral, and regularly do just the sort of analysis called for in the studies envisioned in both bills. A.B. 1321 is also more balanced in calling for an analysis of the practices of facilities that do not use pepper spray, input from youth and other stakeholders, best practices from jurisdictions that have eliminated the use of pepper spray, and recommendations for elimination of its use. We strongly support the scenario envisioned by A.B. 1321 as providing a more thorough and balanced report.”

6) Related Legislation: AB 1321 (Gipson), would require the custodian of a juvenile facility to report specific information regarding the use of chemical agents to the Board of State and Community Corrections (BSCC), and requires the Legislative Analyst’s Office (LAO) to analyze the data collected and report to the Legislature. AB 1321 is pending in the Assembly Appropriations Committee.

7) Prior Legislation: AB 2010 (Chau), of the 2017-18 Legislative Session, would have prohibited an employee of a juvenile facility, as defined, from possessing and using any chemical agent, such as pepper spray, in a juvenile facility, with limited exceptions. AB 2010 was held in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California (Sponsor)

Opposition

Bend the Arc: Jewish Action
California Public Defenders Association
Children's Defense Fund-California
Ella Baker Center for Human Rights
Juvenile Justice Commission of Santa Clara County
Legal Services for Children
Pacific Juvenile Defender Center
The W. Haywood Burns Institute
Youth Law Center

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Clarifies that existing law prohibits a person, business or government agency including a law enforcement agency, from hacking or otherwise accessing without authorization, computer data and computer systems in a motor vehicle.

EXISTING STATE LAW:

1) Prohibits a person from willfully injuring or tampering with any vehicle or the contents thereof or breaking or removing any part of a vehicle without the consent of the owner. (Veh. Code, § 10852.)

2) Punishes the following offenses as a felony, by a fine not exceeding $10,000, by 16 months, two years or three years, or by both fine and imprisonment, or as a misdemeanor by a fine not exceeding $5,000, by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment: (Pen. Code, § 502, subd. (d)(1).)

   a) Any person who knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either devise or execute any scheme or artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data; (Pen. Code, § 502, subd. (c)(1).)

   b) Any person who knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network; (Pen. Code, § 502, subd. (c)(2).)

   c) Any person who knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network; (Pen. Code, § 502, subd. (c)(4).)

   d) Any person who knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network; (Pen. Code, § 502, subd. (c)(5).)

   e) Any person who knowingly and without permission disrupts or causes the disruption of government computer services or denies or causes the denial of government computer services to an authorized user of a government computer, computer system, or computer network.
network; (Pen. Code, § 502, subd. (c)(10).)

f) Any person who knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a public safety infrastructure computer system computer, computer system, or computer network; and, (Pen. Code, § 502, subd. (c)(11).)

g) Any person who knowingly and without permission disrupts or causes the disruption of public safety infrastructure computer system computer services or denies or causes the denial of computer services to an authorized user of a public safety infrastructure computer system computer, computer system, or computer network; (Pen. Code, § 502, subd. (c)(12).)

3) Punishes any person who knowingly and without permission uses or causes to be used computer services as follows: (Pen Code, § 502(c)(3).)

a) For the first violation that does not result in injury, and where the value of the computer services used does not exceed nine hundred fifty dollars ($950), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and, (Pen. Code, § 502, subd. (d)(2).)

b) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds nine hundred fifty dollars ($950), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(2).)

4) Punishes any person who knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network as follows: (Pen. Code, § 502, subd. (c)(6).)

a) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000);

b) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and,

c) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(3).)
5) Punishes any person who knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network as follows: (Pen. Code, § 502, subd. (c)(7).)

a) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000);

b) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and,

c) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(3).)

6) Punishes any person who knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or public safety infrastructure computer system computer, computer system, or computer network as follows: (Pen. Code, § 502, subd. (c)(13).)

a) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000);

b) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and,

c) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(3).)

7) Punishes any person who knowingly introduces any computer contaminant into any computer, computer system, or computer network as follows: (Pen. Code, § 502, subd. (c)(8).)

a) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and,

b) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not
exceeding one year, or by imprisonment, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(4).)

8) Punishes any person who knowingly introduces any computer contaminant into any public safety infrastructure computer system computer, computer system, or computer network as follows: (Pen. Code, § 502, subd. (c)(14).)

a) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment; and,

b) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year, or by imprisonment, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(4).)

9) Punishes any person who knowingly and without permission uses the internet domain name or profile of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages or posts and thereby damages or causes damage to a computer, computer data, computer system, or computer network. (Pen. Code, § 502(c)(9).)

a) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding one thousand dollars ($1,000); and,

b) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 502, subd. (d)(5).)

10) Defines the following terms as follows:

a) “Access” means to gain entry to, instruct, cause input to, cause output from, cause data processing with, or communicate with, the logical, arithmetical, or memory function resources of a computer, computer system, or computer network. (Pen. Code, § 502, subd. (b)(1).)

b) “Computer network” means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals, remote systems, mobile devices, and printers connected by telecommunication facilities. (Pen. Code, § 502, subd. (b)(2).)

c) “Computer program or software” means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions. (Pen. Code, § 502, subd. (b)(3).)

d) “Computer services” includes, but is not limited to, computer time, data processing, or storage functions, internet services, electronic mail services, electronic message services, or other uses of a computer, computer system, or computer network. (Pen. Code, § 502,
subd. (b)(4).)

e) “Computer system” means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control. (Pen. Code, § 502, subd. (b)(5).)

f) “Government computer system” means any computer system, or part thereof, that is owned, operated, or used by any federal, state, or local governmental entity. (Pen. Code, § 502, subd. (b)(6).)

g) “Public safety infrastructure computer system” means any computer system, or part thereof, that is necessary for the health and safety of the public including computer systems owned, operated, or used by drinking water and wastewater treatment facilities, hospitals, emergency service providers, telecommunication companies, and gas and electric utility companies. (Pen. Code, § 502, subd. (b)(7).)

h) “Data” means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device. (Pen. Code, § 502, subd. (b)(8).)

i) “Supporting documentation” includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software. (Pen. Code, § 502, subd. (b)(9).)

j) “Injury” means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access, or the denial of access to legitimate users of a computer system, network, or program. (Pen. Code, § 502, subd. (b)(10).)

k) “Victim expenditure” means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access. (Pen. Code, § 502, subd. (b)(11).)

l) “Computer contaminant” means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network. (Pen. Code, §
m) “Internet domain name” means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy. (Pen. Code, § 502, subd. (b)(13).)

n) “Electronic mail” means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. (Pen. Code, § 502, subd. (b)(14).)

o) “Profile” means either of the following:

i) A configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer; or,

ii) An internet website user's personal page or section of a page that is made up of data, in text or graphical form, that displays significant, unique, or identifying information, including, but not limited to, listing acquaintances, interests, associations, activities, or personal statements. (Pen. Code, § 502, subd. (b)(15).)

EXISTING FEDERAL LAW

1) Makes it a crime to knowingly access a computer without authorization or exceeding authorized access. (18 U.S.C. § 1030.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “As automotive technology has progressed, the industry has made great strides in mobilizing and integrating advanced computer hardware into even the most basic automobiles. This has resulted in cleaner running, more efficient, more reliable, and perhaps most noticeably, more comfortable vehicles, to be manufactured and sold to consumers. These advancements, however, have opened up whole new avenues of risk and risk assessment. The hardware technologies required for these advancements are far more akin to the capabilities found in a high-powered home PC or smart phone than any vehicle most of people are familiar with, and bring with them all the same dangers for exploitation. A bad actor may access a vehicle’s systems to download a record of the vehicle’s location. They can also utilize the vehicle’s onboard microphone to spy on unsuspecting occupants, or they may utilize the vehicle’s wireless surface areas to simply steal the vehicle itself. AB 814 explicitly makes the unauthorized access of a vehicle’s computer system, data system, or software, located within the vehicle, illegal under California Law.”
2) **Background:** According to the author, “Technologies that were once only found in DARPA\(^1\) laboratories or in science fiction are now standard features on a host of cars. Advanced collision avoidance systems that use complex algorithms to interpret sonar, Lidor, and optical inputs to avoid accidents, maintain speed, and perhaps one day take over for human drivers, are ‘standard equipment’ on large numbers of cars and required on new vehicles in more than 40 countries by 2022.\(^2\) Higher-end models allow a user to turn their car into a Wi-Fi hotspot, utilize sensors to track tire pressure, and relay that information wirelessly to a vehicle’s engine control unit. Manufactures have even made the FM radio ‘smart’ by allowing for limited data transmission using FM band radios.

“Like all things however, these advancements have opened up whole new avenues of risk and risk assessment. The hardware technologies required for these advancements are far more akin to the capabilities found in a high-powered home PC or smart phone than any vehicle most of people are familiar with, and bring with them all the same dangers for exploitation.

“A bad actor may access a vehicle’s systems to download a record of the vehicle’s location. They can also utilize the vehicle’s onboard microphone to spy on unsuspecting occupants, or they may utilize the vehicle’s wireless surface areas to simply steal the vehicle itself.”\(^3\)

The public has been on notice of this problem for many years now. In 2015, the *Los Angeles Times* reported, “Just about any new car can be hacked — some even driven by remote control — as automakers depend more on software and wireless connections. Vehicle vulnerability may only grow as cars become their own wireless hot spots with the advent of automated braking and steering systems, experts warn.”\(^4\) In 2016, the *Associated Press* reported on the vulnerability of vehicles key systems being computerized reporting that “[a] group of computer security experts say they figured out how to hack the keyless entry systems used on millions of cars, meaning that thieves could, in theory, break in and steal items without leaving a broken window.”\(^5\)

A recent article by the New York Times reports an instance of car hacking from 2010, where a former employee of the Texas Auto Center used a co-worker’s account to log into company software used to repossess cars and hacked the software of over 100 cars, causing the vehicles to honk continuously and preventing them from starting.\(^6\) The *Times* also reports on more pressing concerns: “Digital threats to self-driving cars, according to a 2018 University of Michigan report, ‘include hackers who would try to take control over or shut down a

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\(^1\) Defense Advanced Research Projects Agency - DARPA
\(^4\) By Chris Valasek & Charlie Miller
vehicle, criminals who could try to ransom a vehicle or its passengers and thieves who would direct a self-driving car to relocate itself to the local chop-shop.’ The average car has over 150 million lines of computer code...."

The most effective solution to the risk of cars being hacked is for automakers to ensure that software and computer systems in vehicles are safe from hacking. Notwithstanding that fact, it is and should be unlawful to hack a person’s vehicle.

3) **Existing Law Prohibits Hacking Vehicles:** Both federal and state law currently prohibit the hacking of any computer system, which includes a computer system located in a car vehicle. The Computer Fraud and Abuse Act, passed in 1984, makes unauthorized access to a computer system a crime. State law contains similar, more explicit prohibitions. This bill would specifically articulate that a vehicle computer system is encompassed by state laws prohibiting the unauthorized access of a computer system.

4) **Related Legislation:**

   a) **AB 904 (Chau)** would prohibit a court from granting a search warrant to conduct real-time surveillance of a person through an electronic device possessed by that person, except in extraordinary circumstances. AB 904 is pending before this committee.

   b) **AB 1638 (Olberolte)** would expands authorization for the issuance of a search warrant to obtain information from a motor vehicle’s software that “tends to show the commission of a public offense involving a motor vehicle, resulting in death or serious bodily injury.” AB 1638 is pending before the Assembly Privacy and Consumer Protection Committee.

5) **Prior Legislation:**

   a) **SB 30 (Gaines),** of the 2015-2016 Legislative Session, would have expanded the methods by which carjacking can be accomplished to include remotely commandeering the vehicle through access of one or more of the vehicle’s operating systems, as defined. This bill was never set for hearing in the Senate Public Safety Committee.

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California District Attorneys Association
Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Requires the Attorney General (AG) to convene a task force, as specified, to study the use of force by law enforcement and to develop recommendations, including a model written policy. Specifically, this bill:

1) Requires the AG to convene a task force within the Civil Rights Enforcement Section of the Department of Justice (DOJ) to study officer-involved shootings throughout the state and to develop policy recommendations and a model written policy or general order for the use of deadly force by law enforcement officers, with the goal of promulgating best practices and reducing the number of deadly force incidents that are unjustified, unnecessary, or preventable.

2) States that the task force shall, by no later than July 1, 2021, prepare a report detailing its findings and recommendations, including a model written policy or general order that may be adopted for use by law enforcement agencies.

3) Requires, commencing on July 1, 2021, the AG shall operate a program within the Civil Rights Enforcement Section of the DOJ to review the use of deadly force policies of any law enforcement agency that requests a review.

4) Provides that the program shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to this section, based on those policies identified as recommended best practices in the task force report developed, as specified.

5) Defines a “law enforcement agency” to mean “a municipal police department, a county sheriff’s department, the Department of the California Highway Patrol, or the University of California or California State University police departments.”

6) Contains a sunset date of July 1, 2024.

EXISTING LAW:

1) Specifies that subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. (Cal. Const., Art. 5, § 13.)

2) States that it shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., Art. 5, § 13.)

3) Provides that the Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all
matters pertaining to the duties of their respective offices, and may require any of said
officers to make reports concerning the investigation, detection, prosecution, and punishment
of crime in their perspective jurisdictions as to the Attorney General may seem advisable.
(Cal. Const., Art. 5, § 13.)

4) States that whenever in the opinion of the Attorney General any law of the State is not being
adequately enforced in any county, it shall be the duty of the Attorney General to prosecute
any violation of law of which the superior court shall have jurisdiction, and in such cases the
Attorney General shall have all the powers of a district attorney. When required by the
public interest or directed by the Governor, the Attorney General shall assist any district
attorney in the discharge of the duties of that office. (Cal. Const., Art. 5, § 13.)

5) Specifies that the Attorney General has direct supervision over the district attorneys of the
several counties of the State and may require of them written reports as to the condition of
public business entrusted to their charge. (Gov. Code, § 12550.)

6) Provides that when the Attorney General deems it advisable or necessary in the public
interest, or when directed to do so by the Governor, he shall assist any district attorney in the
discharge of his duties, and may, where he deems it necessary, take full charge of any
investigation or prosecution of violations of law of which the superior court has jurisdiction.
In this respect he has all the powers of a district attorney, including the power to issue or
cause to be issued subpoenas or other process. (Gov. Code, § 12550.)

7) Provides that any peace officer who has reasonable cause to believe that the person to be
arrested has committed a public offense may use reasonable force to effect the arrest, to
prevent escape or to overcome resistance. (Pen. Code, § 835a)

8) Specifies that a peace officer who makes or attempts to make an arrest need not retreat or
desist from his efforts by reason of the resistance or threatened resistance of the person being
arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the
use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.
(Pen. Code, § 835a)

9) Homicide is justifiable when committed by public officers and those acting by their
command in their aid and assistance, either—

a) In obedience to any judgment of a competent court; or,

b) When necessarily committed in overcoming actual resistance to the execution of some
legal process, or in the discharge of any other legal duty; or,

c) When necessarily committed in retaking felons who have been rescued or have escaped,
or when necessarily committed in arresting persons charged with felony, and who are
fleeing from justice or resisting such arrest. (Pen. Code, § 196.)

10) Requires each department or agency in this state that employs peace officers to establish a
procedure to investigate complaints by members of the public against the personnel of these
departments or agencies, and shall make a written description of the procedure available to
the public. (Pen. Code, § 832.5, subd. (a)(1).)

11) Allows each department or agency that employs custodial officers, to establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with other provisions, as specified. (Pen. Code, § 832.5, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 855 would reduce the number of officer-involved shootings and build back trust between law enforcement and citizens by providing a review by the DOJ of use of force policies and take action to make real change in how law enforcement operates. It will reduce unnecessary deaths by promoting alternatives and de-escalation."

2) Argument in Support: According to California Attorneys for Criminal Justice, “AB 855 would require the Attorney General to convene a task force to study officer-involved shootings and develop policy recommendations for the use of deadly force by law enforcement. This bill is necessary to develop statewide standards for the use of deadly force and will ensure there is a uniform understanding of what is expected of peace officers. AB 855 is an important step forward to continue the relationship between peace officers and the public.”

3) Argument in Opposition: The Riverside Sheriffs' Association states, “No need for this bill. The Attorney General currently has the authority to convene a task force to study the use of deadly force and develop recommendations and a model use of deadly force written policy for law enforcement agencies.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice

Opposition

Riverside Sheriffs’ Association

Analysis Prepared by: Gregory Pagan / 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 880 (Obernolte) – As Amended  April 11, 2019

SUMMARY: Deletes erroneous cross-references in the list of crimes disqualifying individuals from operating as Transportation Network Company (TNC) drivers.

EXISTING LAW:

1) Establishes the “Passenger Charter-Party Carriers Act,” which authorizes the California Public Utilities Commission (CPUC) to supervise and regulate every charter-party carrier of passengers (CPC) in the State and may do all things, necessary and convenient in the exercise of such power and jurisdiction, including issuing permits or certificates, investigating complaints against carriers, and cancel, revoke, or suspend permits and certificates for specific violations. (Pub. Util. Code, § 5381, et seq.)

2) Defines “Charter-party carrier of passengers” to mean every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. (Pub. Util. Code, § 5360.)

3) Defines a “Transportation network company” to mean an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle. (Pub. Util. Code, § 5431)

4) Requires a TNC to conduct, or have a third party conduct, a local and national criminal background check for each participating driver, as specified. (Pub. Util. Code, § 5445.2, subd. (a)(1).)

5) Prohibits a TNC from contracting with, employing, or retaining a driver if he or she meets either of the following criteria:
   a) Is currently registered on the United States Department of Justice National Sex Offender Public Web site; or
   b) Has been convicted of specified violent felonies or acts of terrorism and offenses related to weapons of mass destruction and biological agents. (Pub. Util. Code, § 5445.2, subd. (a)(2).)

6) Prohibits a TNC from contracting with, employing, or retaining a driver if he or she has been convicted of any of the following offenses within the previous seven years:
a) Misdemeanor assault or battery;

b) A domestic violence offense;

c) Driving under the influence of alcohol or drugs; or,

d) Other specified felony violations. (Pub. Util. Code, § 5445.2, subd. (a)(3).)

7) Subject a TNC that violates, or fails to comply with, the specified requirements, to a penalty of not less than $1,000 nor more than $5,000 for each offense. (Pub. Util. Code, § 5445.2, subd. (b).)

8) Authorizes the Department of Justice (DOJ) to furnish state summary criminal history information to specified entities, if needed in the course of their duties and, when specifically authorized, federal-level criminal history information, upon showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, as specified. (Pen. Code, § 11105, subs. (b) & (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “In 2016 with the passage of AB 1289 (Cooper) Chapter 740, Statutes of 2016, the Legislature imposed a requirement in statute that TNCs conduct background checks on drivers, and identified a list of offenses that disqualify individuals from operating as a TNC driver. Upon review, it was found that this list included some erroneous cross references.”

2) **Need For this Bill:** In 2016, the Legislature imposed a requirement in statute that TNCs conduct background checks on drivers, and identified a list of offenses that disqualify individuals from operating as a TNC driver. (See Pub. Util. Code, § 5445.2.) This list included some erroneous cross references, including a reference to Penal Code section 18500, which is not a crime.

3) **Prior Legislation:** AB 1289 (Cooper), Chapter 740, Statutes of 2016, requires TNCs to conduct background checks on drivers and disqualifies persons from driving if convicted of specified criminal offenses.

REGISTERED SUPPORT / OPPOSITION:

**Support**

None

**Opposition**

None
Date of Hearing: April 23, 2019
Counsel: Nikki Moore

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

AB 928 (Grayson) – As Amended March 26, 2019

SUMMARY: Creates an exemption from the warrant requirement imposed by the California Electronic Communications Privacy Act (CalECPA), when a law enforcement officer seeks subscriber information about a person suspected of engaging in the exploitation or attempted exploitation of a child, and instead permits a law enforcement officer to access subscriber information through a subpoena. Specifically, this bill:

1) Permits, notwithstanding CalECPA, a peace officer investigating the sexual exploitation of children, upon reasonable cause to believe that an internet service account has been used in the exploitation or attempted exploitation of a child, issue in writing and cause to be served an administrative subpoena requiring the production of the following information relating to that internet service account:

   a) The name of the account holder;

   b) The billing and service address of the account holder;

   c) Any telephone number, email address, or similar contact information provided by the subscriber to the service provider to establish or maintain an account;

   d) Any internet user name associated with the account;

   e) Any internet protocol address associated with the account;

   f) The method of access to the internet;

   g) The automatic number identification records if access is by modem; and,

   h) The source of payment for the service, including a credit card or bank account number.

2) States that an internet service provider shall not disclose any other electronic communication information without a warrant, including the following information:

   a) Any in-transit electronic communication;

   b) Account memberships related to internet groups, newsgroups, mailing lists, or information related to specific areas of interest;

   c) Account passwords;
d) Account content including, but not limited to, electronic mail in any form, address books or contact lists, financial records, or internet proxy content history; and,

e) Files or other digital documents stored within the account or pursuant to use of the account.

3) At any time before the return date specified in the administrative subpoena, the service provider may petition for an order modifying or setting aside the subpoena, or prohibiting the disclosure of the information, as specified, in the superior court for the county in which the service provider summoned resides or does business.

4) An administrative subpoena issued pursuant to this section shall describe the information required to be produced and shall prescribe a return date within a reasonable period of time in which the information can be assembled and made available.

5) If a case or proceeding does not arise from the production of information pursuant to this section within a reasonable time after that information is produced, the records shall either be destroyed or returned to the service provider.

6) An administrative subpoena issued pursuant to this section may be served by personal delivery upon any officer, director, custodian of records, or agent or employee authorized by the service provider to accept service of a subpoena. If the service provider is a natural person, service may be made upon that person.

EXISTING LAW:

1) Enacts CalECPA, which generally prohibits a government entity from compelling the production of or access to electronic communication information or electronic device information without a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to specified conditions, except for emergency situations. (Pen. Code, §§ 1546-1546.4.)

2) Provides that a government entity may access electronic device information by means of a physical interaction or electronic communication device only: pursuant to a warrant; wiretap; with authorization of the possessor of the device; with consent of the owner of the device; in an emergency; if seized from an inmate. (Pen. Code, § 1546.1, subd. (b).)

3) Specifies the conditions under which a government entity may access electronic device information by means of physical interaction or electronic communication with the device, such as pursuant to a search warrant, wiretap order, or consent of the owner of the device. (Pen. Code, § 1546.1, subd. (c).)

4) Allows a service provider to voluntarily disclose electronic communication information or subscriber information, when the disclosure is not otherwise prohibited under state or federal law. (Pen. Code, § 1546.1, subd. (f).)

5) Provides that if a government entity receives electronic communication voluntarily it shall destroy that information within 90 days except under specified circumstances. (Pen. Code, § 1546.1, subd. (g).)
6) Provides for notice to the target of a warrant or an emergency obtaining electronic information to be provided either contemporaneously with the service of the warrant or within three days in an emergency situation. (Pen. Code, § 1546.2, subd. (a).)

7) Allows a person in a trial, hearing, or proceeding to move to suppress any electronic information obtained or retained in violation of the Fourth Amendment or the CalECPA. (Pen. Code, § 1546.4, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Child sex trafficking and child pornography don't just happen in a foreign country. They happen right in our backyard. The California Department of Social Services identified 1,911 instances of child sex trafficking that happened in California between July 1, 2015-July 1, 2016. 25 million images of child pornography are reviewed by the National Center for Missing and Exploited Children annually. In addition, 50-85% of sex traffickers and consumers of child pornography physically abuse a child in their lives. This conduct is unacceptable, and there's something we can do to help stop such abuses.

"AB 928 will ensure law enforcement can use the same legal tools other states and the United States Department of Justice use when it comes to catching child sex traffickers and child pornography viewers—without sacrificing an individual’s Fourth Amendment or due process rights. In doing so, AB 928 protects our children and ensures a safer, more just community for all Californians."

2) Background: According to the Author, "Right now, law enforcement issues a first search warrant to require an ISP to provide basic account information from the account associated with the IP address. Law enforcement issues a second search warrant to search the particular person or content information at issue, such as files on a computer... Today, internet users can easily change their IP addresses. In the past, law enforcement has reported that account information linked to a NCMEC-identified IP address has changed within a few hours of law enforcement receiving a CyberTip. If the account information linked to an IP address changes, law enforcement must engage in an additional review process to determine whether the change was related to the potential consumer of child pornography or sex trafficking. Additionally, finding a judge knowledgeable in this area and available to sign a warrant also creates unnecessary delay. Failure to identify proper account information in a timely manner increases the likelihood that those engaging in child pornography and child sex trafficking can continue harming children.

"This bill will allow local law enforcement officers to use an administrative subpoena to gain basic account information attached to an already-identified IP address, rather than a traditional warrant. Law enforcement will then use this account information to apply for a traditional warrant to search the person or item(s) in question. This bill will increase protection for our children while maintaining individuals’ rights."

3) Constitutional Protections Against Unreasonable Searches and Seizures: The Fourth Amendment was borne from the concern that government officials would arbitrarily and
unreasonably rummage through the homes of its citizens; it acts as a shield to protect the privacy and security of individuals against the arbitrary invasion of governmental officials. When society deems a place or thing to be covered by a reasonable expectation of privacy, a warrant supported by probable cause is required to search or inspect that place or thing. No single rubric definitively resolves which expectations of privacy are entitled to protection under the Fourth Amendment, but a fundamental purpose in imposing limitations on government intrusions has long been to prevent too pervasive a state of police surveillance.

The government’s ability to obtain a warrant to search a place or thing is generally limited to offenses that justify such invasion in the first place. California law specifies the types of crimes that permit intrusion into a person’s places or things including: when property is stolen or embezzled, among other specified offenses; when there is probable cause that a felony was committed and for some specified misdemeanors; and when there is a warrant to arrest a person. In the last five years, the Legislature has expanded the crimes that will allow the issuance of a warrant several times, and continues to suggest additions to the list.

Fourth Amendment jurisprudence has developed to permit a government entity to access information held by a third party, in some cases with a warrant and in some, without. The third-party doctrine is grounded in the idea that an individual has a reduced expectation of privacy when knowingly sharing information with another. For example, the United States Supreme Court held that a person does not have a reasonable expectation of privacy in bank records, which may be subpoenaed by law enforcement with reasonable suspicion that those records will reveal that a crime has been committed. The court has, on the other hand, said that location information obtained from a third party which is transmitted through a cellphone likely requires a warrant to access except in exigent circumstances.

As technology advances, the courts and lawmakers should be careful not to “embarrass the future” by making decisions that are in discord with the “progress of science.” This sentiment is at the core of the holdings in three preeminent United States Supreme Court cases, Jones, Riley and Carpenter that lay a foundation for Fourth Amendment jurisprudence in the modern age.

In United States v. Jones (2012) 565 U.S. 400, law enforcement agents planted a GPS tracking device on a vehicle without a warrant. The court ruled that this was an unreasonable search, due to the amount of information a tracking device discloses and based on the length of time the person was tracked. California reacted to the Jones case by establishing a warrant protocol for the use of a tracking device in Penal Code section 1534.

Two years later, the court decided the case Riley v. California (2014) 573 U.S. 373, wherein the court ruled that searching a person’s cellphone incident to arrest was too great an invasion into that person’s effects. The court spelled out why a cellphone is unique: “Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person. The term ‘cell phone’ is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars,

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1 Northwest Airlines, Inc. v. Minnesota (1944) 322 U. S. 292, 300.
tape recorders, libraries, diaries, albums, televisions, maps, or newspapers. One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. ... Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.” In response, California used this decision as a basis for justifying the passage of the California Electronic Communications Privacy Act in 2016. CalECPA, discussed below, recognizes, as the Riley court did, that the vast amount of information stored in cellphones is so unique to other types of property that access to electronic devices for law enforcement purposes must require a warrant, except in exigent circumstances.

Most recently, in 2018, the Supreme Court considered whether law enforcement can access cell site location data held by a third party without a warrant. In ruling that a warrant is required to access this cell data, the court in Carpenter v. United States (2018) 138 S. Ct. 2206 asked whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records held by a third party that provide a comprehensive chronicle of the user’s past movements. In concluding that activity does constitute a search requiring a warrant, the court said that access to “historical cell-site records present even greater privacy concerns than the GPS monitoring of a vehicle we considered in Jones. ... In light of the deeply revealing nature of CSLI [cell site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection, the fact that such information is gathered by a third party does not make it any less deserving of Fourth Amendment protection. The Government’s acquisition of the cell-site records here was a search under that Amendment.”

Federal jurisprudence on when a warrant must be required is evolving, and many questions remain unanswered as to how far the court will go in requiring a warrant be obtained in many different scenarios, including those raised by this bill.

4) The California Electronic Communications Privacy Act (CalECPA): Federal law establishes a minimum floor to protect fundamental rights; a state may confer a greater protection of rights than its federal counterpart. In 2015, California did so when it passed SB 178 (Leno), Chapter 651, Statutes of 2015, which established CalECPA. SB 178 codified the requirement that law enforcement officials obtain a warrant before “searching” a third party’s electronic records for law enforcement purposes. In doing so, California has outstripped the Supreme Court in making it clear that a warrant is required when there is an intrusion into a person’s electronic records and devices even if a third party has access to them.

Any California court issuing a warrant must decide whether to grant that warrant on a case-by-case basis. Under CalECPA, a law enforcement agency must have probable cause to search electronic records held by a third party, including tech companies that host untold terabytes of data about their users. The law limits the reach of any warrant to information described with particularity, under specific time periods, identifying the “target individuals or accounts, the applications or services covered, and the types of information sought.”3 The law also specifies that any information unrelated to the objective of the warrant shall be

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3 Pen Code, Section 1546.1(d)(1).
sealed and not subject to further review, use, or disclosure without a court order.4

This bill would create an exception to CalECPA and permit law enforcement to access information for a criminal investigation without a warrant. This bill does not specify exactly which crimes would permit an officer to obtain subscriber information by subpoena, however, it is reasonable to interpret this bill as granting broad access to subscriber information via subpoena for non-felony cases where a warrant would not even be granted under existing law.

This bill also reduces the probable cause standard to one of reasonable cause. That means this bill eliminates the warrant requirement and lowers the threshold for permitting a search in the first place. Taken apart, both actions are diminishing personal rights; together, they practically eliminate these rights.

5) **Exemption from CalECPA is Unnecessary:** It is not clear why a warrant is insufficient for law enforcement to access information it needs in cases of child sexual exploitation. While the proponents of this bill state that there are delays in the issuance of warrants for weeks and sometimes months, this concern does not appear to be widespread or well-founded. Courts across the state have judges available to review and sign warrants at all times of the day; district attorneys are available to draft affidavits; warrants can be issued over the phone; and documents can be emailed between the parties.

Proponents of this bill argue that by requiring them to obtain a warrant to get subscriber or personally identifying information, investigations are delayed and the IP address may change by the time local law enforcement obtains the warrant. According to the California State Sheriffs’ Association, if the IP address has changed, law enforcement is required to conduct “an additional review process to confirm that the account is related to the alleged criminal.” It is not clear that this bill would cure the problem, however, which is that IP addresses can be changed quickly to evade investigators regardless of which tool, a subpoena or a warrant, law enforcement is permitted to use to access that information.

Moreover, this bill give law enforcement the right to issue an administrative subpoena. However, an administrative subpoena is a subpoena issued in an ongoing administrative proceeding. The administrative subpoena as an investigatory tool does not exist in California. Law enforcement officials do not engage in administrative criminal enforcement proceedings. It is peculiar to purport to grant these agencies the right to seek an administrative subpoena when there is no corresponding administrative proceeding.

6) **“Sexual Exploitation of Children” is Broad and Vague:** This bill would permit the warrantless search of a person in cases of the sexual exploitation of a child, but does not define the term or specify which crimes fall within the ambit of this exemption to CalECPA. Broadly interpreted, child sexual exploitation could include dozens of crimes, as well as activities that do not rise to the level of criminal conduct, and potentially, protected speech; activity for which a warrant may not even be appropriate to issue.

A law is subject to constitutional scrutiny for vagueness when people “of common

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4 Pen Code, Section 1546.1(d)(2)
intelligence must necessarily guess at its meaning,” an idea founded in the ancient Roman law maxim, “nulla crimen sine lege” meaning “no crime without law.” In general, vague criminal laws raise due process concerns. When the First Amendment is involved, the issue raises even greater concern because of the potential chilling impact on speech.

In Kolender v. Lawson (1983) 461 U.S. 352, the Supreme Court explained that “the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory treatment.”

A law that defines a crime in vague terms is likely to raise due-process issues. While this bill does not create a new crime, it declares that government may intrude on a person’s private, typically protected information, simply because a law enforcement official has a “reasonable belief” that a person has engaged in criminal activity. The potential for abuse of the tool this bill would create is great.

7) **Anonymous Speech**: This bill would open the door for law enforcement, without a warrant and any judicial oversight, to claim it is investigating the exploitation of children in order to access personally identifying information about a person. This creates a glaring exception in CalECPA’s protections, including those to protect against the unmasking of a person’s identity when that person is posting online anonymously. There is a long tradition of protecting anonymous speech as a constitutional right. Of course, this is overcome when there is probable cause that a serious crime has been committed, and law enforcement may seek a warrant to discover the name and identity of a person in those cases. However, by opening the door to permitting a subpoena in any case where there is a suspicion of child exploitation, this bill turns back CalECPA’s protections and puts at risk any person engaged in anonymous speech whose identity police would like to discover. For example, in 2016, a sheriff in Louisiana raided a police officer’s home to seize computers and electronic devices based on allegations of criminal defamation against the anonymous person. (See Naomi LaChance, *Sheriff Raids House to Find Anonymous Blogger Who Called Him Corrupt*, August 4, 2016 The Intercept, Available at: https://theintercept.com/2016/08/04/sheriff-raids-house-to-find-anonymous-blogger-who-called-him-corrupt/.)

8) **This Bill Would Create Uncertainty for Companies that Hold Subscriber Information**: CalECPA created rules that companies must comply with before producing a person’s electronic information to law enforcement for the purposes of a criminal investigation. By creating an exemption to the standard warrant requirement for law enforcement to access a person’s information, this bill would create uncertainty for companies trying to comply with California law. When is a subpoena valid and when is it overreaching? This bill asks technology companies to be the party to make that call. Under existing law, a judge is the gatekeeper. By amending the law to permit access to personal information via a subpoena, companies will be left with the discretion and burden of deciding when to comply with a subpoena and when to make a motion to quash the subpoena.

9) **Argument in Support**: According to the *California State Sheriffs' Association*, “In certain investigations involving child pornography or child sex trafficking, law enforcement first obtains a search warrant to require internet service providers to provide information on the account associated with the user’s IP address. From that information, law enforcement then obtains a second warrant to search the person or device associated with that IP address.
However, by the time local law enforcement begins investigating a case linked to a specific IP address, the individual has often changed their account information, which requires an additional review process to confirm that the account is related to the alleged criminal.”

10) Arguments in Opposition:

a) According to the *American Civil Liberties Union of California*, “The Fourth Amendment to the United States Constitution states that ‘... no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.’ Similarly, CalECPA’s requirement that law enforcement to get a warrant to access users’ Internet Protocol (IP) addresses is also intended to ensure that a criminal investigation into users’ online information will be overseen by a judge who can determine whether there is probable cause to pursue the information as well as what information law enforcement can and cannot obtain.

“Yet under AB 928, law enforcement could demand an array of account information, including a user’s name, address, phone number or email address, and IP address by means of an administrative subpoena served on an internet service provider, based merely on an internal conclusion that there is ‘reasonable cause’ to believe that an internet service account has been used in the exploitation or attempted exploitation of a child. These subpoenas would be issued without court oversight as to whether there was probable cause, or even the ‘reasonable cause’ required in the bill to link the account or accounts in question to the alleged exploitation. Nor would a court be able to limit the information that could be demanded. And there would be no requirement that the targets of the investigation ever be notified or that information that is inappropriately obtained ever be sealed or deleted, as required for a search of electronic information under CalECPA.

“The bill thus gives law enforcement the ability to write itself a blank check to learn identifying information about internet users that could then be used to get further information about the online activities of those users. Law enforcement would not be limited to getting this information on someone who had allegedly posted illegal content, but could use a subpoena to request the account information for anyone who had viewed the content, or even anyone who had visited the site hosting the content. A subpoena could be served on [a] search engine or internet service provider asking for the IP address of each user who searched for particular content. This allows exactly the type of fishing expedition and invasion of privacy without court authorization and oversight that CalECPA and the Fourth Amendment were intended to protect against.

“These changes are not necessary to allow law enforcement to get the information it needs to investigate and prosecute those who use the internet to engage in the sexual exploitation of children. Warrants can now be obtained by phone or fax or even by email. (Penal Code §1526.) Warrants are routinely used by law enforcement to get electronic information, without difficulty or delay. Moreover, even if a user is able to change the user’s IP address before a warrant can issued, the warrant can specify that the internet service provider must provide historical information giving the user information for a previous IP address.

“In sum, AB 928 would give law enforcement power to get identifying information on
internet users at will, with no court oversight and no clear standards limiting this power.”

b) According to the California Public Defenders Association, “AB 928 is an ill-defined, overbroad bill, and unneeded bill that would permit a peace officer investigating sexual exploitation of children to issue an administrative subpoena for a wide range of information about an internet service account that would otherwise violate the carefully-crafted and properly balanced California Electronic Communications Privacy Act (CalECPA).

“AB 928 does not state any statutory or other authority that permits the issuance of an ‘administrative subpoena.’ The primary existing authority is in Article 2 (“Investigations and Hearings”) of Chapter 2 (State Departments) of Part 1 of Division 3 of the Government Code (sections 11180 to 11191). That authority seems limited to State Agencies. AB 928 proposes to extend that authority to all peace officers.

“AB 928 does not define ‘sexual exploitation of children.’

“Even if those two problems are overcome, this bill is too broad and not needed. Electronic Communication Privacy is critically important to all Californians. That is why the legislature passed CalEcpa in 2015. Surveillance of a person’s electronic communications is as intrusive as any search of a person’s home, papers, and other effects, maybe even more. This bill would create a large loophole to CalECPA; it even says so: Proposed Penal Code section 1565, subdivision (a) begins ‘Notwithstanding the Electronic Communications Privacy Act….’ The intention to go beyond CalECPA’s carefully crafted rules could not be more plain.

“CalECPA already permits a warrantless access of electronic device information by means of physical interaction or electronic communication with the device in an emergency involving danger of death or serious physical injury. See Penal Code section 1546.1, subdivision (c)(6).

“If the investigation into child sexual exploitation shows an emergency, therefore, law enforcement can act quickly to stop it. If the investigation does not show an emergency, then law enforcement will have the time to apply for a search warrant, or take other investigative measures pursuant to the existing CalECPA.

11) Related Legislation:

a) AB 1280 (Grayson), would create three new crimes for the creation or distribution of a “deepfake” video related to sexual and political activity. AB 1280 is before this committee today.

b) AB 1638 (Olbernolte), would expand authorization for the issuance of a search warrant to obtain information from a motor vehicle’s software that “tends to show the commission of a public offense involving a motor vehicle, resulting in death or serious bodily injury.” AB 1638 will be heard in the Assembly Committee on Privacy and Consumer Protection today.
12) **Prior Legislation:**

a) **SB 178 (Leno), Chapter 651, Statutes of 2015,** known as CalECPA, prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

b) **AB 1924 (Low), Chapter 511, Statutes of 2016,** requires an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device direct that the order be sealed until the order, including any extensions, expires, and would require that the order or extension direct that the person owning or leasing the line to which the pen register or trap and trace device is attached not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person.

c) **AB 929 (Chau), Chapter 204, Statutes of 2015.** AB 929 authorized state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Concord Police Department (Sponsor)
Belmont Police Department
California State Sheriffs' Association
Contra Costa County District Attorney's Investigators' Association
Livingston Police Department
Newark Police Department
Santa Clara Police Officers' Association

**Oppose**

American Civil Liberties Union of California
California Public Defenders Association

**Analysis Prepared by:**  Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Allows specified firearms transactions that are not required to be processed through a licensed firearms dealer to be reported to the Department of Justice (DOJ) via the web-based California Firearms Application Reporting System (CFARS) until January 1, 2025, and from the date forward would require those specified firearms transactions to be reported via CFARS. Specifically, this bill:

1) Allows a person, or a licensed firearms collector, who is bringing a firearm into the state, and is therefore required to report the firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

2) Allows a person who is receiving a firearm, including a firearm that is imported into the state, from a member of the same immediate family by gift, bequest, intestate succession, or other means from one individual to another, and is therefore required to report the firearm to DOJ, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

3) Allows a person receiving a firearm by operation of law, as specified, and is therefore required to report the firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

4) Allows a person who acquires ownership of a firearm as an executor or administrator of an estate, and is therefore required to report the firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

5) Allows a person who acquires ownership of the firearm by bequest or intestate succession as a surviving spouse or as the surviving registered domestic partner of the decedent who owned that firearm, and is therefore required to report the firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

6) Allows a member of the United States Armed Forces who is, or recently has been on active duty outside of the United States and who is bringing a firearm into the United States as a war souvenir, and is therefore required to report the firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

7) Allows a licensed collector who is receiving a curio or relic firearm, that is not a handgun, as the result of an infrequent sale, loan, or transfer, and is therefore required to report the
firearm to DOJ, as specified, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS.

8) Allows a person who is exempt from reporting to DOJ, or a person who is moving out of state with a firearm and is therefore not required, but allowed to report the firearm to DOJ, to do so via CFARS until January 1, 2025, and from that day on, requires such a person to make the report via CFARS, if they choose to report.

9) Updates provisions of existing law pertaining to educating and notifying the public about how to properly report firearms that are being brought into the state to be consistent with the provisions of this bill.

10) Authorizes DOJ to collect a fee, not to exceed twenty dollars ($20), for the reasonable cost of receiving and processing any report that is submitted by mail or in person, rather than through CFARS.

EXISTING LAW:

1) Requires the parties to a firearm transfer where neither party to the transaction holds a dealer’s license as specified, to complete the sale, loan, or transfer of that firearm through a licensed firearms dealer. (Pen. Code § 27545.)

2) Requires a resident of this state who is importing into this state, bringing into this state, or transporting into this state, any firearm that he or she purchased or otherwise obtained from outside of this state, to have the firearm delivered to a licensed dealer in this state for redelivery to the resident, as specified. (Pen. Code, § 27585, subd. (a).)

3) Exempts various persons from the prohibition against importing, bringing in, or transporting a firearm into this state without going through a licensed dealer, including licensed dealers, licensed collectors, and personal firearm importers, as specified. (Pen. Code, § 27585, subd. (b).)

4) Exempts the infrequent sale, loan, or transfer of a non-handgun firearm that is a curio or relic, as specified, from the requirement of conducting the sale, loan, or transfer through a licensed firearm dealer. (Pen. Code, § 27966.)

5) Exempts the transfer of a firearm by gift, bequest, intestate succession, or other means of infrequent transfer from one individual to another, as specified, from the requirement of conducting the transfer through a licensed firearm dealer whether the firearm was acquired in this state or in another. (Pen. Code, § 27875.)

6) Exempts the taking of a firearm by operation of law, as specified, from the requirement of conducting the transfer through a licensed firearm dealer whether the firearm was acquired in this state or in another, if the person is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, § 27920, subds. (a) and (b).)

7) Requires that, within 60 days of bringing a handgun, and commencing January 1, 2014, any firearm, into this state, a personal firearm importer shall do one of the following:
a) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question;

b) Sell or transfer the firearm, as specified;

c) Sell or transfer the firearm to a licensed dealer, as specified; or

d) Sell or transfer the firearm to a sheriff or police department. (Pen. Code, § 27560, subd. (a).)

8) Requires DOJ to conduct a public education and notification program regarding this section to ensure a high degree of publicity of the provisions pertaining to reporting a firearm that has been brought into this state. (Pen. Code, § 27560, subd. (d).)

9) Requires a licensed collector who acquires a firearm curio or relic to, within five days of transporting the firearm into this state, as specified, to report the acquisition of that firearm to DOJ. (Pen. Code, § 27565.)

10) Allows a person who is not required to conduct a firearm transfer through a licensed dealer, or is otherwise not required by law to report acquisition, ownership, destruction, or disposal of a firearm, or who moves out of this state with the person’s firearm, to report that information to DOJ. (Pen. Code, § 28000.)

EXISTING FEDERAL LAW:

1) States that under federal law, it shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph:

a) Shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State;

b) Shall not apply to the transportation or receipt of a firearm obtained in conformity as specified; and,

c) Shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter (effective Dec. 16, 1968). (18 U.S.C. 922(a)(3).)

2) States that under federal law, it shall be unlawful for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor
resides; except that this paragraph shall not apply to:

a) The transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence; and

b) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes. (18 U.S.C. 922(a)(5).)

3) States that under federal law it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance. (18 U.S.C. 922(b)(2).)

4) Defines firearm curios or relics as firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons, as specified. (27 C.F.R. § 478.11.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “AB 1009 modernizes the firearm registration system, ensuring the public can easily comply with gun registration laws and law enforcement has access to accurate and up to date information on registered firearms. By moving towards a fully online system, this bill saves government time, resources, and, most importantly, tax payer money.”

2) CFARS Reporting System: CFARS is a web-based application that allows a person to report his or her firearm to DOJ using state reporting forms. The website is accessible at https://cfars.doj.ca.gov/login.do. According to DOJ, there are numerous benefits to using the CFARS system for both DOJ and registration applicants.

Applicants benefit from using CFARS because they can do so from the comfort of a home computer, without having to mail in an application or show up in person. CFARS allows applicants to pay with a variety of major credit cards. In addition, once a person establishes a CFARS account, he or she can review past applications, and save personal information in an encrypted format to save time on future applications.

DOJ benefits from the CFARS system by saving time and resources on the processing of applications. According to the author, DOJ has found that an overwhelming majority of firearm registrations have been submitted via mail. Of the total registrations submitted, for all types of transactions affected by this bill, almost 80% were via mail. Mail-in forms are apparently more expensive and take twice as long for the DOJ to process.

DOJ provided the following statistics for mail-in versus online applications, stating that in
2018 they spent nearly ten thousand (10,000) hours processing mail-in applications and less than one thousand five hundred (1,500) hours processing the applications that were submitted via CFARS:

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<th>MAIL IN</th>
<th>ONLINE</th>
<th>TOTAL</th>
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<td>(2) New Resident Report</td>
<td>3236</td>
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<td>(3) Curio and (4) Relic Firearms Reports</td>
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<tr>
<td>(5) Operation of Law and (6) Intra-Familial Transfer Reports</td>
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<tr>
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<td>4628</td>
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3) **Implementation of this Bill:** This bill would allow a number of firearms transactions to be registered with DOJ via CFARS until 2025, and from that point on would require that such transactions be registered online. Specifically, AB 1009 contemplates allowance of, and eventually would require, 1) the online registration of firearm ownership, 2) firearm ownership of a new California resident moving from out of state, 3) licensed collector in state acquisition of curio or relic long gun report, 4) curio or relic firearm ownership report, 5) report of ownership by operation of law, and 6) report of intra-familial firearm transaction.

This is not the first time that the Legislature has required online registration for firearms. In 2016, the Legislature passed SB 880 (Hall) and AB 1135 (Levine), both of which amended the definition of an assault weapon for purposes of the assault weapon ban. More importantly for the purposes of this bill, those measures required registration of weapons that had previously not been prohibited, and required that the registration be done via the DOJ's online website application. There was a fixed deadline by when those weapons had to be registered.

According to a pair of lawsuits filed by individuals and gun groups, "[t]ens of thousands of gun owners were prevented from registering their bullet-button assault weapons before July 1 through no fault of their own." (Chen, *I can't be a felon*: Gun Owners Sue California Over Faulty Weapon Registration System, Sacramento Bee, Jul. 13, 2018, available at: https://www.sacbee.com/news/politics-government/capitol-alert/article214798695.html, [as of Apr. 16, 2019].) As a result, a lawsuit was filed against the Attorney General of the State of California and the DOJ in state court on July 11, 2018 (available at: https://d3n8a8pro7vhmx.cloudfront.net/firearmspolicycoalition/pages/4636/attachments/original/1531345286/Sharp-Complaint-Filed-2018-7-11.pdf?1531345286), and a federal lawsuit was filed on September 21, 2018. (https://d3n8a8pro7vhmx.cloudfront.net/firearmspolicycoalition/pages/4636/attachments/original/1537567240/sharp-v-becerra-sac-2018-9-21.pdf?1537567240.) Both lawsuits allege that the online system was virtually inaccessible in the days leading up to the deadline because it continuously crashed and would not allow persons who were attempting to comply with the law to register their firearms. The lawsuits appear to still be pending.

It bears mentioning that this bill is different from past legislation that mandated online reporting of firearms in that there is no deadline by which firearms must be registered. Instead, this bill allows certain transactions to be reported online until 2025, and then makes online reporting mandatory from then on. It is therefore unlikely that the system would receive the same flood of application requests that it did in the days leading up to the assault
weapon registration deadline. DOJ submitted numbers to the committee that indicate it received nearly 70,000 applications to register assault weapons as a result of SB 880 and AB 1135. By contrast, the total number of applications for the reports that this bill would require in 2018 was slightly more than 22,000. According to DOJ, in many cases, the assault weapon registrations that crashed the system required photographs of the weapons to be uploaded to the system, which was a root cause of the system’s failure. DOJ asserts that the online registration of firearms contemplated by this bill will not require photographs to be uploaded.

In addition to the online registration requirements this bill anticipates, it would also allow DOJ to raise the price of processing the applications it receives by mail or in person by up to twenty dollars ($20). DOJ states that this cost is reasonable in light of the additional manpower and processing time that is necessary to process those applications. People who do not have access to a computer or an internet connection will therefore be required to pay more to register their firearms than those that do.

4) **Argument in Support**: According to the bill’s sponsor, Xavier Becerra, the Attorney General of California: “Under current law, firearm owners are required to file reports with the DOJ regarding firearms ownership under certain circumstances including the following: firearm ownership reports for voluntary registration of unregistered firearms, new residents who bring firearms into the state, intra-familial transfers, and transfers upon death, divorce, or when dealing in curio's and relics (antiques). Each of the forms requires a nineteen-dollar fee, and DOJ currently accepts these reports online and by mail.

“In 2018, DOJ processed a total of 22,140 of the aforementioned six types of forms. Of that total, only 4,628 were submitted online while the remaining 17,512 forms were submitted by mail. DOJ staff spent almost 10,000 hours processing the mailed forms while it took less than 1500 hours to process the online applications. AB 1009 attempts to address this processing inefficiency by requiring these six specific CF ARS forms to be submitted online. In order to give affected Californians time to adjust, the online requirement would not take effect until 2025, five years after the effective date of the bill. In the interim, the bill authorizes the DOJ to adjust the fees for these six forms by no more than twenty dollars, when they are submitted by mail, to reflect the additional time required to process hard copy forms. The fee for forms submitted online would remain at nineteen dollars.”

5) **Related Legislation**:

a) AB 1292 (Bauer-Kahan), would specify circumstances following the death of a firearm owner which allow a firearm to be transferred from one person to another by operation of law without the need to go through a firearms dealer. AB 1292 is pending referral in the Senate Rules Committee.

b) SB 392 (Portantino), would redefine “infrequent” to mean less than six firearm transactions per calendar year for purposes of making a loan of a firearm regardless of whether it is a handgun or long gun. SB 376 is pending hearing in the Senate Appropriations Committee.
6) Prior Legislation:

a) SB 746 (Portantino), Chapter 780, Statutes of 2018, established procedures for return of ammunition that has been seized by law enforcement or has been transferred to a licensed firearms dealer because of a temporary prohibition on ammunition possession and required.

b) SB 880 (Hall), Chapter 48, Statutes of 2016, expanded the definition of an assault weapon for purposes of the assault weapon ban and required registration of weapons via CFARS.

c) AB 1135 (Levine) Chapter 40, Statutes of 2016, expanded the definition of an assault weapon for purposes of the assault weapon ban and required registration of weapons via CFARS.

d) AB 1609 (Alejo), Chapter 878, Statutes of 2014, clarified the regulations for direct shipment requirements for transfer of ownership of firearms.

e) SB 683 (Block), Chapter 761, Statutes of 2013, extended the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
Brady California United Against Gun Violence

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Extends the statute of limitation for the crime of domestic violence for 20 years when one or more specified conditions apply. Specifically, this bill:

1) States that, notwithstanding any other law, a prosecution for a crime involving domestic violence, as specified, may be commenced within 20 years of the crime if one of the following criteria applies:
   a) The state becomes aware of an audio or video recording, photographs, or written or electronic communication that provides sufficient evidence to charge the perpetrator;
   b) The perpetrator provides a confession; or,
   c) Three or more victims present evidence of domestic violence committed by the same perpetrator in separate events, the last of which occurred after the statute of limitations had lapsed.

2) States that this new statute of limitations shall only apply to crimes that were committed on or after January 1, 2020, or to crimes for which the statute of limitations that was in effect before January 1, 2020 has not expired as of that date.

3) Delineates additional training requirements for peace officers with respect to domestic violence crimes, including:
   a) Requiring that police training on techniques for handling domestic violence incidents include:
      i) Methods for ensuring victim interviews occur in a venue separate from the alleged perpetrator and with appropriate sound barriers to prevent the conversation from being overheard; and
      ii) Asking the victim whether he or she would like a follow-up visit to provide needed support or resources, information on obtaining a protective order or a gun violence restraining order, and/or a verbal review of specified resources available for victims.
   b) Requiring that when officers learn about the signs of domestic violence, the training also includes an assessment of “coercive control.” Coercive control means that the victim has also been subjected to any of the following criminal conduct: coercion for purposes of committing or impeding the investigation or prosecution of domestic violence; as specified; false imprisonment; extortion and the use of fear; identity theft; impersonation
through an internet website or by other electronic means; false personation; mail theft; stalking; and revenge pornography.

4) Adds a criminal-justice-reform advocate and a racial-justice advocate to the individuals which should be consulted when developing standards and guidelines for domestic violence training.

EXISTING LAW:

1) Provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, someone with whom the person has, or previously had, an engagement or dating relationship, or the mother or father of the offender’s child, is guilty of domestic violence. (Pen. Code, § 273.5.)

2) Punishes domestic violence by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to $6,000 or by both that fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)

3) Provides that there is no statute of limitations for crimes punishable by death, or by imprisonment in the state prison for life, or by life without the possibility of parole. (Pen. Code, § 799, subd. (a).)

4) Provides that there is no statute of limitations for specified sex crimes if the crime was committed on or after January 1, 2017, or if the crime was committed before that date but the statute of limitations had not expired on January 1, 2017. (Pen. Code, § 799, subd. (b)(1).)

5) Provides that prosecution for crimes punishable by imprisonment for eight years or more must be commenced within six years after commission of the offense. (Pen. Code, § 800.)

6) Provides that prosecution for other felonies punishable by less than eight years must be commenced within three years after commission of the offense. (Pen. Code, § 801.)

7) Provides, generally, that the statute of limitations for most misdemeanors is one year. (Pen. Code, § 802, subd. (a).)

8) Provides that, notwithstanding any other time limitations, for specified sex crimes that are alleged to have been committed when the victim was under the age of 18, prosecution may be commenced any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a).)

9) Provides that notwithstanding any other time limitations, prosecution for a felony offense requiring sex offender registration shall be commenced within 10 years after commission of the offense. (Pen. Code, § 801.1, subd. (b).)

10) Provides that, notwithstanding any other limitation of time, a criminal complaint for specified sex crimes may be filed within one year of the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid (DNA) testing if specified conditions are met. (Pen. Code, § 803, subd. (g)(1).)
11) Provides that if more than one time period described in the statute of limitations scheme applies, the time for commencing an action is governed by that period that expires the latest in time. (Pen. Code, § 803.6, subd. (a).)

12) Requires peace officers to take a course of training in the handling of domestic violence complaints, as specified. (Pen. Code, § 13519.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “California has the opportunity to significantly strengthen the law regarding domestic violence. The steps taken in AB 1029 will give victims the ability to pursue charges when they statute of limitations has passed when very specific criteria are met and give law enforcement the tools needed to identify and act appropriately to prevent further harm to a potential victim.”

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

The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and repose. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.

Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

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

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

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

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

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

The prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (People v. Lopez (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (People v. Zamora (1976) 18 Cal.3d 538, 574; People v. Lee (2000) 82 Cal.App.4th 1352, 1357-1358.)

For most types of offenses, the statute of limitations begins to run on the day that the offense was actually committed. However, the statute of limitations period does not commence as to continuing offenses until the entire course of conduct is complete. (People v. Zamora, supra, 18 Cal.3d 538.) And in cases involving crimes such as fraud or embezzlement the statute of limitations may begin to run at the point that the offense is discovered. (See e.g. Pen. Code, § 803, subd. (c).)

In California, the statute of limitations to prosecute a criminal case of domestic violence is three years. (People v. Sillas (2002) 100 Cal.App.4th Supp. 1, 5.)
This bill would extend the statute of limitations in domestic violence cases to 20 years in cases where the perpetrator confesses, where there is photographic, audio or video recorded evidence, or written or electronic communication that provides sufficient evidence to charge the perpetrator. This bill would also extend the statute of limitations to 20 years in cases where three or more victims present evidence of abuse committed by the same perpetrator in separate events, the last of which occurred after the statute of limitations had lapsed.

However, despite its traumatic nature, domestic abuse does not fall within the type of crimes that would normally warrant extension. The domestic abuse statute, Penal Code section 273.5, prohibits the willful infliction of corporal injury resulting in a traumatic condition upon a victim with which the offender has a specified domestic relationship. As a general matter, most people know that a battery is criminal conduct. So, domestic abuse is not the type of crime where the person does not discover until a later date that the crime has occurred. And arguably, if a victim of abuse is taking photographs of sustained injuries, the victim recognizes that criminal conduct has in fact occurred.

The other two factors proposed by this bill to warrant extension of the statute of limitation—a confession by the perpetrator or allegations of abuse by multiple victims against the same perpetrator—are not the type of factors considered for extending a statute of limitations. Rather, this type of corroborating evidence affects the strength of the case or weight of the evidence. So for example, they might be factors a prosecutor would consider when deciding whether to file charges even when the statute of limitations has not expired.

Extension of the statute of limitations based on these factors will not necessarily get victims the justice they deserve. Even in cases where a proposed factor is present, a prosecutor may have to tell a victim that even though the case is not time barred, there is not enough evidence to bring the case to trial.

Most importantly however, as noted above, there is a strong public policy against extending the statute of limitations. Memories fade as time passes. Evidence that might have been gathered by the police is lost. Witnesses move or die. Fairness and due process demand prosecution be commenced in a reasonable time so the accused may be able to gather evidence to prove his or her innocence. It seems a rejection of firmly rooted public policy to significantly extend the statute of limitations in this type of case.

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

This bill states that it the provisions eliminating the statute of limitations for the specified crimes will apply either only to crimes committed after its effective date, or to crimes for which a statute of limitations that was in effect before its effective date has not run as of that date. In other words, the bill extends current limitations periods, but does not try to revive time-barred cases. Therefore, there do not appear to be any ex post facto concerns raised by this bill.
4) **Law Enforcement Training on Domestic Violence:** Penal Code section 13519 requires peace officers to receive training on the handling of domestic violence complaints as part of basic training. Additionally, law enforcement officers below supervisory rank assigned to patrol are required to take refresher training every two years. (Pen. Code, § 13519, subd. (g).)

The course of training covers the following procedures and techniques:

- The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.
- The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.
- Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.
- The nature and extent of domestic violence.
- The signs of domestic violence.
- The assessment of lethality or signs of lethal violence in domestic violence situations.
- The legal rights of, and remedies available to, victims of domestic violence.
- The use of an arrest by a private person in a domestic violence situation.
- Documentation, report writing, and evidence collection.
- Domestic violence diversion
- Tenancy issues and domestic violence.
- The impact on children of law enforcement intervention in domestic violence.
- The services and facilities available to victims and batterers.
- The use and applications of the Penal Code in domestic violence situations.
- Verification and enforcement of temporary restraining orders when the suspect is present and when the suspect has fled.
- Verification and enforcement of stay-away orders.
- Cite and release policies.
- Emergency assistance to victims and how to assist victims in pursuing criminal justice options. (Pen. Code, § 13519, subd. (c).)

This bill would require that the training on the signs of domestic violence include an assessment of “coercive control” by the defendant. For purposes of domestic violence training “coercive control” would be defined as the victimization based on other types of criminal conduct, such as: false imprisonment, extortion, identity theft, impersonation through an internet website or by other electronic means, false personation, mail theft, stalking, and revenge pornography.

The Department of Justice and the Commission on Peace Officer Standards and Training have developed a domestic violence lethality risk assessment for first responders. ([https://post.ca.gov/Portals/0/post_docs/resources/DV_Lethality_Risk_Assessment.pdf](https://post.ca.gov/Portals/0/post_docs/resources/DV_Lethality_Risk_Assessment.pdf)) It is a questionnaire that should be administered to all victims of domestic violence to assess the level of danger and/or the severity of the situation. Should the proposed factors regarding coercive control be included in the lethality risk assessment questionnaire?

5) **Argument in Support:** According to artist, advocate, and survivor *Evan Rachel Wood*, the sponsor of this bill, “I am a survivor of Domestic Violence. I was so traumatized and afraid
of retaliation from my abuser it took me many years and a lot of therapy to reach the point of being able to come forward, only to be told by an attorney that despite my long list of video, audio and photographic evidence, nothing could be done.

"I felt that I was one of many victims who fall through the cracks if they were not able to recover from or identify their abuse in time. This moved me to assemble a team that could create a cushion for survivors of domestic violence to come back from their trauma, with certain exceptions to the statute of limitation.

"According to the American Psychological Association, more than one in three women and more than one in four men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. Women with disabilities have a 40% greater risk of intimate partner violence. One in five female high school students reports being physically and/or sexually assaulted by a dating partner.

"California has the opportunity to significantly strengthen the law regarding domestic violence in three areas: student education, criminal prosecution, and law enforcement training. These steps will help prevent domestic violence from occurring, grant victims the ability to pursue charges when the statute of limitations has passed, given the very specific criteria are met, and present law enforcement the tools needed to identify and act appropriately to prevent further harm to a potential victim.”

6) Arguments in Opposition:

a) According to the California Public Defenders Association, “While we applaud the efforts to address the harms of domestic violence and the increase in training for law enforcement, we strongly oppose AB 1029’s extension of the statute of limitations for domestic violence prosecutions. The extension of the statute of limitations will result in the conviction of innocent people, is bad public policy and wastes scarce resources that could be better spent on evidence based and effective strategies to end domestic violence.

"Criminal statutes of limitations in the United States date back to colonial times, with the first such statute appearing as early as 1652. The statutes’ fundamental purpose is to protect people accused of crimes from having to face charges based on evidence that may be unreliable, and from losing access to the means to defend themselves. The United States Supreme Court has stated that statutes of limitations are considered ‘the primary guarantee against bringing overly stale criminal charges’ and that they ‘protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time...’ Likewise, the California Supreme Court has noted that statutes of limitations ‘encourage the swift and effective enforcement of the law, hopefully producing a stronger deterrent effect.’

"With the passage of time, memories fade, witnesses die, records and biological evidence are lost or destroyed. All of this makes it more likely that an innocent person will be wrongly convicted.

"Statutes of limitations also serve the purpose of encouraging swift investigations and prosecutions. Given the incidence of domestic violence in the United States and California, proponents of AB 1029 rightly complain that relatively few domestic violence
cases are actually investigated and prosecuted in California. The primary reason for this is not because of statutes of limitations. Rather, the failure to investigate and prosecute domestic violence results from choices made about allocation of resources and priorities and lingering ignorance about the generational harms of domestic violence. Extending the statute of limitations will do nothing to address those obstacles.

"Unfortunately, the extension of statute of limitations ... will likely promote false accusations when spouses or dating partners separate or divorce and child custody and/or money are at issue. The provision that the discovery of ‘an audio or video recording, photographs, or written or electronic communication that provides evidence sufficient to charge the perpetrator’ intended to provide corroboration to test the reliability of the accusation provides scant protection in an era in which the average person can photo shop or alter recordings, photographs, or electronic communications without any particular training or skills. The instructions on how to do so are readily available on the internet."

b) According to the American Civil Liberties Union of California, “In recent years, psychologists and other researchers who study human memory have raised concerns about the elimination or extension of statutes of limitations. In a 2016 piece in the Daily Journal, psychology Professor Elizabeth Loftus illustrated the ways in which criminal statutes of limitations protect against deficits in witness’ memories. As Professor Loftus explained,

‘Over the years, a growing body of research, including [her] own, has found that, contrary to what some may think, the human memory is not like a recording device. You can’t perfectly preserve events, to be played or rewound and replayed at will. Instead, our memories are more like a Wikipedia page: they can be edited by us and other people, and more so with each year that goes by...Scientists have long known about the ‘forgetting curve,’ which revealed that, as time passes, people are unable to retrieve information that they would have earlier be[en] able to remember accurately. The loss of memory can be quite significant, especially after many years go by."

“The memory issues raised by Professor Loftus apply equally to all parties involved in a criminal prosecution: defendants, detectives, witnesses, and victims alike. As such, both defendant and victim may suffer the consequences of these deficits, often leading to unjust outcomes.”

7) Related Legislation: SB 273 (S. Rubio) is identical to this bill. SB 273 will be heard in the Senate Public Safety Committee today.

8) Prior Legislation:

a) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extends the statute of limitations for the crime of concealing an accidental death to no more than four years after the concealment.

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1 Elizabeth Loftus, Focus on Detecting Sex Crimes Today, Daily Journal (March 10, 2016).
b) SB 813 (Leyva), Chapter 777, Statutes of 2016, eliminated the statute of limitations for specified sex crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Evan Rachel Wood (Sponsor)
Crime Victims United of California

Opposition

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Changes the existing eligibility requirements for early discharge from parole to take into account a parolee’s risk of re-offense and reduces the early-discharge eligibility time line for specified parolees. Specifically, this bill:

1) States that when a person who was imprisoned for committing a felony that is non-violent, non-serious and not subject to sex-offender registration, as specified, and who has been classified low or moderate risk by CDCR, has been released on parole, has been on parole continuously and has not committed any new offenses for the initial 180 days since release, the person shall be immediately discharged from parole.

2) States that when a person who was imprisoned for committing a felony that is non-violent, non-serious, and not subject to sex-offender registration, as specified, and who has been classified high risk by CDCR, has been released on parole, has been on parole continuously and not committed any new offenses for the initial 180 days since release, the person shall be discharged from parole within 30 days, unless CDCR determines, for good cause, that the person shall be retained.

3) States that when a person who is required to register as a sex offender has been released on parole, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole unless CDCR recommends to the Board of Parole Hearings (BPH) that the person be retained on parole, and the board, for good cause, determines that the person will be retained.

4) States that when a person who was imprisoned for committing a serious felony, as specified, and who has been classified low or moderate risk by CDCR, has been released on parole, has been on parole continuously and not committed any new offense for the initial 180 days since release, the person shall be immediately discharged from parole, unless CDCR determines, for good cause, that the person shall be retained.

5) States that when a person who was imprisoned for committing a serious felony, as specified, and who has been classified as high risk by CDCR has been released on parole, has been on parole continuously, and has not committed any new offense for one year since release, the person shall be discharged from parole within 30 days, unless CDCR determines, for good cause, that the person shall be retained.

6) States that when a person who was imprisoned for committing a violent felony, as specified, and who has been classified low or moderate risk by CDCR, has been released on parole for a period not exceeding five years, has been on parole continuously, and has not committed any new offense during the initial 180 days since release, the person shall be immediately
discharged from parole, unless CDCR determines, for good cause, that the person shall be retained.

7) States that when a person who was imprisoned for committing a violent felony, as specified, has been released on parole for a period not exceeding three years, and irrespective of risk assessment by CDCR, has been on parole continuously, and has not committed any new offense for two years since release, the person shall be discharged from parole within 30 days, unless CDCR recommends to the Board of Parole Hearings (BPH) that the person be retained on parole, and the board, for good cause, determines that the person will be retained.

8) States that when a person who was imprisoned for committing a violent felony, as specified, and who has been classified high risk by CDCR, has been released on parole for a period not exceeding five years, has been on parole continuously, and has not committed any new offense for three years since release, the person shall be discharged from parole within 30 days, unless CDCR recommends to the Board of Parole Hearings (BPH) that the person be retained on parole, and the board, for good cause, determines that the person will be retained.

9) Provides that when CDCR determines that a parolee should be retained on parole, CDCR shall make a written record of its determination and shall transmit a copy of that record to the parolee.

10) Defines “good cause” for purposes of retention on parole to mean that “the Board of Parole Hearings or the Department of Corrections and Rehabilitation identifies one or more documented and verifiable behaviors, actions, or omissions by a person on parole that reasonably and persuasively suggest that the person poses an unacceptable risk for committing a serious or violent offense if presently discharged from parole.”

11) Requires CDCR, upon a finding of good cause to retain a person on parole, to adopt a supervision plan to address the issues that gave rise to the good-cause finding and to provide the parolee with the support and intervention needed to reduce the risk of offending.

12) States that interventions may include, but are not limited to, counseling and treatment, programs or courses designed to advance literacy, vocational training, or education achievements, and services aimed at achieving housing stability.

13) Applies the new early-discharge criteria retroactively to persons on parole on or before the date of the enactment.

14) Provides that any person who has been on post-release community supervision (PRCS) continuously for six consecutive months without any violations of conditions of release that result in a custodial sanction must be reviewed and considered for discharge.

EXISTING LAW:

1) Provides for a period of post-prison supervision immediately following a period of incarceration in state prison. (Pen. Code, § 3000 et seq.)

2) Requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of CDCR (Pen. Code, § 3000.08, subds. (a) and (c).):
a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);

b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);

c) A person serving a Three-Strikes sentence;

d) A high risk sex offender;

e) A mentally disordered offender;

f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,

g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released.

3) Requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, § 3000.08, subd. (b).)

4) States that, notwithstanding any other law, a person released from prison prior to October 1, 2011, is subject to parole under CDCR supervision. (Pen. Code, § 3000.09.)

5) Establishes parole-term lengths depending on the committing offense and the date the offense is committed. (Pen. Code, §§ 3000, subd. (b)(6), 3000.1.)

6) Entitles a parolee to an annual review hearing until the statutory maximum period of parole expires. (Pen. Code, § 3001, subd. (d).)

7) Provides for the opportunity for early discharge from parole for parolees after a certain period of continuously-successful parole, depending on the crime committed and the length of the period of parole. (Pen. Code, § 3001.)

8) Triggers suspension of the period of parole if a parolee absconds. (Pen. Code, §§ 3000, subd. (b)(6) & 3064.)

9) Provides that any person who has been on PRCS continuously for six consecutive months without any violations of conditions of release that result in a custodial sanction may be considered for immediate discharge. (Pen. Code, § 3456, subd. (a)(2).)

10) Provides that any person who has been on PRCS continuously for one year without any violations of conditions of release that result in a custodial sanction shall be discharged from supervision within 30 days. (Pen. Code, § 3456, subd. (a)(2).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement**: According to the author, "AB 1182 strengthens and expands existing earned discharged process for parolees and those on post release community supervision (PRCS) by aligning existing discharge terms with evidence-based practices. The bill helps address parolees unnecessarily languishing on parole/PRCS periods and authorizes the Department or county probation departments to discharge parolees and those on PRCS who score as low or moderate risk via the Department's risk assessment instrument after the initial 180 days of supervision are completed violation and crime free. AB 1182 will ensure discharge decisions are no longer driven by arbitrarily established timelines but instead determined by the parolee's compliant and crime free behavior."

2) **Changes to Parole Supervision As a Result of Criminal Justice Realignment**: Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a) and (c), and 3451, subd. (b).) All other inmates released from prison are subject to up to three years of PRCS under probation supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

3) **Length of Parole Term**: The length of a person's parole term depends on the committing offense, the sentence imposed, and the date the offense is committed. Most inmates who received a determinate sentence will serve a three-year period of parole, with the possibility of a one-year extension. (Pen. Code § 3000 subd. (b).)

The last data provided to this committee by CDCR (January 31, 2018) regarding the breakdown in the parole population by parole period is as follows:

<table>
<thead>
<tr>
<th>Parole Population by Parole Period</th>
<th>Parole Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parole Period (Years)</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>3</td>
<td>37,215</td>
</tr>
<tr>
<td>5</td>
<td>3,790</td>
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<td>21</td>
<td>107</td>
</tr>
<tr>
<td>Life</td>
<td>2,169</td>
</tr>
<tr>
<td>Total</td>
<td>44,465</td>
</tr>
</tbody>
</table>

4) **Discharge from Parole**: Most parolees can be discharged from parole early by successfully completing a specified amount of parole time without obtaining any violations. Different time periods apply in determining the presumptive discharge date, depending on the length of parole. (See Pen. Code, § 3001.) For example, a person who was not imprisoned for a
serious or violent felony, or for a registrable sex offense, and who is subject to a three-year parole period must be discharged from parole within 30 days after a consecutive six-month period of violation-free parole unless the BPH decides to retain the person. (Pen. Code, § 3001, subd. (a).)

When a parolee reaches the presumptive discharge date, the parole officer will prepare a report recommending whether or not the person should remain on parole. The BPH will then review the case. Parole terminates automatically unless the BPH acts to retain the parolee after the presumptive discharge date. If the parole is retained on parole, the parolee’s case will be reviewed annually until the maximum parole date is reached. (Pen. Code, § 3001, subd. (d).) If a parolee has not been discharged early, the parolee must discharge after serving the maximum period of parole specified.

CDCR has informed this committee that, in total, there were a total of 27,491 discharges during the two year period from January 2016 through January 2018. For this same period, 8,922 parolees discharged early.

This bill would change the early discharge process. It would eliminate the ability for BPH to retain a person on parole in some instances in which the parolee has been classified as low to moderate risk of re-offending. It would also lower some of the timelines for early release eligibility, particularly for most serious or violent felons who have been classified as low to moderate risk of re-offending.

5) **CDCR Parole Generally:** The BPH conducts parole-suitability hearings and nonviolent offender parole reviews for adult inmates under the jurisdiction of CDCR. (See CDCR’s web site: [https://www.cdc.ca.gov/BOPH/](https://www.cdc.ca.gov/BOPH/) Once a person is released on parole, CDCR’s Division of Adult Parole Operations (DAPO) is responsible for supervising the parolee. ([https://www.cdc.ca.gov/Parole/index.html](https://www.cdc.ca.gov/Parole/index.html))

Under existing provisions of law governing early discharge, CDCR makes a recommendation to the BPH that a person otherwise eligible for early discharge be retained on parole and then BPH decides whether to retain the person on parole for good cause. (Pen. Code, § 3001.) This bill would, in some instances, have CDCR make the good cause determination. CDCR would also be responsible for making a written record of its good-cause determination for retaining a person on parole. In other instances, consistent with current law, CDCR would make a recommendation to BPH, and BPH would make the good cause determination. Should the bill be amended to provide consistency?

6) **Argument in Support:** According to Californians for Safety and Justice, the Sponsor of this bill, “AB 1182 seeks to ensure that there is a more transparent and just discharge policy based on a commitment that a person should only be retained as long as they need to be, not for as long as they can be to ensure increased public safety and long-term success. Specifically, AB 1182 authorizes the Department to discharge parolees who score as low or moderate risk via the Department’s risk assessment instrument after the initial 180 days of supervision are completed without violation and offense free.

“Additionally, this bill strengthens the existing earned discharge process for those on post community release supervision (PRCS) population by requiring a review of those who have been continuously supervised for 6 months without violations to be considered for an earned
discharge. This bill specifies the need for the Department to objectively document behaviors and actions in their rationale for denying earned discharge and respond with a plan for the parolee’s future success of the terms and conditions of supervision ensuring no one is arbitrarily kept under supervision for longer than necessary.

“AB 1182 builds off current law and parole best practices and research. California law already recognizes the legitimacy of identifying a 180-day threshold for parole discharge in statute at section 3001 and 3456 of the Penal Code. Furthermore, an earned discharge is currently authorized at sections 3001 (a) (1), (2) and (3) as well as at section 3456.

“AB 1182 is consistent of the evidence and risk based practices recommendations experts have made to the California legislature and CDCR for the past two decades. A number of states, including Arizona, Florida, Louisiana, Nevada, Illinois and Wyoming, to name a few, have changed their parole or probation supervision practices so that a person can earn a reduced term of supervision as a consequence of compliant and offense free behavior....

“Though current law allows for earned discharge, individuals are rarely released despite being violation and crime free in the initial 180 days of supervision. Approximately 70% of CDCR’s current population scores low to moderate risk via the CSRA. With 49,000 parolees under supervision, we can conclude that over a majority of parolees released are low or moderate risk. There are 43,0387 people in the PRCS population in our state which continues to remain steady despite a portion scoring low or moderate on their risk assessments. Unfortunately, too often in current practice the decision to discharge a parolee is based on completing the full parole term dictated by the offense, not on evidence-based practices and an objective measure of the public safety risk the individual represents.”

7) Argument in Opposition: According to the California District Attorneys Association, “Current law already strikes a good balance between discharge from, and retention of, an offender on supervision. A parolee may be retained on parole past six months, if there is good cause. An offender on PRCS may be considered for discharge after six months of supervision and is required to be discharged from supervision after one year, if there are no violations that result in a custodial sanction. Parole agents, probation officers, and supervising agencies are in the best position to know whether an offender should be retained on supervision.

“Rehabilitation is key in reducing recidivism and helping offenders to lead productive lives. Shortening already-short supervision periods lessens an offender’s chance of successful reintegration into society. True rehabilitation will not be attained with a one-size-fits-all approach. Some offenders are participating in important programs such as job training or substance abuse treatment. Others are paying restitution to crime victims. Supervising agencies must have the ability to assess each offender individually, and determine on a case-by-case basis whether an offender needs to be retained on supervision.”

8) Related Legislation: AB 277 (McCarty) creates a program through which parolees, except those subject to sex offender registration requirements, are able to earn “reintegration credits” to reduce the term of parole. AB 277 is pending in the Assembly Appropriations Committee.
9) Prior Legislation:

a) AB 1940 (McCarty), of the 2017-2018 Legislative Session, creates a program through which parolees, except those subject to sex offender registration requirements, are able to earn “reintegration credits” to reduce the term of parole. AB 1940 failed passage in the Assembly.

b) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment, which, among other things, shifted the supervision of some inmates released from prison from parole agents of CDCR to local supervision by probation departments.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
A New Way of Life Re-Entry Project
California Attorneys for Criminal Justice
California Public Defenders Association
Communities in Schools
Inland Congregations United for Change
Pillars of the Community
Re:Store Justice

Opposition

California District Attorneys Association
Riverside Sheriffs’ Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
AB 1210
Page 1

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

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

AB 1210 (Low) – As Introduced February 21, 2019

SUMMARY: Makes it an alternate felony/misdemeanor to enter the property adjacent to a dwelling with the intent to steal a package that has been shipped to the dwelling. Specifically, this bill:

1) Creates a crime for a person to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier.

2) Defines “curtilage” as “an area adjacent to or in the immediate area of the home, and to which the activity of home life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard.”

3) Specifies that a violation of provisions of this bill is punishable as a felony, by imprisonment in county jail up to three years, or as misdemeanor, by imprisonment in the county jail not to exceed one year.

EXISTING LAW:

1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

2) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified. (Pen. Code, § 487.)

3) Defines petty theft as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and makes it punishable as a misdemeanor, except in the case where a person has a prior super strike or registrable sex conviction and a prior theft conviction, as specified. (Pen. Code, § 490.2, subd. (a).) This provision does not apply to theft of a firearm. (Pen. Code, § 490.2, subd. (c).)

4) Lists the theft-related offenses which qualify a defendant for enhanced status for the crime of petty theft with a prior theft conviction as:

   a) Petty theft;

   b) Grand theft;

   c) Theft, embezzlement, forgery, fraud, and identity theft committed against an elder or dependent adult;
d) Auto theft;
e) Burglary;
f) Carjacking;
g) Robbery; and,
h) Receiving stolen property. (Pen. Code, § 666.)

5) Defines shoplifting as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950 dollars, and makes it punishable as a misdemeanor, except where a person has a prior super strike or registrable sex conviction. Any act of shoplifting must be charged as shoplifting. (Pen. Code, § 459.5, subd. (a).)

6) Specifies that a burglary of an inhabited dwelling is burglary of the first degree. (Pen. Code, § 460, subd. (a).)

7) States that every person who commits mail theft, as defined, is guilty of a crime, and shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. (Pen. Code, § 530.5, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "The scourge that is package theft has hit every neighborhood and community in this state. Current law only encourages these so-called porch pirates, as our district attorneys struggle to justify spending precious resources on prosecuting crimes that carry negligible penalties. It's time we send a clear message to porch pirates in California: under AB 1210 you will be prosecuted for these serious and invasive crimes."

2) Proposition 47 and Theft: Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See [http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf](http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf))

Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft valued at $950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 [http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf](http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf))
The offenses made misdemeanors by Proposition 47 also include: the new offense of commercial burglary where the value of the property taken or intended to be taken is $950 or less (Pen. Code, § 459.5; People v. Sherow (2015) 239 Cal.App.4th 875, 879); and petty theft with a prior theft conviction. (Pen. Code, § 666; People v. Rivera, supra, 233 Cal.App.4th at p. 1091.) Specifically, Proposition 47 eliminated the penalties formerly associated with the “petty theft with a prior” statute except for a narrow category of sex offenders, persons with qualifying “super strikes,” and those persons convicted of theft from elders or dependent adults. Those persons are still eligible for felony punishment in state prison sentence. (Pen. Code, § 666.)

3) **Intent of Proposition 47:** Proposition 47 directed that theft crimes of $950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions. Proposition 47 contained specific language reflecting the purpose and intent of the proposition:

“In enacting this act, it is the purpose and intent of the people of the State of California to: “... (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes. . .” (http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47)

“One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.” (Harris v. Superior Court (2016) 1 Cal.5th 984, 992, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)

This bill would make it a crime to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. The crime defined by this bill is not dependent on the value of the property intended to be stolen. This bill would make conduct that would constitute misdemeanor petty theft under Proposition 47 (property value under $950), punishable as a felony.

4) **Misdemeanor Crimes are Treated Seriously:** The author’s statement indicates that, “Current law only encourages these so-called porch pirates, as our district attorneys struggle to justify spending precious resources on prosecuting crimes that carry negligible penalties.” The penalties involved for theft of packages $950 or less, is a misdemeanor, theft of packages of value in excess of $950 is can be charged as a felony.

The suggestion that district attorneys’ offices won’t devote resource to prosecuting misdemeanors seems inconsistent with district attorney practices throughout the state. DUI and domestic violence are crimes which generally, or frequently, are charged and punished as a misdemeanors. District attorneys are not indicating that it isn’t worth their time or resources to prosecute a DUI because the offense is a misdemeanor. District attorneys take misdemeanor crime seriously. Such prosecutions make up a significant proportion of a D.A. office’s total case load. Misdemeanor charges are not ignored simply because the maximum penalty for such offenses is lower than the maximum penalty on a felony offense.

Conviction of a misdemeanor can also have a substantial impact on a defendant. Conviction
of a misdemeanor results in the direct consequences of jail, fines, and court supervision. Conviction of a misdemeanor also results in significant collateral consequences in areas like employment and professional licensing.

5) **Argument in Support:** According to the *California District Attorneys Association*, “This bill would make it unlawful to enter onto the curtilage of the home with the intent to steal packages delivered by public or private carriers. As you know, along with an increase in packages being shipped and delivered through the mail or by other means has come a staggering increase in the theft of these packages from the doorsteps of persons ordering such packages.

“Although theft of such packages can be prosecuted as a felony if the package has been delivered by UPS under federal law (see 18 U.S.C.A. § 1708), theft of a privately-delivered package may only be prosecuted as a misdemeanor under state law unless the items contained in the package are valued at more than $950 (see Pen. Code, §§ 490 and 490.2). But entry onto the curtilage of a residence with the intent to steal, while not as dangerous as entry into the home itself, comes with elevated dangers (to both the perpetrator and victim) and often involves a breach of personal privacy and security much greater than the typical theft. The law should be able to let the punishment fit the crime and dissuade individuals from engaging in this burglarious-like behavior by creating the potential for punishment as a felony regardless of the value of the item the package haphazardly contains.”

6) **Argument in Opposition:** According to the *California Public Defenders Association*, “AB 1210 is unnecessary and bad public policy. Entering on to someone’s property with the intent to steal a package is already criminalized under a number of different California and federal statutes. It can be punished as an attempted theft and if the individual actually takes something as either petty theft or grand theft depending on the value of the item. If the stolen item was shipped by mail, it is punishable under California Penal Code section 530.5(e) as a one year misdemeanor or United States Code section 1708 of Title 18 by a fine or up to five years in prison or both.

“AB 1210 is bad public policy because it seeks to abrogate the sweeping changes that the voters enacted by initiative when they passed Proposition 47 in November 4, 2014 reducing many non-violent felony crimes to misdemeanors. Voters made a choice to redirect scarce tax dollars from mass incarceration to making communities safer from violent crimes.

“At the time that Proposition 47 was enacted the California Department of Corrections and Rehabilitation was under a federal court order to reduce the number of prisoners being held in California because the conditions resulting from overcrowding were so bad that the federal courts had held that it was cruel and unusual punishment violating the Eighth Amendment of the United States Constitution.

“Mass incarceration in California hit lower income and minority communities the hardest. Felony convictions made it difficult, if not impossible, for individuals to reintegrate into their communities. They were unable to find gainful employment and in some cases even housing leading to a high rate of re-offense. All of the money that was spent on incarcerating Californians left education, medical and mental health care and housing competing for the remaining tax dollars.”
7) Related Legislation:

a) AB 1772 (Chau), would specify that if the value of the property taken or intended to be taken exceeds $950 over the course of distinct but related acts, whether committed against one or more victims, the value of the property taken or intended to be taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. AB 1772 is set to be heard in the Assembly Public Safety Committee on April 23, 2019.

b) AB 1476 (Ramos), would allow a person to be charged with a felony for petty theft with specified prior theft convictions. AB 1476 is awaiting hearing in the Assembly Public Safety Committee.

8) Prior Legislation:

a) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the new crime of organized retail theft and specifies the penalties for violations of the new provisions.

b) AB 3011 (Chau), would have specified that if the value of the property taken or intended to be taken exceeds $950 over the course of distinct but related acts, that conduct will constitute grand theft, if the acts are motivated by one intention, one general impulse, and one plan. AB 3011 was never heard in the Assembly Public Safety Committee.

c) AB 875 (Cooper), would have made petty theft with a prior conviction as a punishable felony as provided in pre-Proposition 47 provisions. AB 875 was held in the Assembly Public Safety Committee.

d) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes, including reducing petty theft with a prior theft conviction to a misdemeanor, except in the case where the person has a prior super strike conviction or a conviction for a specified theft-related offense against an elder or dependent adult.

e) AB 2372 (Ammiano), Chapter 693, Statutes of 2010, increased the threshold amount that constitutes grand theft from $400 to $950.

f) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, amended petty theft with a prior to require three prior theft-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Police Chiefs Association
California Retailers Association
California State Sheriffs' Association
Peace Officers Research Association of California
San Jose Police Department
Oppose

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1215 (Ting) – As Amended April 8, 2019

As Proposed to be Amended in Committee

SUMMARY: Prohibits a law enforcement officer or agency from installing, activating, or using a biometric surveillance system in connection with a law enforcement agency’s body-worn camera or any other camera. Specifically, this bill:

1) States that a law enforcement agency or law enforcement official shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

2) Defines “biometric data” to mean “a physiological, biological, or behavioral characteristic that can be used, singly or in combination with each other or with other information, to establish individual identity.”

3) Defines “biometric surveillance system” to mean “any computer software or application that performs facial recognition or other biometric surveillance.”

4) Defines “facial recognition or other biometric surveillance” to mean either of the following, alone or in combination:
   a) An automated or semiautomated process that captures biometric data of an individual; and
   b) An automated or semiautomated process that assists in identifying an individual or generating surveillance information about an individual based on biometric data.

5) Defines “officer camera” to mean “a body-worn camera or similar device that records or transmits images or sound and is attached to the body or clothing of, or carried by, a law enforcement official.”

6) Defines “surveillance information” to mean either of the following, alone or in combination:
   a) Any information about a known or unknown individual, including, but not limited to, a person’s name, date of birth, gender, or criminal background; and
   b) Any information derived from biometric data, including, but not limited to, assessments about an individual’s sentiment, state of mind, or level of dangerousness.

7) Defines “use” to mean either of the following, alone or in combination:
a) The direct use of the biometric surveillance system by a law enforcement officer or law enforcement agency.

b) A request by a law enforcement officer that a law enforcement agency or other third party use the biometric surveillance system on behalf of the requesting entity.

8) Declares that facial recognition and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors. Declares that the use of facial recognition and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of recognized constitutional rights. States that this technology also allows people to be tracked without consent and would also generate massive databases about law-abiding Californians, and may chill the exercise of free speech in public places.

9) Declares that facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful “false positive” identifications. States that facial and other biometric surveillance would corrupt the core purpose of officer-worn body-worn cameras by transforming those devices from transparency and accountability tools into roving surveillance systems. States that the use of facial recognition and other biometric surveillance would disproportionately impact the civil rights and liberties of persons who live in highly policed communities. States that its use would also diminish effective policing and public safety by discouraging people in these communities, including victims of crime, undocumented persons, people with unpaid fines and fees, and those with prior criminal history from seeking police assistance or from assisting the police.

10) Permits a person to bring an action for equitable or declaratory relief in a court of competent jurisdiction against a law enforcement agency or law enforcement official that violates this section, in addition to any other sanctions, penalties, or remedies provided by law.

EXISTING LAW:

1) Declares that it is the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage data recorded by a body-worn camera worn by a peace officer; these policies and procedures shall be based on best practices. (Pen. Code, § 832.18, subd. (a).)

2) Encourages agencies to consider best practices in establishing when data should be downloaded to ensure the data is entered into the system in a timely manner, the cameras are properly maintained and ready for the next use, and for purposes of tagging and categorizing the data. (Pen. Code, § 832.18, subd. (b).)

3) Encourages agencies to consider best practices in establishing specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data. (Pen. Code, § 832.18, subd. (b)(3).)

4) Encourages agencies to consider best practices in establishing the length of time that recorded data is to be stored. States that nonvidentiary data including video and audio recorded by a body-worn camera should be retained for a minimum of 60 days, after which it
may be erased, destroyed, or recycled. Provides that an agency may keep data for more than
60 days to have it available in case of a civilian complaint and to preserve transparency. (Pen.
Code, § 832.18, subd. (b)(5)(A).)

5) States that evidentiary data including video and audio recorded by a body-worn camera
should be retained for a minimum of two years under any of the following circumstances:

a) The recording is of an incident involving the use of force by a peace officer or an officer-
involved shooting;

b) The recording is of an incident that leads to the detention or arrest of an individual; or,

c) The recording is relevant to a formal or informal complaint against a law enforcement
officer or a law enforcement agency. (Pen. Code, § 832.18, subd. (b)(5)(B).)

6) States that the recording should be retained for additional time as required by law for other
evidence that may be relevant to a criminal prosecution. (Pen. Code, § 832.18, subd.
(b)(5)(C).)

7) Instructs law enforcement agencies to work with legal counsel to determine a retention
schedule to ensure that storage policies and practices are in compliance with all relevant laws
and adequately preserve evidentiary chains of custody. (Pen. Code, § 832.18, subd.
(b)(5)(D).)

8) Encourages agencies to adopt a policy that records or logs of access and deletion of data from
body-worn cameras should be retained permanently. (Pen. Code, § 832.18, subd. (b)(5)(E).)

9) Encourages agencies to include in a policy information about where the body-worn camera
data will be stored, including, for example, an in-house server which is managed internally,
or an online cloud database which is managed by a third-party vendor. (Pen. Code, § 832.18,
subd. (b)(6).)

10) Instructs a law enforcement agency using a third-party vendor to manage the data storage
system, to consider the following factors to protect the security and integrity of the data:
Using an experienced and reputable third-party vendor; entering into contracts that govern
the vendor relationship and protect the agency’s data; using a system that has a built-in audit
trail to prevent data tampering and unauthorized access; using a system that has a reliable
method for automatically backing up data for storage; consulting with internal legal counsel
to ensure the method of data storage meets legal requirements for chain-of-custody concerns;
and using a system that includes technical assistance capabilities. (Pen. Code, § 832.18, subd.
(b)(7).)

11) Encourages agencies to include in a policy a requirement that all recorded data from body-
worn cameras are property of their respective law enforcement agency and shall not be
accessed or released for any unauthorized purpose. Encourages a policy that explicitly
prohibits agency personnel from accessing recorded data for personal use and from uploading
recorded data onto public and social media Internet websites, and include sanctions for
violations of this prohibition. (Pen. Code, § 832.18, subd. (b)(8).)
12) Requires that a public agency that operates or intends to operate an Automatic License Plate Recognition (ALPR) system to provide an opportunity for public comment at a public meeting of the agency’s governing body before implementing the program. (Civil Code, § 1798.90.55.)

13) Prohibits a local agency from acquiring cellular communications interception technology unless approved by its legislative body. (Gov. Code, § 53166, subd. (c)(1).)

14) Permits a court to award attorney fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed. (Code of Civ. Proc., § 1021.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “In response to public concern over police-involved shootings, agencies across the state have implemented body camera programs to help increase accountability and mend trust with the communities they are sworn to protect. However, technology has been developed to allow for facial recognition and biometric scanning in body cameras, which can lead to dire consequences for Californians.

“This technology has the potential to subject law-abiding citizens to perpetual police line-ups, tracking their movements without their consent, and creating new databases susceptible to exploitation and hacking undermines public trust and the effectiveness of law enforcement, threatens the safety of Californians, and unduly intrudes on constitutional rights to privacy. AB 1215 would ban law enforcement agencies and officials from using, installing, or activating facial recognition and biometric scanners in body cameras in order to protect Californians from unnecessary and potentially dangerous surveillance.”

2) Pervasive Surveillance Possible through Facial Recognition: According to the author, “Facial recognition applies computer software that automatically converts the unique features on a person’s face into a mathematical code, called a faceprint. But unlike other biometric identifiers like fingerprints or DNA, facial recognition technology allows faceprints to be taken without our permission or knowledge, with no way to opt-out – taking away an individual’s longstanding legal right to protect their identity if they haven’t done anything wrong...

“Law enforcement body cameras coupled with facial recognition software would transform thousands of individual cameras carried by law enforcement officers into roving surveillance devices that record who we are, where we go, and where we have been over time – from the
homes of friends, to medical offices, therapists, places of worship, and political gatherings. Such constant and pervasive surveillance would not only corrupt the purpose of body cameras, it would undermine trust in law enforcement and discourage victims and vulnerable groups from seeking help. Errors could result in false accusations or the inappropriate use of force, with potentially tragic consequences.”

In January, 85 privacy advocacy groups wrote a letter to Amazon, Google and Microsoft requesting that the companies pledge not to sell facial recognition technology to the government.¹ “We are at a crossroads with face surveillance, and the choices made by these companies now will determine whether the next generation will have to fear being tracked by the government for attending a protest, going to their place of worship, or simply living their lives,” said Nicole Ozer, technology and civil liberties director for the American Civil Liberties Union of Northern California.²

Use of facial recognition by law enforcement has been particularly pronounced in China. The Washington Post reported in May 2018 that a man was plucked from a crowd of 20,000 concertgoers after passing through security.³ “Facial recognition cameras at a stadium led to the arrest of a fugitive at a Jacky Cheung concert in China, making it the third time in two months that the technology was used to catch a wanted person at one of the pop star’s concerts.”

Google recognizes that facial recognition technology poses unique concerns, posting on its blog titled “Google in Asia” that “Google has long been committed to the responsible development of [artificial intelligence]. These principles guide our decisions on what types of features to build and research to pursue. As one example, facial recognition technology has benefits in areas like new assistive technologies and tools to help find missing persons, with more promising applications on the horizon. However, like many technologies with multiple uses, facial recognition merits careful consideration to ensure its use is aligned with our principles and values, and avoids abuse and harmful outcomes. We continue to work with many organizations to identify and address these challenges, and unlike some other companies, Google Cloud has chosen not to offer general-purpose facial recognition [application programing interfaces] before working through important technology and policy questions.”⁴

3) Accuracy Problems Could Exacerbate Civil Liberties Concerns: The American Civil Liberties Union reported last year that facial recognition software is, at best, inaccurate and at

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¹ Available at: https://www.aclu.org/coalition-letter-amazon-urging-company-commit-not-release-face-surveillance-product
⁴ Kent Walker, AI for Social Good in Asia Pacific, Google in Asia, December 13, 2018, Available at: https://www.blog.google/around-the-globe/google-asia/ai-social-good-asia-pacific/amp.
worst, “flawed, biased and dangerous.” 5 “The errors emerged as part of a larger test in which the civil liberties group used Amazon’s facial software to compare the photos of all federal lawmakers against a database of 25,000 publicly available mug shots. In the test, the Amazon technology incorrectly matched 28 members of Congress with people who had been arrested, amounting to a 5 percent error rate among legislators. The test disproportionately misidentified African-American and Latino members of Congress as the people in mug shots.” 6

Countering ACLU’s concerns, Nina Lindsey, an Amazon Web Services spokeswoman, said in a statement that the company’s customers had used its facial recognition technology for various beneficial purposes, including preventing human trafficking and reuniting missing children with their families, and said that police departments should utilize the technology differently than the ACLU did during its testing of the system’s accuracy. Lindsey added that, “police departments do not typically use the software to make fully autonomous decisions about people’s identities. ‘It is worth noting that in real-world scenarios, Amazon Rekognition is almost exclusively used to help narrow the field and allow humans to expeditiously review and consider options using their judgment.’” Lindsey also said that the “confidence threshold” ACLU used for its test, 80 percent confidence score, was lower than what law enforcement should use, a 95 percent confidence score.

Still, even manufacturers of the technology recognize that it is flawed. In August 2018, Gizmodo reported that Rick Smith, the CEO of Axon, one of the largest body camera manufacturers in the U.S., said the company was not implementing facial recognition software into their products, yet. 7 Smith said on a call to shareholders that privacy and policy concerns regarding the accuracy of face recognition was the cause for pause: “The ‘accuracy thresholds,’ Smith said on the call, aren’t ‘where they need to be to be making operational decisions off the facial recognition.’” 8

4) Fourth Amendment Issues: The American Civil Liberties Union of California writes that, “The Fourth Amendment to the US Constitution prohibits police from demanding identification without suspicion. The US Supreme Court has held, that absent specific statutory authority and limitations, there is no justification for police officers to arrest a suspect who refused to identify herself to authorities. Hiiibel v. Sixth Judicial District Court of Nevada, 542 U.S. 177; 2004. At one time, California did have a statute, former California Penal Code Section 647 (e), permitting police officers to question people who were loitering on the streets about their identity. However, that statute was repealed after it was determined to be unconstitutional. That case, Lawson v. Kolender, 461 U.S. 352 (1983), involved a black man who was repeatedly asked to identify himself to police for doing nothing more than walking in so-called white neighborhoods.

“By prohibiting the use of facial recognition software on police body cameras, AB 1215

6Id.
7Sidney Fussell, Axon CEO Says Face Recognition Isn't Accurate Enough for Body Cams Yet, Gizmodo, August 8, 2018, Available at: https://gizmodo.com/axon-ceo-says-face-recognition-isnt-accurate-enough-for-1828205723.
8Id.
(Ting) codifies the US Supreme Court’s recognition that, absent valid legal reasons, Californians may not be required to identify themselves to government officials.

“Our country appropriately values the freedom to walk down the street without being compelled to identify ourselves to law enforcement. Such liberty is one of the differences between this country and others. Governments in China, for example, subject residents to intense surveillance and scrutiny using public face surveillance systems.

“In addition to codifying existing privacy protections, there are other compelling civil rights justifications for preventing the implantation of facial recognition software on police body cameras.”

5) Investigatory Benefits of Facial Recognition Technology: Proponents of facial recognition technology see it as a useful tool in helping identify criminals. It was reportedly utilized to identify the man charged in the deadly shooting at The Capital Gazette’s newsroom in Annapolis, Md.9

This bill asks the Legislature whether it is ever appropriate to permit the use of facial recognition technology for investigatory purposes. There are no exceptions to the ban on using facial recognition software.

6) Enforcement: This bill would provide that in addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for injunctive or declaratory relief against a law enforcement agency that violates the provisions of this bill. If a person successfully enforces the provisions of this bill, they will have the opportunity to seek attorney fees if they prevail in court under Code of Civil Procedure Section 1021.5.

7) Argument in Support: According to the California Attorneys for Criminal Justice, “AB 1215 would prohibit a law enforcement agency or official from installing, activating, or using any biometric surveillance system in connection with an officer camera. Biometric surveillance is inherently intrusive and poses significant risks when used by law enforcement. A police officer equipped with this technology could scan, identify, and catalog a person’s face, without them ever being suspected of a crime or even communicating with the officer. CACJ believes that individual privacy protections should be strengthened in the face of these new technologies.”

8) Argument in Opposition: According to the California Police Chiefs, “Prohibiting the use of biometric surveillance systems severely hinders law enforcement’s ability to identify and detain suspects of criminal activity. These systems compare hundreds of thousands of mug shots with images captured by officer cameras – saving time and resources.”

9) Related Legislation: AB 1281 (Chau) would require a business in California that uses facial recognition technology to disclose that usage in a physical sign that is clear and conspicuous.

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at the entrance of every location that uses facial recognition technology.

10) Prior Legislation:

a) SB 21 (Hill), of the 2017-2018 Legislative Session, would have required local law enforcement agencies to have a policy, approved by the local governing body, in place before using surveillance technology. SB 21 was held in the Assembly Appropriations Committee.

b) AB 748 (Ting), Chapter 960, Statutes of 2018, requires law enforcement agencies to release video and audio recordings of critical incidents, as defined, within 45 days, unless disclosure would compromise an investigation.

c) AB 69 (Rodriguez) Chapter 461, Statutes of 2015, requires law enforcement agencies to follow specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras.

d) SB 34 (Hill) Chapter 532, Statutes of 2015, imposed a variety of security, privacy and public hearing requirements on the use of automated license plate recognition systems, as well as a private right of action and provisions for remedies.

e) SB 741 (Hill) Chapter 741, Statutes of 2015, requires local agencies to publicly approve or disclose the acquisition of “cellular communications interception technology” (CCIT). SB 741 also requires local agencies to develop and release a usage and privacy policy for CCIT.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
API Chaya
Anti-Police Terror Coalition
Asian Law Alliance
Council on American-Islamic Relations of California
California Attorneys for Criminal Justice
California Public Defenders Association
Center for Media Justice
Color of Change
Data for Black Lives
Defending Rights and Dissent
Electronic Frontier Foundation
Fight for the Future
Indivisible CA
Justice Teams Network
Media Alliance
Oakland Privacy
RAICES
San Jose/Silicon Valley NAACP
Secure Justice
National Association of Criminal Defense Lawyers
Library Freedom Project
Tor Project
X-Lab

Oppose

California Police Chiefs Association
California State Sheriffs' Association

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-1215 (Ting (A))

Mock-up based on Version Number 98 - Amended Assembly 4/8/19
Submitted by: Nikki Moore, Assembly Committee on Public Safety

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

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

(a) Californians value privacy as an essential element of their individual freedom, and are guaranteed a right to privacy in Section 1 of Article 1 of the California Constitution.

(b) Facial recognition and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors.

(c) The use of facial recognition and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of recognized constitutional rights. This technology also allows people to be tracked without consent. It would also generate massive databases about law-abiding Californians, and may chill the exercise of free speech in public places.

(d) Facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful “false positive” identifications.

(e) Facial and other biometric surveillance would corrupt the core purpose of officer-worn body-worn cameras by transforming those devices from transparency and accountability tools into roving surveillance systems.

(f) The use of facial recognition and other biometric surveillance would disproportionately impact the civil rights and liberties of persons who live in highly policed communities. Its use would also diminish effective policing and public safety by discouraging people in these communities, including victims of crime, undocumented persons, people with unpaid fines and fees, and those with prior criminal history from seeking police assistance or from assisting the police.

SEC. 2. Section 832.19 is added to the Penal Code, immediately following Section 832.18, to read:

Nikki Moore
Assembly Committee on Public Safety
04/16/2019
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832.19. (a) For the purposes of this section, the following terms have the following meanings:

(1) “Biometric data” means a physiological, biological, or behavioral characteristic that can be used, singly or in combination with each other or with other information, to establish individual identity.

(2) “Biometric surveillance system” means any computer software or application that performs facial recognition or other biometric surveillance.

(3) “Facial recognition or other biometric surveillance” means either of the following, alone or in combination:

(A) An automated or semiautomated process that captures biometric data of an individual.

(B) An automated or semiautomated process that assists in identifying an individual or generating surveillance information about an individual based on biometric data.

(4) “Law enforcement agency” means any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, highway patrol, the police department of any campus of the University of California, the California State University, or a community college, the Department of the California Highway Patrol, and the Department of Justice.

(5) “Law enforcement official” means an officer, deputy, employee, or agent of a law enforcement agency.

(6) “Officer camera” means a body-worn camera or similar device that records or transmits images or sound and is attached to the body or clothing of, or carried by, a law enforcement official.

(7) “Surveillance information” means either of the following, alone or in combination:

(A) Any information about a known or unknown individual, including, but not limited to, a person’s name, date of birth, gender, or criminal background.

(B) Any information derived from biometric data, including, but not limited to, assessments about an individual’s sentiment, state of mind, or level of dangerousness.

(8) “Use” means either of the following, alone or in combination:

(A) The direct use of the biometric surveillance system by a law enforcement officer or law enforcement agency.

(B) A request by a law enforcement officer that a law enforcement agency or other third party use the biometric surveillance system on behalf of the requesting entity.

Nikki Moore
Assembly Committee on Public Safety
04/16/2019
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(b) A law enforcement agency or law enforcement official shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

(c) In addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a law enforcement agency or law enforcement official that violates this section. A law enforcement agency or official that violates this section is also liable for actual damages, but in no case less than four thousand dollars ($4,000), and reasonable attorney's fees.
SUMMARY: Creates a pilot program to employ a single law enforcement officer in both Alameda and Contra Costa counties to enforce laws prohibiting dumping. Specifically, this bill:

1) Creates a pilot program to employ a single law enforcement officer in both Alameda and Contra Costa counties to enforce laws prohibiting dumping.

2) Requires the counties to jointly submit a report to the Legislature evaluating the effectiveness of the project by July 1, 2021.

3) Repeals this provision in January 1, 2022.

EXISTING LAW:

1) States that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Pen. Code, § 374.3, subd. (a).)

2) Provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (Pen. Code, § 374.3, subd. (b).)

3) States that a person violating dumping provisions is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation the law is a separate violation. (Pen. Code, § 374.3, subd. (c).)

4) Provides these provisions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (Pen. Code, § 374.3, subd. (d).)
5) Specifies a person convicted of dumping shall be punished by a mandatory fine of not less than $250 nor more than $1,000 upon a first conviction, by a mandatory fine of not less than $500 nor more than $1,500 upon a second conviction, and by a mandatory fine of not less than $750 nor more than $3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (Pen. Code, § 374.3, subd. (e).)

6) Provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (Pen. Code, § 374.3, subd. (f).)

7) States that except when the court requires the convicted person to remove waste matter for which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that a person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (Pen. Code, § 374.3, subd. (g).)

8) States that a person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than $1,000 nor more than $3,000 upon a first conviction, not less than $3,000 nor more than $6,000 upon a second conviction, and not less than ($6,000) nor more than $10,000 upon a third or subsequent conviction.

9) Defines “commercial quantities” means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “Illegal Dumping is an environmental justice issue that disproportionately affects disadvantaged communities, impacting the sense of well-being of children and other residents who live in neighborhoods where it’s rampant.

“Unscrupulous commercial haulers save significant money illegally disposing construction debris, dirt, etc. while taxpayers pick up the tab, paying increasingly significant costs to clean up the tremendous amounts of garbage dumped on our city streets, highways, parks, and in our waterways.

“AB 1216 creates a pilot program to allow the Counties of Alameda and Contra Costa to work together to tackle the issues of illegal dumping. This pilot allows the funding of two full-time officers, one in each county, working together in order to build networks, investigate, and stop illegal dumping. At the end of this one year pilot, results would be
reported to the legislature."

2) **Funding for Officer Positions:** This bill is silent on the funding mechanism for establishing the pilot program, however, it appears the program will require an appropriation from the general fund. The main, ongoing cost would be for the two officer positions created as a result of this pilot program.

3) **Argument in Support:** According to the *Alameda County District Attorney's Office*, "Illegal Dumping is an environmental justice issue that disproportionately affects disadvantaged communities. Illegal dumping impacts the sense of well-being of children and other residents who live in neighborhoods where it's rampant. Dumping 'hot spots' become breeding grounds for vermin and otherwise impact public health. Some residents and businesses are forced to pick up debris daily in front of their homes and businesses. Unscrupulous commercial holler save significant money illegally disposing construction debris, dirt, etc. while taxpayers pick up the tab, paying increasingly significant cost to clean up the tremendous amounts of garbage dumped on our city streets, parks, and in our waterways. Illegal dumping diminishes property values and revenues to local governments. It affects everyone."

"The current lack of investigation into illegal dumping has led to an overall lack of enforcement of our illegal dumping laws – which has encouraged the normalization of illegal dumping. Although cities commonly receive investigative leave relating to illegal dumping from the public, many police agencies don't have the time to investigate because they are focused on violent crimes and other more serious offenses. Illegal dumping investigations are typically time-consuming because, even if a suspect and license plate are captured on video, the suspect is commonly not the registered owner of the associated vehicle. These investigations require a significant amount of follow-up to develop sufficient evidence to file a criminal complaint or citation."

"Having two sworn peace officers working together full-time will provide for some measure of enforcement, which, if publicized, will help deter illegal dumping by the many who currently believe that they will never get caught. In addition to solving cases, the full-time designation of the peace officers will help the officers build networks between law-enforcement agencies, public works, and other partners to address this intransigent problem, and will allow for the building of expertise regarding investigations. Their suspect interviews may also shed light on root causes and possible local solutions. The pilot will also provide the officers the time to conduct any potential special operations."

"Importantly, this pilot will also help reinvigorate the view that illegal dumping crimes deserve investigation and enforcement."

4) **Related Legislation:**

a) **AB 215 (Mathis),** would create a new misdemeanor crime by specifying that the fourth violation of illegal dumping on private property is punishable by up to 30 days in county jail and a fine of not less than $750 nor more than $3,000. AB 215 is pending in the Assembly Appropriations Committee.
b) SB 409 (Wilk), would increase fines for the crime of dumping. SB 409 is pending in the Senate Appropriations Committee.

c) AB 1652 (Wicks), would authorize a court, in cases of illegal dumping in waterways, to order a defendant to perform other types of community service, in lieu of picking up litter, as a condition of probation. AB 1652 is before this committee.

5) **Prior Legislation:**

   a) AB 144 (Mathis), of the 2015-2016 Legislative Session, was identical to this bill. AB 144 was vetoed by the Governor.

   b) AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, imposed the graduated penalties and increased fines for second and third violations of illegal dumping offenses.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alameda County District Attorney’s Office (Sponsor)

**Opposition**

None

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