AGENDA

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

PART IV

AB 1652 (Wicks) – AB 61 (Ting) Vote Only
SUMMARY: Authorizes 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.

EXISTING LAW:

1) Makes it a misdemeanor to litter, cause to be littered, dump, or cause to be dumped, waste into specified bodies of water. (Pen. Code, § 347.7, subd. (a).)

2) Establish graduated fines for convictions of littering a body of water, as follows:
   a) A mandatory fine between $250 and $1,000 upon a first conviction,
   b) A mandatory fine between $500 and $1,500 upon a second conviction; and,
   c) A mandatory fine between $750 and $3,000 upon a third or subsequent conviction. (Pen. Code, § 347.7, subd. (b).)

3) Authorizes the court to require a person convicted of this offense and granted probation to perform eight hours of community service consisting of picking up litter as a condition of probation. (Pen. Code, § 347.7, subd. (c).)

4) Provides that a person giving information leading to the arrest and conviction of a person for specified dumping violations is entitled to an award which shall be 50% of the fine levied against and collected from the perpetrator. (Pen. Code, § 374a.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “AB 1652 will allow courts to require an alternative community service option, other than litter pick up, when a person is convicted of littering in a body of water. The intent of this bill is provide flexibility among courts and take into consideration other opportunities based on the community’s needs.”

2) **Court's Authority to Set Probation Conditions:** Courts are given wide discretion to set probation conditions which foster rehabilitation and protect the public. “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires
or forbids conduct which is not reasonably related to future criminality . . . .” [Citations.]
Conversely, a condition of probation which requires or forbids conduct which is not itself
criminal is valid if that conduct is reasonably related to the crime of which the defendant was
convicted or to future criminality.” (People v. Lent (1975) 15 Cal.3d 481, 486, footnote
omitted; People v. Bianco (2001) 93 Cal.App.4th 748, 752.)

A condition of probation requiring the defendant to perform community service has been
found to be reasonable and within the sound discretion of the trial court. (See e.g., People v.
Beach (1983) 147 Cal.App.3d 612, 623.)

Existing law allows the court to order a defendant convicted of illegal dumping in waterways
to pick up litter as a condition of probation. This bill would allow a court to order other types
of community service instead of picking up litter.

3) **Related Legislation:**

   a) AB 215 (Mathis), would increase punishment for illegal dumping of more than a cubic
yard on private property, including on any private road or highway. AB 215 is pending
in the Assembly Appropriations Committee.

   b) AB 1216 (Bauer-Kahan), would create a pilot program to employ a single law
enforcement officer in both Alameda and Contra Costa counties to enforce laws
prohibiting dumping. AB 1216 is being heard in this committee today.

   c) b) SB 409 (Wilk), would increase fines for the crime of dumping. SB 409 is pending in
the Senate Appropriations Committee.

4) **Prior Legislation:** AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, increased the
maximum fines for second and third violations of illegal dumping.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None

**Opposition**

None

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Creates the Missing and Murdered Indigenous Women Task Force to consult with California’s Indian tribes to ensure resources are used effectively to investigate cases of missing and murdered indigenous persons in the state. Requires the task force to submit a report to the Legislature on or before January 1, 2022. Specifically, this bill:

1) Establishes the Missing and Murdered Indigenous Women Task Force in the Department of Justice (DOJ).

2) States that the purpose of the task force is to enhance the protection of American Indians, especially American Indian women, from domestic violence, dating violence, sexual assault, homicide, stalking, and sex trafficking, and to improve access to local, regional state, and federal crime information databases and criminal justice information systems.

3) States that the Missing and Murdered Indigenous Women Task Force shall consist of the following members, or their appointed representative:
   a) The Attorney General, who shall serve as chair of the task force;
   b) The Director of Emergency Services, who shall serve as vice chair of the task force;
   c) Three representatives, each of whom shall be an enrolled member of a federally recognized tribe in California, appointed by the Governor;
   d) A representative of tribal law enforcement agencies, appointed by the Governor;
   e) A representative of county law enforcement agencies, appointed by the Governor;
   f) A representative of city law enforcement agencies, appointed by the Governor;
   g) A representative of tribal, state, and local groups that represent or provide services to victims of physical or sexual violence, appointed by the Governor;
   h) A member of the Senate, appointed by the Senate Committee on Rules; and
   i) A member of the Assembly, appointed by the Speaker of the Assembly.

4) States that the task force shall encourage the participation of federal representatives, including representatives of the Federal Bureau of Investigation and the Bureau of Indian
Affairs (BIA).

5) Specifies that on or before July 1, 2020, the task force shall complete a formal consultation with California’s Indian tribes on how to further improve tribal data relevance and access to databases, including through the Violent Crime Information Center and by increasing tribal communities’ knowledge and utilization of the Missing and Unidentified Persons System.

6) Requires the task force to determine how to increase state resources for reporting and identifying missing and murdered indigenous persons in the state, including through the Rural Indian Crime Prevention Program and existing community-based crime prevention programs.

7) Requires the task force to collaborate with tribal law enforcement agencies to determine the scope of the problem, identify barriers to addressing the problem, and create partnerships to improve the reporting of and the investigation of missing and murdered indigenous persons.

8) States that the task force shall respect tribal sovereignty in the execution of its duties, and shall collaborate with the United States Department of Justice to improve its processes and protocols for information sharing and coordination of resources in reporting and investigating cases of missing and murdered indigenous persons in the state.

9) States that in consultation with the task force, the Attorney General shall prepare and distribute to law enforcement agencies in the state guidelines and uniform procedures for the reporting and investigation of missing and murdered indigenous persons that shall include all of the following:

   a) Guidelines on interjurisdictional cooperation among law enforcement agencies at the tribal, federal, state, and local levels, including interjurisdictional enforcement of protection orders and detailing of specific responsibilities of each law enforcement agency;

   b) Best practices in conducting searches for missing persons on Indian land;

   c) Standards on the collection, reporting, and analysis of data and information on missing persons and unidentified human remains, and information on culturally appropriate identification and handling of human remains identified as American Indian, including guidance stating that all appropriate information related to missing and murdered American Indians be entered in a timely manner into applicable databases;

   d) Guidance on which law enforcement agency is responsible for inputting information into appropriate databases if the tribal law enforcement agency does not have access to those databases;

   e) Guidelines on improving law enforcement agency response rates and follow up responses to cases of missing and murdered Indians; and,

   f) Guidelines on ensuring access to culturally appropriate victim services for victims and their families.
10) Specifies that in consultation with the task force, the Attorney General shall establish training programs for law enforcement personnel regarding the conduct of investigations into missing and murdered indigenous persons.

11) Requires the task force to develop a database of nonprofit or nongovernmental organizations that provide aid or support in locating missing indigenous persons, and a toolkit for tribal and urban tribal communities to educate tribal families about the steps they should take if a loved one is missing, including how to report a missing person and what other actions they should take to involve law enforcement.

12) Requires the task force to develop a strategy for disseminating the database and toolkit information among tribal and law enforcement communities.

13) States that DOJ to employ a missing indigenous persons specialist responsible for building relationships to increase trust between governmental organizations and native communities, and working closely with local, state, federal, and tribal law enforcement authorities on missing persons cases. The specialist shall do all of the following:

   a) Provide guidance and support to law enforcement authorities and families in the search for missing persons;

   b) Network with other state and international missing persons programs to aid in locating indigenous persons who are unlawfully taken out of or unlawfully brought into California;

   c) Provide public outreach and education on missing and murdered indigenous persons issues;

   d) Issue alerts and advisories at the request of law enforcement authorities to activate public assistance in locating an endangered missing indigenous person;

   e) Facilitate training for law enforcement authorities related to missing and murdered indigenous persons cases, including education concerning resources available to assist with missing and murdered indigenous persons investigations; and,

   f) Act as a liaison with specified entities.

14) States that the missing persons specialist shall have significant experience living in tribal communities and shall complete cultural competency training.

15) Requires the task force to prepare and submit a report, as specified, to the Legislature on or before January 1, 2022, detailing the improvements to tribal database access, interjurisdictional coordination, and law enforcement resource allocation for cases of missing or murdered indigenous persons.

16) Makes findings and declarations.
EXISTING LAW:

1) Establishes in the Office of Emergency Services a program of financial and technical assistance for local law enforcement, called the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, subd. (a).)

2) States that the program shall target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs. (Pen. Code, § 13847, subd. (a).)

3) Specifies that the Director of Emergency Services may allocate and award funds to local units of government for purposes of the program. (Pen. Code, § 13847, subd. (b).)

4) Requires the Director of Emergency Services to issue administrative guidelines and procedures for the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, subd. (d).)

5) Requires each law enforcement agency to have a system for recording all domestic violence-related calls for assistance made to the department, including whether weapons are involved, or whether the incident involved strangulation or suffocation. (Pen. Code, § 13730, subd. (a).)

6) Specifies that monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons or strangulation or suffocation shall be compiled by each law enforcement agency and submitted to the Attorney General. (Pen. Code, § 13730, subd. (a).)

7) Requires the Attorney General to report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, the number of cases involving strangulation or suffocation, and a breakdown of calls received by agency, city, and county. (Pen. Code, § 13730, subd. (b).)

8) Requires each law enforcement agency to have an incident report form that includes a domestic violence identification code. (Pen. Code, § 13730, subd. (c).)

9) Requires the Attorney General to maintain the Violent Crime Information Center to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The center is required to, among other things, assist local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing persons cases. (Pen. Code, § 14200.)

10) States that a law enforcement agency may request a copy of information or data maintained by the Department of Justice pursuant to this title, for the purpose of linking an unsolved missing or unidentified person case with another case that was previously unknown to be related to that case, or for the purpose of resolving an unsolved missing or unidentified person case. (Pen. Code, § 14201.2.)
11) Specifies that within DOJ, there shall be a director responsible for coordinating California’s response to missing persons. (Pen. Code, § 14208.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, "According to the National Congress of American Indians, Native women are two and a half times more likely to experience a violent crime, and at least two times more likely to experience rape or sexual assault than all other races. More than four in five Native women have experienced violence in their lifetime. In the great majority of these cases, the perpetrator is non-Native.

“The complicated jurisdiction for these crimes makes it more challenging to ensure the safety of Native communities, has been increasingly exploited by criminals, and requires a high degree of commitment and cooperation among Tribal, federal, and state law enforcement officials. By establishing a Missing and Murdered Native Women Task Force, AB 1653 will protect California’s Tribal population and give law enforcement at all levels a forum to enhance existing efforts to end violence against Native women and men.”

2) Missing American Indians: The National Crime Information Center reports that, in 2016, there were 5,712 reports of missing American Indian and Alaska Native women and girls, though the US Department of Justice’s federal missing persons database, NamUs, only logged 116 cases. The Center for Disease Control and Prevention has reported that murder is the third-leading cause of death among American Indian and Alaska Native women and that rates of violence on reservations can be up to ten times higher than the national average. However, no research has been done on rates of such violence among American Indian and Alaska Native women living in urban areas despite the fact that approximately 71% of American Indian and Alaska Natives live in urban areas. (http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf)

On some reservations, Native American women are murdered at a rate more than 10 times the national average and more than half of Alaska Native and Native women have experienced sexual violence at some point, according to the U.S. Justice Department. A 2016 study found more than 80 percent of Native women experience violence in their lifetimes. (https://www.apnews.com/cb6efc4ec93e4e92900ec99c9cb7e05)

Cases involving missing American Indians can be complicated by overlapping jurisdictions of state law and tribal law. Jurisdictional questions can arise depending on whether the crime took place on or off a reservation, or whether a criminal suspect is a tribal member or not. Tribal law and California state law are not necessarily consistent. Jurisdictional and legal complications create the possibility that American Indian missing person cases can fall between the cracks.

3) Missing and Unidentified Persons Unit: The DOJ maintains the “Missing and Unidentified Persons Unit.” Through that unit, the DOJ assists law enforcement agencies throughout the state in finding missing persons. The Missing and Unidentified Persons Unit maintains statewide files containing the dental records, photographs and physical characteristics of missing and unidentified persons. Staff assist law enforcement agencies in locating missing
persons and identifying unknown live and deceased persons through the comparison of physical characteristics, fingerprints, and dental/body X-rays. (http://oag.ca.gov/missing/mups)

The Missing and Unidentified Persons Unit provides data, including photographs, for posting to the California Attorney General’s public Internet searchable online database to aid in the identification and recovery of missing persons. The Missing and Unidentified Person Unit assists in coordinating California’s response to missing persons by assisting law enforcement agencies with the search and recovery of missing persons, and maintain relationships with federal, state, and local law enforcement agencies and other entities responsible for the investigation of missing persons in the state.

The Missing and Unidentified Persons Unit also works closely with the DOJ Division of Law Enforcement’s Bureau of Forensic Services Missing Persons DNA Program. The Missing Persons DNA Program compares DNA samples taken from unidentified persons with DNA samples taken from personal articles belonging to missing persons, or from family members of high-risk missing persons. (http://oag.ca.gov/missing/mups)

4) **Argument in Support:** According to the California Tribal Business Alliance, “Examining the data from national reports, there is a need for coordinated efforts and resources, such as those described in the bill, to reduce violent crimes committed against Native Americans. According to the National Congress of American Indians, Native women are two and a half times more likely to experience a violent crime, and at least two times more likely to experience rape or sexual assault than women of all other races. According to the National Institute of Justice, more than four in five Native women (84.3%) and Native men (81.6%) experience violence in their lifetime. According to the Centers for Disease Control and Prevention, homicide is the third leading cause of death for Native women between 10-24 years of age and fifth leading cause of death for Native women between 25-34 years of age.

“In many instances, investigations into cases of missing and murdered Native women are made difficult for tribal law enforcement agencies due to a lack of training and resources; lack of interagency cooperation; and a lack of appropriate statutes. Jurisdictional complexities add to the challenges to ensure the safety of Native persons from violent crimes and requires a high degree of commitment and cooperation among tribal, federal, state and local law enforcement officials.

“AB 1653 seeks to establish a coordinated framework to reduce violent crimes committed against Native Americans and remove obstacles associated with investigating and prosecuting said crimes.”

5) **Prior Legislation:**

a) SB 846 (Galgiani), Chapter 432, Statutes of 2014, specified that law enforcement agencies in California may request information or data maintained by the DOJ for the purpose of linking unsolved missing or unidentified persons cases, for the purpose of resolving these cases, as specified.
b) AB 34 (Nava), Chapter 225, Statutes of 2010, requires the Violent Crime Information Center to make accessible to the National Missing and Unidentified Persons System specific information that is contained in law enforcement reports regarding missing or unidentified persons.

REGISTERED SUPPORT / OPPOSITION:

Support

California Tribal Business Alliance

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR),
the California Rehabilitation Oversight Board (C-ROB), and the Inspector General to report to
the Legislature on CDCR’s implementation of the State Auditor’s recommendations in the 2019
report entitled, “Several Poor Administrative Practices Have Hindered Reductions in Recidivism
and Denied Inmates Access to In-Prison Rehabilitation Programs.” Specifically, this bill:

1) Declares that it is the intent of the Legislature that CDCR, the Office of the Inspector
General, and the California Rehabilitation Oversight Board regularly provide information to
the Legislature to allow it to better assess the performance of the department in establishing
all of the following:

   a) Rehabilitative program performance targets, including an analysis of the cost-
      effectiveness of those programs and an analysis of the programs’ success at reducing
      recidivism;

   b) Systems to ensure that rehabilitative programs are providing a significant benefit to
      program participants, and that those benefits are commensurate with the Legislature’s
      investment in rehabilitative programs; and,

   c) Processes to ensure that inmates who are most in need of rehabilitative programs do in
      fact receive access to those programs.

2) Requires that on or before January 10, 2020, and annually thereafter, CDCR, the Office of
the Inspector General, and C-ROB report to the Joint Legislative Budget Committee and to
the public safety committees of both houses of the Legislature on CDCR’s implementation of
the State Auditor’s recommendations as contained in the 2019 report entitled “Several Poor
Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates
Access to In-Prison Rehabilitation Programs.” The annual report should include all of the
following:

   a) Data on rehabilitation program success, including participant testimony, as discussed in
      the University of California, Irvine study on the department’s rehabilitation programs
      entitled, “CPAP Assessment of CDCR Recidivism-Reduction Programs.”

1 CPAP stands for the California Performance Assessment Process.
b) The percentage of inmates that were recommended for rehabilitation programs who actually received the rehabilitation services;

c) Data on the placement of inmates on rehabilitation program waiting lists after they have been identified as candidates for rehabilitation programs;

d) Data on staffing levels for rehabilitation programs and a description of current efforts to reach full staffing;

e) The number of sanctions or other adverse actions taken against rehabilitation program vendors in the previous year;

f) Data on the Prison Industry Authority program participation and a description of efforts to increase participation;

g) Data on infrastructure capacity for rehabilitation programs and additional space needed, if any;

h) Data on federal recidivism funds applied for by the department in the prior year;

i) Data on rehabilitation program completion rates;

j) Data on inmates receiving rehabilitation programs in their areas of expressed need;

k) Data on recidivism rates for each rehabilitation program in operation over the previous year; and,

l) Data on the success of volunteer programs in rehabilitation and preventing recidivism.

EXISTING LAW:

1) Requires CDCR to develop and implement, by January 15, 2008, a plan to address management deficiencies within the department and states that the plan should, at a minimum, address all of the following:

a) Filling vacancies in management positions within the department;

b) Improving lines of accountability within the department;

c) Standardizing processes to improve management;

d) Improving communication within headquarters, between headquarters, institutions and parole offices, and between institutions and parole offices;

e) Developing and implementing more comprehensive plans for management of the prison inmate and parole populations;

f) The department may contract with an outside entity that has expertise in management of complex public and law enforcement organizations to assist in identifying and addressing
deficiencies. (Pen. Code, § 2061.)

2) Requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prison inmates and parolees and states that the plan shall include, but is not limited to, all of the following:

   a) Plans to fill vacant state staff positions that provide direct and indirect rehabilitation and treatment services to inmates and parolees;

   b) Plans to fill vacant staff positions that provide custody and supervision services for inmates and parolees;

   c) Plans to obtain from local governments and contractors services for parolees needing treatment while in the community and services that can be brought to inmates within prisons; and,

   d) Plans to enter into agreements with community colleges to accelerate training and education of rehabilitation and treatment personnel, and modifications to the licensing and certification requirements of state licensing agencies that can accelerate the availability and hiring of rehabilitation and treatment personnel.

3) Requires that by January 10 of each year, CDCR shall provide to the Joint Legislative Budget Committee operational and fiscal information to be displayed in the Governor’s proposed budget. This information shall include data for the three most recently ended fiscal years, and shall include, but is not limited to, the following:

   a) Per capita costs, average daily population, and offender to staff ratios for each of the following:

      i) Adult inmates housed in state prisons;

      ii) Adult inmates housed in Community Correctional Facilities and out-of-state facilities;

      iii) Adult parolees supervised in the community;

      iv) Juvenile wards housed in state facilities; and,

      v) Juvenile parolees supervised in the community.

   b) Total expenditures and average daily population for each adult and juvenile institution.

   c) Number of established positions and percent of those positions vacant on June 30 for each of the following classifications within the department:

      i) Correctional officer;

      ii) Correctional sergeant;
iii) Correctional lieutenant;

iv) Parole agent;

v) Youth correctional counselor;

vi) Youth correctional officer;

vii) Physician;

viii) Registered nurse;

ix) Psychiatrist;

x) Psychologist;

xi) Dentist;

xii) Teacher;

xiii) Vocational instructor; and,

xiv) Licensed vocational nurse.

d) Average population of juvenile wards classified by board category;

e) Average population of adult inmates classified by security level;

f) Average population of adult parolees classified by supervision level;

g) Number of new admissions from courts, parole violators with new terms, and parole violators returned to custody;

h) Number of probable cause hearings, revocation hearings, and parole suitability hearings conducted;

i) For both adult and juvenile facilities, the number of budgeted slots, actual enrollment, and average daily attendance for institutional academic and vocational education and substance abuse programs; and,

j) Average population of mentally ill offenders classified by Correctional Clinical Case Management System or Enhanced Outpatient Program status, as well as information about mentally ill offenders in more acute levels of care.

**FISCAL EFFECT:** Unknown
COMMENTS:

1) **Author's Statement:** According to the author, "The State Auditor's report highlighted some corrections programs that have had some demonstrable success in reducing recidivism. However, the audit also made clear areas where improvement is needed. Most striking, the report notes that if these programs are just 11% successful, stopping one in every nine inmates from returning to prison, in-prison cognitive behavioral programming will pay for itself without any additional cost to taxpayers, freeing state funds for educational programs, affordable housing, and combatting rising healthcare costs. We must stop throwing taxpayer money at problems, without demanding demonstrative results."

2) **California Rehabilitation Oversight Board (C-ROB):** (Solorio) Chapter 7, Statutes of 2007, among other things, created the California Rehabilitation Oversight Board (C-ROB) within the Office of the Inspector General. C-ROB's mandate is to regularly examine the various mental health, substance abuse, educational, and employment programs for inmates and parolees operated by the CDCR.

   C-ROB is required to meet at least biannually and submit reports to the Governor and the Legislature annually, on September 15. C-ROB reports include findings on the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in offender rehabilitation services in the department, and levels of offender participation and success in the programs. C-ROB also makes recommendations to the Governor and the Legislature with respect to modifications, additions, and eliminations of offender rehabilitation and treatment programs. C-ROB reports are available to the public its website. ([https://www.oig.ca.gov/pages/c-rob.php#](https://www.oig.ca.gov/pages/c-rob.php#))

3) **2019 State Auditor Report on CDCR Rehabilitation Programs:** On January 31, 2019, the California State Auditor released a report concerning the effectiveness of in-prison rehabilitation programs at CDCR. The report is entitled *Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs*, and is available online. (California State Auditor, Jan. 2019, available at: [https://www.bsa.ca.gov/pdfs/reports/2018-113.pdf](https://www.bsa.ca.gov/pdfs/reports/2018-113.pdf)) By way of background: To reduce the likelihood of inmates reoffending within three years of their release dates, CDCR began increasing inmates' access to in-prison rehabilitation programs to meet the needs of inmates before their release from one of 36 adult prisons across the State. Although the number of inmates housed in state prisons has decreased over the years, the recidivism rate for inmates in California has remained relatively constant. In addition to academic and vocational programs, CDCR has expanded to all prisons its cognitive behavioral therapy (CBT) reentry programs, which are designed to correct an inmate’s patterns of thinking and behavior. CDCR determines what in-prison rehabilitation programs inmates need through the assessments that it requires inmates to take upon entering an institution. ([https://www.bsa.ca.gov/pdfs/factsheets/2018-113.pdf](https://www.bsa.ca.gov/pdfs/factsheets/2018-113.pdf))

The key findings of the auditor’s report were: 1) CDCR’s Cognitive Behavioral Therapy (CBT) programs have not reduced recidivism; 2) CDCR has neither placed inmates on program waiting lists appropriately nor assigned inmates to the programs necessary to address their rehabilitative needs, and 3) CDCR has not established performance measures for its rehabilitation programs nor has it measured their cost effectiveness and thus does not
know if its programs reduce recidivism.

In regards CBT programs, the auditor stated that CDCR has not properly assessed its own ability to determine inmates’ needs and therefore is potentially placing certain inmates into programs that will not be the most effective at reducing the possibility of reoffending. In addition, the auditor stated that a lack of oversight by CDCR resulted in numerous CBT programs being administered that have not been evaluated and shown to have a positive impact on program participants. According to the audit, nearly 20 percent of the CBT programming that it reviewed in CDCR facilities had not been shown to be effective at reducing recidivism. (Auditor’s Report, supra at 19.) For waitlist issues, the auditor found that CDCR has historically struggled with high staff vacancy rates for its academic and vocational education programs. In addition, for the three prisons the auditor reviewed, the enrollment rate for rehabilitation programs was 45 to 76 percent of full capacity. Finally, the report indicates that CDCR has not yet established performance measures for rehabilitation programs and therefore doesn’t know the extent of their cost-effectiveness.

The audit concludes by making recommendations to the Legislature, C-ROB, and CDCR. The recommendations to the Legislature include requiring CDCR to issue an annual report on the effectiveness of the rehabilitation programs on recidivism, which would be accomplished by the provisions of this bill. This bill would require specific information to be included in the report, including the effectiveness of rehabilitative programs as discussed in the University of California, Irvine study on the department’s rehabilitation programs entitled, CPAP Assessment of CDCR Recidivism-Reduction Programs. (https://ucicorrections.seweb.uci.edu/files/2013/06/CPAP-Assessment-of-CDCR.pdf.) It would further require information and data on problems identified by the auditor such as the placement of inmates on waitlists as well as staffing levels. This would appear to address the auditor’s recommendation to the Legislature in terms of holding CDCR accountable for the effectiveness of its rehabilitative programs. (Auditor’s Report, supra at 44.) A companion bill, AB 1688 (Calderon) would address the auditor’s recommendations regarding external researchers and performance targets.

4) Responses to the Audit: In response to the audit, C-ROB submitted the following:

“Thank you for including the California Rehabilitation Oversight Board (C-ROB) in your recent audit of the California Department of Corrections and Rehabilitation’s (CDCR) rehabilitative programming. We appreciate the work your office has done in preparing this audit. We also appreciate that you realize this board lacks the resources, funding and legislative authority necessary to implement the recommendations set forth in the audit report.” (ld. at 65.)

CDCR submitted the following response:

“The California Department of Corrections and Rehabilitation (CDCR) submits this letter in response to the California State Auditor's (CSA) audit of CDCR's in-prison rehabilitation programs.

“CDCR considers rehabilitation one of its highest priorities. In the most recent fiscal years following California's historic recession, CDCR placed significant focus on re-establishing rehabilitative programs statewide. CDCR continues to
champion a culture focused on rehabilitation that addresses the critical needs of the Department's population. CDCR's rehabilitation efforts go beyond the in-prison Cognitive Behavior Therapy (CBT) programs which are the main focus of the CSA's report. As stated in the report, CBT programs comprise just 26 percent of all rehabilitative programs; the remaining 74 percent comprise academic and career technical education. CDCR believes that robust in-prison rehabilitation opportunities followed by aftercare are essential to holistically addressing the criminogenic needs of the offender population and truly impacting recidivism.

"CSA's report on CDCR's in-prison programming highlights areas where CDCR is already taking action to improve. Moreover, CDCR's significant efforts in recent fiscal year go beyond those raised in the report. These current efforts include:

1. *Creation of in-prison cognitive behavioral treatment program accountability and fidelity tools.* In collaboration with external researchers, CDCR has developed and is currently implementing program accountability and fidelity tools. Research shows that fidelity can significantly impact the efficacy (recidivism effects) of programming. CDCR believes that ensuring vendors adhere to the fidelity of the implemented models will produce reductions in recidivism.

2. *Modification to in-prison CBT contracts.*
   CDCR is already in the process of finalizing future treatment contract language to ensure that CDCR vendors are delivering treatment programming consistent with the highest likelihood for positive outcomes.

3. *Development and implementation of technology tools aimed at improving offenders' engagement in rehabilitative programs.*
   In the previous fiscal year, data analytic tools were developed and implemented to ensure that CDCR staff have the ability to prioritize offender placement into programming. Additionally, weekly and detailed monthly reports have been developed to further monitor performance expectations at the local level. These tools, combined with planned technology initiatives in 2019, will help ensure that the right offenders are getting into the right programs at the right time.

4. *Expansion and development of career technical education.*
   CDCR will continue to work in collaboration with Prison Industry Authority to establish career technical education programs that best prepare inmates for employment and success upon reentry.

5. *Conduct research on CDCR rehabilitative programs.*
   CDCR will continue the development of partnerships with external researchers to allow for output and outcome-based research opportunities that demonstrate the full impact of programming on the offender population. As noted in the audit, because of recent expansions, CDCR has continued to focus on a number of priority issues critical to robust
research, including data collection, data extraction, and program accountability and fidelity.

“CDCR welcomes the insights provided by the auditors and would like to thank CSA for their work on this report. CDCR will address the specific recommendations in a corrective action plan within the timelines outlined in the report.” (ld. at 61-62.)

5) **Argument in Support:** According to the *California Public Defender’s Association*: “In 2019, the State Auditor drafted a report entitled “Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs.” In addition to detailing the deficiencies and harmful practices, the State Auditor listed corrective recommendations. Assembly Bill 1687 will require the Department of Corrections and Rehabilitation, the Office of the Inspector General, and the California Rehabilitation Oversight Board to routinely provide the Legislature with information, so that the legislature can knowledgeably (1) evaluate the performance of rehabilitative programs, (2) assess the evidenced-based foundation for the systems that the Department of Corrections and Rehabilitation has established, and (3) ensure that individuals who need rehabilitation are receiving the services.”

“Effective rehabilitation reduces recidivism, which emphasizes the value of human life and saves the state money by lessening incarceration. Ultimately, Assembly Bill 1687 is about (1) rehabilitation, (2) effectiveness, and (3) efficiency.”

6) **Related Legislation:** AB 561 (Burke) would require CDCR to complete a statewide evaluation of rehabilitation programs by January 1, 2022. AB 561 is pending hearing in the Assembly Public Safety Committee.

7) **Prior Legislation:** AB 900 (Solorio) Chapter 7, Statutes of 2007, among other things, implemented C-ROB and required CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prison inmates and parolees.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Public Defenders Association

**Opposition**

None

**Analysis Prepared by:** Matthew Fleming / PUB. S. / (916) 319-3744
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2062.5 is added to the Penal Code, to read:

2062.5. (a) It is the intent of the Legislature that the department, the Office of the Inspector General, and the California Rehabilitation Oversight Board regularly provide information to the Legislature to allow it to better assess the performance of the department in establishing all of the following:

(1) Rehabilitative program performance targets, including an analysis of the cost-effectiveness of those programs and an analysis of the programs’ success at reducing recidivism.

(2) Systems to ensure that rehabilitative programs are evidence-based providing a significant benefit to program participants, and that those benefits are commensurate with the Legislature’s investment in rehabilitative programs.

(3) Processes to ensure that inmates who are most in need of rehabilitative programs do in fact receive access to those programs.

(b) On or before January 10, 2020, and annually thereafter, the department, the Office of the Inspector General, and the California Rehabilitation Oversight Board shall report to the Joint Legislative Budget Committee and to the public safety committees of both houses of the Legislature on the department’s implementation of the State Auditor’s recommendations as contained in the 2019 report entitled “Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs.” The annual report should include all of the following:

(1) A report on the progress made toward ensuring that all rehabilitation programs are 100-percent evidence-based.

(2) The number of sanctions or other adverse actions taken against rehabilitation program vendors in the previous year.

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3) Data on rehabilitation program success, including participant testimony, as discussed in the University of California, Irvine study on the department's rehabilitation programs entitled, "CPAP Assessment of CDCR Recidivism-Reduction Programs."

4) The percentage of inmates that were recommended for rehabilitation programs who actually received the rehabilitation services.

5) Data on the placement of inmates on rehabilitation program waiting lists after they have been identified as candidates for rehabilitation programs.

6) Data on staffing levels for rehabilitation programs and a description of current efforts to reach full staffing.

5) The number of sanctions or other adverse actions taken against rehabilitation program vendors in the previous year.

7) Data on the Prison Industry Authority program participation and a description of efforts to increase participation.

8) Data on infrastructure capacity for rehabilitation programs and additional space needed, if any.

9) Data on federal recidivism funds applied for by the department in the prior year.

10) Data on rehabilitation program completion rates.

140) Data on inmates receiving rehabilitation programs in their areas of expressed need.

121) Data on recidivism rates for each rehabilitation program in operation over the previous year.

132) Data on the success of volunteer programs in rehabilitation and preventing recidivism.

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SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR), to contract with a researcher to conduct a recidivism analysis of the effectiveness of rehabilitation programs and to create performance targets, develop and implement a corrective action plan, and annually report to the Legislature on the recidivism analysis, performance targets, and corrective action plan. Specifically, this bill:

1) Requires CDCR to do all of the following:

a) By June 30, 2020, draft a scope of work, select and contract with an external researcher to conduct a recidivism analysis of the effectiveness of rehabilitation programs, define the data elements for purposes of the analysis, and create performance targets;

b) During the 2020–21 fiscal year:
   i) Ensure that the selected external researcher conducts and completes a recidivism analysis pursuant to the scope of work; and
   ii) Develop and implement a corrective action plan in response to the recidivism analysis and performance targets;

c) During the 2021–22 fiscal year:
   i) Modify, as necessary, and continue implementing, the corrective action plan.
   ii) Given the results of the recidivism analysis, create new performance targets and policies, and modify or eliminate rehabilitation programs that are proven ineffective; and,
   iii) Prepare a report on the recidivism analysis, performance targets, and corrective action plan;

2) Requires CDCR, by June 1, 2022, and annually thereafter, to submit to the Legislature the report on the recidivism analysis, performance targets, and corrective action plan, and sunsets the report requirement on June 1, 2026.
EXISTING LAW:

1) Requires CDCR to develop and implement, by January 15, 2008, a plan to address management deficiencies within the department and states that the plan should, at a minimum, address all of the following:

a) Filling vacancies in management positions within the department;

b) Improving lines of accountability within the department;

c) Standardizing processes to improve management;

d) Improving communication within headquarters, between headquarters, institutions and parole offices, and between institutions and parole offices;

e) Developing and implementing more comprehensive plans for management of the prison inmate and parole populations; and,

f) The department may contract with an outside entity that has expertise in management of complex public and law enforcement organizations to assist in identifying and addressing deficiencies. (Pen. Code, § 2061.)

2) Requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prison inmates and parolees and states that the plan shall include, but is not limited to, all of the following:

a) Plans to fill vacant state staff positions that provide direct and indirect rehabilitation and treatment services to inmates and parolees;

b) Plans to fill vacant staff positions that provide custody and supervision services for inmates and parolees; and,

c) Plans to obtain from local governments and contractors services for parolees needing treatment while in the community and services that can be brought to inmates within prisons.

d) Plans to enter into agreements with community colleges to accelerate training and education of rehabilitation and treatment personnel, and modifications to the licensing and certification requirements of state licensing agencies that can accelerate the availability and hiring of rehabilitation and treatment personnel.

3) Requires that by January 10 of each year, CDCR shall provide to the Joint Legislative Budget Committee operational and fiscal information to be displayed in the Governor’s proposed budget. This information shall include data for the three most recently ended fiscal years, and shall include, but is not limited to, the following:
a) Per capita costs, average daily population, and offender to staff ratios for each of the following:

i) Adult inmates housed in state prisons;

ii) Adult inmates housed in Community Correctional Facilities and out-of-state facilities;

iii) Adult parolees supervised in the community;

iv) Juvenile wards housed in state facilities; and,

v) Juvenile parolees supervised in the community.

b) Total expenditures and average daily population for each adult and juvenile institution.

c) Number of established positions and percent of those positions vacant on June 30 for each of the following classifications within the department:

i) Correctional officer;

ii) Correctional sergeant;

iii) Correctional lieutenant;

iv) Parole agent;

v) Youth correctional counselor;

vi) Youth correctional officer;

vii) Physician;

viii) Registered nurse;

ix) Psychiatrist;

x) Psychologist;

xi) Dentist;

xii) Teacher;

xiii) Vocational instructor; and,

xiv) Licensed vocational nurse.

d) Average population of juvenile wards classified by board category;
e) Average population of adult inmates classified by security level;

f) Average population of adult parolees classified by supervision level;

g) Number of new admissions from courts, parole violators with new terms, and parole violators returned to custody;

h) Number of probable cause hearings, revocation hearings, and parole suitability hearings conducted;

i) For both adult and juvenile facilities, the number of budgeted slots, actual enrollment, and average daily attendance for institutional academic and vocational education and substance abuse programs; and,

j) Average population of mentally ill offenders classified by Correctional Clinical Case Management System or Enhanced Outpatient Program status, as well as information about mentally ill offenders in more acute levels of care.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “California state prisons house approximately 130,000 inmates annually and releases tens of thousands of the formerly incarcerated offenders back in to communities each year. Various in-prison rehabilitation programs are offered to inmates to improve the likelihood that offenders will lead a productive, crime-free life upon release. The state funds in-prison rehabilitation programs in the categories of Academic Education; Career Technical Education (CTE); Cognitive Behavioral Therapy (CBT); Employment Preparation; Substance Use Disorder Treatment (SUD); “Arts-in-Corrections;” and Innovative Programming Grants. In-prison rehabilitative programs represent 3% of CDCR’s total budget – $298 million in fiscal year 2018–19. The primary goal of these in-prison programs is to reduce the recidivism rate, which has averaged about 50% over the last decade – meaning that half of the inmates who were released, re-offended within 3 years of their release date.

“California has invested a sizable amount in our in-prison rehabilitation programs, yet a recent audit has revealed a lack of results and oversight of these programs. AB 1688 will result in a thorough evaluation of the effectiveness of our rehabilitation programs to ensure that these programs in state prisons do indeed promote reductions in recidivism. This bill will take necessary steps to ensure that public funds are being properly utilized, and the state is fulfilling the rehabilitative component of the correctional experience.”

2) 2019 State Auditor Report on CDCR Rehabilitation Programs: On January 31, 2019, the California State Auditor released a report concerning the effectiveness of in-prison rehabilitation programs at CDCR. The report is entitled Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs, and is available online. (California State Auditor, Jan. 2019, available at: https://www.sda.ca.gov/pdfs/reports/2018-113.pdf.) By way of background: To reduce the likelihood of inmates reoffending within three years of their release dates,
CDCR began increasing inmates’ access to in-prison rehabilitation programs to meet the needs of inmates before their release from one of 36 adult prisons across the State. Although the number of inmates housed in state prisons has decreased over the years, the recidivism rate for inmates in California has remained relatively constant. In addition to academic and vocational programs, CDCR has expanded to all prisons its cognitive behavioral therapy (CBT) reentry programs, which are designed to correct an inmate’s patterns of thinking and behavior. CDCR determines what in-prison rehabilitation programs inmates need through the assessments that it requires inmates to take upon entering an institution. (https://www.bsa.ca.gov/pdfs/factsheets/2018-113.pdf)

The key findings of the auditor’s report were: 1) CDCR’s Cognitive Behavioral Therapy (CBT) programs have not reduced recidivism; 2) CDCR has neither placed inmates on program waiting lists appropriately nor assigned inmates to the programs necessary to address their rehabilitative needs, and 3) CDCR has not established performance measures for its rehabilitation programs nor has it measured their cost effectiveness and thus does not know if its programs reduce recidivism.

In regards CBT programs, the auditor stated that CDCR has not properly assessed its own ability to determine inmates’ needs and therefore is potentially placing certain inmates into programs that will not be the most effective at reducing the possibility of reoffending. In addition, the auditor stated that a lack of oversight by CDCR resulted in numerous CBT programs being administered that have not been evaluated and shown to have a positive impact on program participants. According to the audit, nearly 20 percent of the CBT programming that it reviewed in CDCR facilities had not been shown to be effective at reducing recidivism. (Auditor’s Report, supra at 19.) For waitlist issues, the auditor found that CDCR has historically struggled with high staff vacancy rates for its academic and vocational education programs. In addition, for the three prisons the auditor reviewed, the enrollment rate for rehabilitation programs was 45 to 76 percent of full capacity. Finally, the report indicates that CDCR has not yet established performance measures for rehabilitation programs and therefore doesn’t know the extent of their cost-effectiveness.

The audit concludes by making recommendations to the Legislature, C-ROB, and CDCR. The recommendations to the Legislature include requiring CDCR to partner with external researchers to evaluate the effectiveness of its rehabilitation programs and establish performance targets, including ones for reducing recidivism. These recommendations would be implemented by this bill. A companion bill, AB 1687 (Jones-Sawyer) would address the auditor’s recommendations regarding annual reporting of the effectiveness of CDCR’s rehabilitations programs on recidivism.

3) **CDCR Response to the Audit:** In response to the audit, CDCR submitted the following:

“The California Department of Corrections and Rehabilitation (CDCR) submits this letter in response to the California State Auditor’s (CSA) audit of CDCR’s in-prison rehabilitation programs.

“CDCR considers rehabilitation one of its highest priorities. In the most recent fiscal years following California's historic recession, CDCR placed significant focus on re-establishing rehabilitative programs statewide. CDCR continues to
champion a culture focused on rehabilitation that addresses the critical needs of the Department's population. CDCR's rehabilitation efforts go beyond the in-prison Cognitive Behavior Therapy (CBT) programs which are the main focus of the CSA's report. As stated in the report, CBT programs comprise just 26 percent of all rehabilitative programs; the remaining 74 percent comprise academic and career technical education. CDCR believes that robust in-prison rehabilitation opportunities followed by aftercare are essential to holistically addressing the criminogenic needs of the offender population and truly impacting recidivism.

"CSA's report on CDCR's in-prison programming highlights areas where CDCR is already taking action to improve. Moreover, CDCR's significant efforts in recent fiscal year go beyond those raised in the report. These current efforts include:

1. *Creation of in-prison cognitive behavioral treatment program accountability and fidelity tools.* In collaboration with external researchers, CDCR has developed and is currently implementing program accountability and fidelity tools. Research shows that fidelity can significantly impact the efficacy (recidivism effects) of programming. CDCR believes that ensuring vendors adhere to the fidelity of the implemented models will produce reductions in recidivism.

2. *Modification to in-prison CBT contracts.*
   CDCR is already in the process of finalizing future treatment contract language to ensure that CDCR vendors are delivering treatment programming consistent with the highest likelihood for positive outcomes.

3. *Development and implementation of technology tools aimed at improving offenders' engagement in rehabilitative programs.*
   In the previous fiscal year, data analytic tools were developed and implemented to ensure that CDCR staff have the ability to prioritize offender placement into programming. Additionally, weekly and detailed monthly reports have been developed to further monitor performance expectations at the local level. These tools, combined with planned technology initiatives in 2019, will help ensure that the right offenders are getting into the right programs at the right time.

4. *Expansion and development of career technical education.*
   CDCR will continue to work in collaboration with Prison Industry Authority to establish career technical education programs that best prepare inmates for employment and success upon reentry.

5. *Conduct research on CDCR rehabilitative programs.*
   CDCR will continue the development of partnerships with external researchers to allow for output and outcome-based research opportunities that demonstrate the full impact of programming on the offender population. As noted in the audit, because of recent expansions, CDCR has continued to focus on a number of priority issues critical to robust
research, including data collection, data extraction, and program accountability and fidelity.

"CDCR welcomes the insights provided by the auditors and would like to thank CSA for their work on this report. CDCR will address the specific recommendations in a corrective action plan within the timelines outlined in the report." (Id. at 61-62.)

4) **Related Legislation:** AB 1687 (Jones-Sawyer) would require CDCR and other agencies to report to the Legislature on its implementation of the State Auditor's recommendations contained in the 2019 Report. AB 1687 is set for hearing on April 23, 2019 in the Assembly Public Safety Committee.

5) **Prior Legislation:** AB 900 (Solorio) Chapter 7, Statutes of 2007, among other things, implemented C-ROB and required CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prison inmates and parolees.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None

**Opposition**

None

**Analysis Prepared by:** Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Establishes the Forced or Involuntary Sterilization Compensation Program to provide compensation to those who were forcibly sterilized under California’s eugenic laws, as well as those sterilized without medical necessity or demonstrated informed consent while incarcerated. Specifically, this bill:

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

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

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

4) Defines the following terms:

   a) “Board” means the California Victim Compensation Board;

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

   c) “Qualified recipient” means:

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

      ii) An the individual who was sterilized while under the custody and control of the Department of Corrections and Rehabilitation (CDCR), county jail, or any other institution in which they were involuntarily confined or detained under a civil or criminal statute; the sterilization was not medically necessary to preserve the person’s life or was not pursuant to a chemical sterilization program administered to convicted sex offenders; and the sterilization meets one of several other circumstances, including sterilization that was not medically necessary, or performed for purposes of birth control, or performed without demonstrated informed consent.
5) Requires CDCR to post notice of the program, qualifications, and claim process in all parole and probation offices, as well as in all state prison yards.

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

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

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

   c) Review and verify all applications for victim compensation;

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

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

   f) Oversee an appeal process.

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

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

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

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

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

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

13) Requires the board to hold any appropriated funds in a separate account, and only those funds shall be used for the purpose of implementing the program.
14) States that an individual seeking compensation under the program shall submit an application to the board beginning six months after the start date of the program and no later than two years and six months after its start date.

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

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

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

EXISTING LAW:

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “AB 1764 would establish the Forced Sterilization Compensation Program to compensate survivors of forced sterilization, either under state eugenics laws while living in state hospitals or for those who were incarcerated in state prisons. Sadly, California used eugenics as a defense to sterilize women without their knowledge or consent, and approximately 20,000 women had their ability to have children taken away from them because they were deemed ‘unfit to reproduce.’
“These sterilizations disproportionately affected women of color, as our communities are also incarcerated at significantly higher rates than others. Although California has taken significant steps to right these wrongs, we need to do more for these women who had their choice to have children taken away from them. Monetary compensation will never replace the choice to have children, but it provides material acknowledgement of this injustice.”

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

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

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

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

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

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

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

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

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

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

This bill would allow such inmates to file a claim for compensation. It would also provide the same recourse for female county inmates that were sterilized without proper consent.

4) **Argument in Support:** According to the *National Health Law Program*, “This bill serves as a vital first step to materially acknowledge the discriminatory harms inflicted on a large number of Californians and to prevent eugenic sterilization of vulnerable populations into the future.

“Between 1909 and 1979, California was the most aggressive eugenics sterilizer in the nation, sterilizing 20,000 of 60,000 people nationally. The law explicitly targeted people with disabilities and others who state institutions, in their broad discretion, deemed unfit to reproduce. Although this law was repealed in 1979, a subsequent state audit revealed that an additional 144 women were sterilized during labor and delivery without required consents and authorization in California’s women’s prisons between 2006 and 2010. Research also indicates that there may be an additional 100 involuntary prison sterilizations dating back to the late 1990s.

“With AB 1764, California will become the third state to compensate survivors of forced sterilizations under eugenics laws, following North Carolina (2013) and Virginia (2015). California will become the first state to compensate survivors of involuntary sterilizations in prison performed outside of formal eugenic laws.

“AB 1764 plays an important role in advancing disability justice and reproductive justice. It recognizes the human right of each individual to control their reproductive capacity without state interference. It affirms that all people should be treated with respect and dignity regarding their lives and reproduction, including those who have historically been disenfranchised: disabled people, women, people of color, LGBTQ people, people with felony records, and poor people.”

5) **Related Legislation:** AB 732 (Bonta) requires specified medical treatment and services for county jail and state prison inmates who are pregnant. AB 732 is pending in the Assembly Appropriations Committee.

6) **Prior Legislation:**

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights Education and Defense Fund (Co-Sponsor)
Access Women's Health Justice
Act for Women and Girls
American Civil Liberties Union of California
American Medical Women's Association
Business and Professional Women of Nevada County
CA Association of State Hospital Parent Councils for the Retarded
California Coalition for Women Prisoners
California Nurse Midwives Association
California Pan - Ethnic Health Network
California Public Defenders Association
California United for a Responsible Budget
Center for Genetics and Society
Center for Reproductive Rights
Citizens for Choice
Disability Rights California
Ella Baker Center for Human Rights
End Solitary Santa Cruz County
Feminist Majority Foundation
Hollywood NOW
If/When/How: Lawyering for Reproductive Justice
Justice in Aging
Latino Coalition for a Healthy California
Legal Services for Prisoners with Children
Los Angeles LGBT Center
Naral Pro-Choice California
National Association of Social Workers, California Chapter
National Compadres Network
National Council of Jewish Women Los Angeles
National Health Law Program
National Women's Health Network
Public Health Justice Collective
The Women's Foundation of California
Visión y Compromiso
Western Center on Law & Poverty, Inc.

Opposition

None
SUMMARY: Specifies 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.

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) Requires generally that a person who is arrested for a misdemeanor be released upon his or her promise to appear in court at a later specified date, unless one of specified reasons exists for non-release, including a reasonable likelihood that the offense or offenses will continue or resume, or that the safety of persons or property would be imminently endangered by release of the arrested person. (Pen. Code, § 853.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Since the enactment of Proposition 47 in 2014, there has been an increase in theft crimes occurring in my district. In fact, if you analyze the data reported to the California Department of Justice, from the cities within the 49th Assembly District, you see a stark rise in crime. Between 2014, when Prop. 47 was passed, and 2016, the most recent year data that is available, property crimes are up 25.6% in AD 49. AB 3011 would try to bring some relief and clarity to this situation by allowing distinct, but related incidents of theft, whether committed against one or more victims, to be aggregated to a charge of grand theft."

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.edn.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)

Among the theft crimes made misdemeanors by Proposition 47, where the value of the property is $950 or less, are forgery (Pen. Code, § 473), making or delivering a check with insufficient funds (Pen. Code, § 476a), petty theft (Pen. Code, § 490.2), and receiving stolen property (Pen. Code, § 496). (See People v. Rivera (2015) 233 Cal.App.4th 1085, 1091.)

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.)

“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.) These policies are supported by a liberal construction clause in Proposition 47, sections 15 and 18. (http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47)

3) **Aggregation and Theft Offenses Committed as Part of One Intention, Impulse and Plan:** In 1961, the Supreme Court in People v. Bailey, found that a single misrepresentation resulting in multiple thefts could be aggregated and prosecuted as one felony grand theft if they were conducted pursuant to one intention, one general impulse, and one plan. (See People v. Bailey (1961) 55 Cal.2d 514, 518-519.) The defendant in Bailey made a single fraudulent misrepresentation about her household income that caused her to receive a stream of welfare payments. (Id. at pp. 515-516.) While each individual payment fell below the felony threshold, the aggregated total constituted grand theft. (Id. at p. 518.) The Supreme Court concluded that the payments could be aggregated because “the evidence established that there was only one intention, one general impulse, and one plan.” (Id. at p. 519; see also CALCRIM No. 1802 [Theft: As Part of Overall Plan].)

The California Supreme Court addressed the Bailey rule in People v. Whitmer (2014) 59 Cal.4th 733. In Whitmer, the defendant arranged for the fraudulent sale of 20 motorcycles, motorized dirt bikes, all-terrain vehicles, and similar recreational vehicles. The defendant was convicted of multiple thefts. The defendant appealed arguing that under Bailey he should have been convicted of a single theft. The Supreme Court distinguished the facts in Whitmer from what occurred in Bailey, and found that multiple theft convictions were appropriate because each count of theft was based on a separate and distinct fraudulent act. (Id. at 740.) The court in Whitmer pointed out that Bailey concerned a single fraudulent act followed by a series of payments. Concurring opinions were written by Justices Werdegar and Liu. Justice Liu distinguished acts committed with a common scheme from acts committed as part of a single impulse. (Id. at 748, concur. opn. J. Liu.) Justice Liu went on to state that “...separate and distinct takings do not fall under Bailey's aggregation rule simply because, as here, they were all done the same way. But neither does the mere fact that multiple takings are separate and distinct entail a finding of multiple thefts in every case. If the takings were committed pursuant to a single intention, impulse, and plan, then under Bailey they amount to only one theft.”

Where multiple victims are involved, courts disagree about applying the Bailey rule and cumulating the charges even if a single plan or intent is demonstrated. In People v. Columbia Research Corp. (1980) 103 Cal.App.3d Supp. 33, the court applied Bailey and approved aggregation where the defendant was charged with grand theft based on a series of petty thefts that occurred over a 10-month period, pursuant to a single plan and intent, and involved different victims. (Id. at p. 40.) In People v. Garcia (1990) 224 Cal.App.3d 297, the
defendant filed fraudulent bonds at different times involving different victims. The court found multiple convictions proper. (Ibid. at pp. 308-309.)

This bill states that the amendments to existing statute made by this bill do not constitute a change in, but are declaratory of, existing law. However, the language of this bill states: “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.” It is unclear whether the language of this bill is declaratory of existing law.

4) Argument in Support: According to the Los Angeles County Sheriff’s Department, “Since the enactment of Proposition 47, numerous communities throughout Los Angeles County and the state have expressed concern over an increase in shoplifting and petty theft crimes. These crimes are being committed by individuals who are taking advantage of the system by attempting to keep their thefts under the $950 threshold established by the proposition. An article by the Los Angeles Times. (http://www.latimes.com/local/crime/lm-me-prop47-anniversary.20151106-story.html) recently identified the unintended consequences of Proposition 47. It interviewed a serial thief who admitted to using the contents of Proposition 47 as a way to commit theft and stay out of jail. According to the article, the thief was very content with the passage of Proposition 47 and “didn’t start stealing bicycles until the proposition raised the threshold for a felony theft to $950.” Additionally, the thief bragged about being cited and released by law enforcement, so long as the thefts were left under the Proposition 47 threshold.

“AB 1772 would specify that if the value of the money, labor, real property, or personal 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 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.”

5) Argument in Opposition: According to the American Civil Liberties Union of California “This bill states that ‘[i]t is not the intent of the Legislature to alter the scope or effect of Proposition 47’ and issues a legislative finding and declaration ‘that it was not the intent of the voters in enacting the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, at the November 4, 2014, statewide general election to abrogate [the holdings in several pre-Proposition 47 cases related to aggregation] to the benefit of persons committing theft of property exceeding $950 in value over the course of successive but related acts.’ However, contrary to these findings and declarations, the bill does alter the scope and effect of Proposition 47. Moreover, it inappropriately substitutes the intent of the Legislature for that of the voters. Importantly, California voters already had the opportunity to make a decision on the issue addressed by this bill and on November 4, 2014, in our statewide general election, they overwhelmingly decided to approve Proposition 47.

“Current law already provides courts with sufficient power to punish multiple thefts of property. Under current law, as established by Proposition 47, the court may impose a sanction of up to one year in county jail for any petty theft. Thus, a person who commits multiple theft offenses in a short amount of time can already be punished with significant jail time; further expansion of the grand theft statute is unnecessary.
"Petty theft offenses are often crimes of poverty, even when they are committed on more than one occasion by the same person. Decades of experience in California shows that increasing the penal consequences for petty offenses to include a felony conviction will not lead to less recidivism; it will only make it more difficult for people to get their lives back on track and will waste taxpayer dollars. It is exactly this punitive approach to low-level, non-violent offenses that the voters rejected when they approved Proposition 47. Recent research has shown that counties that invest in rehabilitation services and programs and innovative approaches show better outcomes than those that focused on ‘old-fashioned enforcement’. Indeed an extensive study of the impact of realignment concluded that ‘[c]ounties that invested in offender reentry in the aftermath of realignment had better performance in terms of recidivism than counties that focused resources on enforcement.’”

6) **Related Legislation:**

a) AB 1476 (Ramos), would amend Proposition 47 to allow a person to be charged with a felony for petty theft, if the person has specified prior convictions, without regard to whether the person is required to register as a sex offender or has been convicted of specified violent or serious felonies. AB 1476 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 1210 (Low), would make 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. AB 1210 is set for hearing in the Assembly Public Safety Committee on April 23, 2019.

7) **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. AB 1065 is awaiting hearing in the Senate Appropriations Committee.

b) AB 3011 (Chau), contained the same provisions as this bill. AB 3011 was never heard in the Assembly Public Safety Committee.

c) 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.

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

e) 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

City of Rosemead
Los Angeles County Sheriff's Department
Riverside Sheriffs' Association

1 private individual

Oppose

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Prohibits a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race. Specifically, this bill:

1) Prohibits a person from being condemned to death or executed pursuant to any judgment that was sought or obtained on the basis of race.

2) States that a finding that race was the basis of a decision to seek or impose a sentence of death may be established if the court finds that race was a significant factor in the decision to either seek or impose the death penalty in the county or the state at the time the death sentence was sought or imposed.

3) States that evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the death penalty in the county or the state at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, the sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system, that irrespective of statutory factors, either of the following applies:

   a) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race; or,

   b) Race was a significant factor in the decision to exercise preemptory challenges during jury selection.

4) Specifies that the defendant shall have the burden of proving by a preponderance of the evidence that race was a significant factor in the decision to seek or impose the death penalty in the county or state at the time the death sentence was sought or imposed.

5) Specifies that the state may offer evidence in rebuttal of the defendant’s evidence, including statistical evidence; further states that if a program to eliminate race as a factor in seeking or imposing the death penalty was in effect in the county or the state at the time the death sentence was sought or imposed in the defendant’s case, the court may consider that as evidence in rebuttal.

6) Specifies that a claim that race was a significant factor in decisions to seek or impose the death penalty may be raised in a pretrial motion or in postconviction proceedings.

7) Requires the defendant to state with particularity the manner in which the evidence supports the claim that race was a significant factor in decisions to seek or impose the death penalty in
the county or the state at the time the death sentence was sought or imposed.

8) Requires the court to schedule a hearing on the claim and prescribe a time for the submission of evidence by both parties.

9) Requires the court, upon a finding that race was a significant factor in the decision to either seek or impose the death penalty in the county or the state at the time the death sentence was sought or imposed, to either order that the death penalty not be sought if the finding is made before trial, or that the death sentence imposed be vacated and the defendant sentenced to life imprisonment without the possibility of parole if the finding is made postconviction.

EXISTING LAW:

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

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

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

4) Provides that first-degree murder includes murders perpetrated by destructive device or explosive; knowing use of ammunition designed primarily to penetrate metal or armor; poison; lying in wait; torture; any kind of willful, deliberate, and premeditated killing; discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death; and any murder committed in the perpetration of, or attempt to perpetrate:

   a) Arson;

   b) Rape;

   c) Carjacking;

   d) Robbery;

   e) Burglary;

   f) Mayhem;

   g) Kidnapping;

   h) Train wrecking;
i) Sodomy;

j) Lewd or lascivious acts on a child under age 14;

k) Oral copulation; or,

l) Penetration of genital or anal openings with a foreign object. (Pen. Code, § 189.)

5) Provides that second-degree murders include all murders not enumerated as first degree. (Pen. Code, § 189.)

6) Specifies that first-degree murder without "special circumstances" (Pen. Code, § 190.2) is punishable in the state prison for a term of 25-years-to-life. (Pen. Code, § 190.)

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

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

a) The murder was intentional and carried out for financial gain;

b) The defendant was convicted previously of first- or second-degree murder;

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

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

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

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

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

i) The victim was a firefighter who was intentionally killed while performing his or her duties;
j) The victim was a witness to a crime and was intentionally killed to prevent his or her testimony, or killed in retaliation for testifying;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c) Prior felony convictions;

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

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

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

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “California’s Death Row is the largest in the United States with 737 condemned prisoners. Since reinstatement of the death penalty in 1978, California has executed only thirteen individuals, costing taxpayers over $5 billion, nearly 18 times the cost of imprisoning a convicted person for life.

“African Americans and Latinos represent 67% of California’s Death Row population, leading criminal justice reform advocates to question whether race has been improperly factored into death penalty sentences. Along with DNA evidence that has proven the
innocence of 150 Death Row inmates across the nation, there is growing consensus that the
death penalty has failed to achieve its stated public safety goals.

“A 2000 study by the US Department of Justice revealed the influence that the race of the
victim had in determining potential capital cases. U.S. Attorneys recommended the death
penalty in 36% of the cases with black defendants and non-black victims, but only
recommended the death penalty in 20% of the cases with black defendants and black
victims.

“Racial bias in capital criminal cases denies justice to thousands of Americans and further
erodes public confidence in our criminal justice system.

“To date, Racial Justice Act legislation has been introduced in Florida, Georgia, Illinois,
Nebraska, North Carolina and South Carolina.

“AB 1798 would prohibit a person from being executed pursuant to a judgment that was
either sought or obtained on the basis of race and allow a condemned prisoner to appeal their
conviction and sentence if there is evidence of racial bias in the trial or sentencing.

“A court and a jury should determine the guilt or innocence of any defendant based
exclusively upon evidence provided during a criminal trial, not by racial biases. AB 1798
will affirm California’s commitment to ensure unbiased due process in capital criminal cases
and prevent wrongful convictions based upon racial bias.”

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

Beginning in 1967, the death penalty came under scrutiny by various state and federal courts.
Beginning in 1967, there were no executions in California for 25 years. In February 1972,
the California Supreme Court found that the death penalty constituted cruel and unusual
punishment under the California state constitution and 107 condemned inmates were
resentenced to life with the possibility of parole and removed from California’s death row.
Later that year, the United States Supreme Court held that the death penalty was
unconstitutional as it was being administered at that time in a number of states in the case of
Furman v. Georgia (1972) 408 U.S. 238. Three years later, the United States Supreme Court
clarified how the death penalty may be imposed without violating the United States
Constitution. (Gregg v. Georgia (1976) 428 U.S. 153.)

Subsequently, California voters approved Proposition 7 in November 1978. Prop 7
reaffirmed the death penalty and established the death penalty statute under which California
currently operates. Hundreds of people have been sentenced to the death penalty since that
time. There are currently 737 inmates on death row. (https://sites.cdcr.ca.gov/capital-
Despite the large number of people on death row, the actually execution of death sentences
has been sparing. No executions were carried out between the enactment of Prop 7 in 1978
and 1992. Since that time, exactly 13 executions have taken place in the state of California. (https://sites.edcr.ca.gov/capital-punishment/inmates-executed-1978-to-present/.)

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

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

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

5) **The Need for this Bill:** This bill would prohibit a death sentence that is imposed as a result of racial bias either in the determination to seek the death penalty, or bias in the removal of jurors who hear the case during jury selection. Specifically, the defendant could move the court to take the death penalty off the table by establishing that the prosecutor was improperly motivated by racial bias in choosing to seek the death penalty. In support of such a motion, the defendant would be able to advance statistical evidence tending to show that sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race. In addition it would prohibit the use of “preemptory strikes” – the striking of a juror without a specific reason – on the basis of race.
In regards to the provisions of this bill that deal with statistical evidence of racial disparities in seeking or imposing the death penalty, both the United States Supreme Court and the California Supreme Court have decided that such statistical evidence, standing alone, is insufficient to establish unconstitutional racial discrimination. (McCleskey v. Kemp (1986) 481 U.S. 279, 296-97 (United States Supreme Court); In re Seaton (2004) 34 Cal. 4th 193, 202-03 (California Supreme Court).) This bill would provide that such statistical evidence can be advanced in support of a claim that a decision to seek the death penalty was racially biased. However, in light of the McCleskey and Seaton decisions, such evidence is unlikely to be enough to establish the fact that the decision was, in fact, motivated by racial bias.

With regard to the provisions of this bill that deal with the improper exclusion of jurors on the basis of race, this bill seems to be restating a long-standing legal doctrine established by the courts. The California Supreme Court held in 1976 that the practice of excusing jurors from the jury pool on the basis of race was unconstitutional. (People v. Wheeler (1978) 22 Cal. 3d 258.) The United States Supreme Court followed suit in 1986 in the landmark decision of Batson v. Kentucky (1986). (476 U.S. 79.) Therefore, the provisions of this bill relating to improper striking of jurors on the basis of race are apparently a codification of existing case law.

6) Related Legislation:

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

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

   c) AB 580 (Lackey), would require that the district attorney in the relevant jurisdiction be given at least 30 days notice prior to the governor acting upon an application for a commutation of a death sentence.

7) Prior Legislation:

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

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

   c) AB 1512 (Aroner) of the 2001-2002 Legislative session, would have prohibited the application of the death penalty for people determined to be mentally retarded. AB 1512 died in the Assembly Appropriations Committee.
REGISTERED SUPPORT / OPPOSITION:

Support
None

Opposition
None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Expands the category of persons that may file a petition requesting a court to issue an ex parte temporary gun violence restraining order (GVRO), a one year GVRO, or a renewal of a GVRO, to include an employer, a coworker who has substantial and regular interactions with the subject of the petition for at least one year and has obtained the approval of the employer, and an employee or teacher of a secondary school, or postsecondary school the subject has attended in the last six months and has the approval of the school administration staff.

EXISTING LAW:

1) Defines a GVRO as an order in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, § 18100.)

2) Requires, upon issuance of a GVRO, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person’s custody or control, or which the restrained person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)

3) Allows an immediate family member of a person or a law enforcement officer to file a petition requesting that the court issue an ex parte GVRO, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. (Pen. Code, §§ 18150 and 18155, subd. (c).)

4) States that the court, before issuing an ex parte GVRO, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Pen. Code, § 18155, subd. (a).)

5) Requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or to another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors, and that less restrictive alternatives have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Pen. Code, § 18150, subd. (b).)
6) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;

c) A violation of an emergency protective order that is in effect at the time the court is considering the petition;

d) A recent violation of an unexpired protective order;

e) A conviction for any specified offense resulting in firearm possession restrictions; or,

f) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1).)

7) States that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Pen. Code, § 18160, subd. (b).)

8) Requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Pen. Code, § 18160, subd. (c).)

9) Allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year. (Pen. Code, § 18170.)

10) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and
found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)

11) Provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175, subd. (c)(1) & (2).

12) Requires the court to inform the restrained person that he or she is entitled to one hearing to request a termination of the gun violence restraining order and provide the restrained person with a form to request a hearing. (Pen. Code, § 18180, subd. (b).)

13) States that it is a misdemeanor offense for every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing knowing the information in the petition to be false or with the intent to harass. (Pen. Code, § 18200.)

14) Provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Gun violence and mass shootings can no longer be tolerated or accepted. We need to provide the people in all our communities with more tools to take firearms out of the hands of individuals that pose a deadly threat to themselves and others. Family members, co-workers, employers, and teachers are most likely to see early warning signs if someone is becoming a danger to themselves or others.

"In these circumstances, existing law enables family members and law enforcement to prevent gun-related tragedies before they happen by pursuing a gun violence restraining order (GVRO) in court. If granted by a court, a GVRO results in a temporary seizure of firearms possessed by a dangerous individual and a prohibition of their ability to purchase new firearms. This bill logically expands who can petition a court for a GVRO by adding co-workers, employers, and teachers."

2) Gun Violence Restraining Orders: California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.
The statutory scheme establishes three types of GVRO’s: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night. In contrast, an immediate family member or a law enforcement officer can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to one year.

When AB 1014 (Skinner), Statutes of 2014, which created the GVRO statutory scheme was considered in the Senate Public Safety Committee, the bill would have allowed anyone to request a gun violence restraining order. The committee analysis noted that "Only those with a close relationship to the person to be restrained can request a domestic violence protective order." The Committee questioned whether anyone should be allowed to petition for a GVRO. AB 1014 was subsequently amended in the Senate Appropriations Committee to only permit law enforcement and immediate family members to petition for a GVRO.

This bill would expand the class of people who are able to petition for a GVRO to enjoin an individual for possessing or purchasing a firearm. It would allow an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last six months to seek such an order. While a mental health worker who has recently treated an individual should be in a position to know whether a person poses a danger to himself or others; employers, co-workers, and school personnel would not necessarily know this. It might depend on the work environment, the size of the place of employment, or the size of the school.

3) **Governor's Veto Messages:** AB 2607 (Ting), of the 2015-2016 Legislative Session, was similar to this bill in that it expanded the list of individuals that are authorized to petition the court to issue a GVRO. AB 2607 was vetoed by the Governor. The Governor's veto message stated, "In 2014, I signed Assembly Bill 1014 which allowed immediate family members and members of law enforcement to petition for a GVRO. That law took effect on January 1, 2016, so at this point it would be premature to enact a further expansion.”

AB 2888 (Ting), of the 2017-2018 Legislative Session, was also similar to this bill in that it expanded the list of individuals that are authorized to petition the court to issue a GVRO. AB 2888 was vetoed by the Governor. The Governor’s veto message stated, "I am returning this bill without my signature. This bill would authorize an employer, a coworker, an employee of a secondary school or postsecondary school that a person has attended in the last six months, to file a petition for a gun violence restraining order against an individual. All of the persons named in this bill can seek a gun violence restraining order today by simply
working through law enforcement or the immediate family of the concerning individual. I think law enforcement professionals and those closest to a family member are best situated to make these especially consequential decisions.”

4) **Argument in Support:** According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Existing law allows law enforcement and immediate family members to petition the court to obtain a Gun Violence Restraining Order when a person is at risk of injury to self or others by having a firearm. The order would temporarily prohibit the purchase or possession of firearms while the order is in effect and would allow a warrant to be issued to seize firearms or ammunition from a person subject to the order. AB 61 would similarly authorize an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, or an employee of a secondary or postsecondary school that the person as a patient in the prior six months, or an employee of a secondary or postsecondary school that the person has attended in the last six months, to file a petition for a Gun Violence Restraining Order.

"Those who teach or work with a person and have frequent interaction may see the early warning signs and be the first to know that the person is at severe risk of harming self or others with a firearm. These people need the ability to directly petition the court for a temporary firearm prohibition, particularly if law enforcement is not responsive to an urgent concern. For example, last February, 17 people were killed and 17 more were injured at Stoneman Douglas High School in Parkland, Florida. The shooter was a former student of the school and there had been several warnings raised about his potential for violence. AB 61 would provide school employees the opportunity to petition the court for a gun violence restraining order on a similar young person.

"The Gun Violence Restraining Order statute is modeled after California's domestic violence restraining order laws and ensures due process and a rigorous standard of proof. A noticed hearing before the court is required within 21 days. In fact, the law provides more protections than the state's domestic violence restraining order or mental health commitment laws. The person subject to the temporary order expires after one year (unless renewed) or is revoked by the court."

5) **Argument in Opposition:** According to the *American Civil Liberties Union*, "The ACLU of California does not oppose gun control measures that regulate the acquisition or use of guns – so long as those regulations contribute to public safety and do not raise civil liberties issues. Additionally, we do not oppose laws that authorize protective orders to remove guns from people who pose a risk to themselves or others, provided there are nondiscriminatory criteria for defining people as dangerous, and a fair process for those affected to object and be heard by a court.

"AB 61, however, poses a significant threat to civil liberties by expanding the authorization to seek *ex parte* orders, with all the ensuing consequences, without an opportunity for the person to be heard or contest the matter.

"The statutory scheme creating the Gun Violence Restraining Order (Penal Code §§ 18100-18205) was established in 2014 (AB 1014, Skinner). Under this scheme a family member, or any law enforcement officer, who has reason to believe a person owns a gun and poses a significant danger to themselves or others, may petition the court for an *ex parte* order to
prohibit the subject from possessing a gun for up to 21 days, at which time a hearing is held to determine whether to extend the order for to one year.

"An ex parte order means the person subject to the restraining order is not informed of the court proceeding and therefore has no opportunity to contest the allegations. We support the efforts to prevent gun violence, but we must balance that important goal with protection of civil liberties so we do not sacrifice one in an attempt to accomplish the other. We believe AB 1014 was crafted in order to properly strike that balance. By expanding the parties that could apply for such an ex parte restraining order to include all the parties listed above, many of whom lack the relationship or skills required to make an appropriate assessment, AB 61 upsets that balance and creates significant potential for civil rights violations."

6) Prior Legislation:

a) AB 2888 (Ting), of the 2017-2018 Legislative Session, was similar to this bill in that it authorized an employer, co-worker, or health care worker to file a petition requesting a court to issue a GVRO. AB 2888 was vetoed by the Governor.

b) AB 2607 (Ting), of the 2015-2016 Legislative Session, was similar to this bill in that it authorized an employer, co-worker, or health care worker to file a petition requesting a court to issue a GVRO. AB 2607 was vetoed by the Governor.

c) AB 1014 (Skinner), Chapter 872, Statutes of 2014, provided that commencing January 1, 2016, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a GVRO, as specified, prohibiting that person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Bay Area Student Activists
California Chapters of the Brady Campaign to Prevent Gun Violence
California Chapters of the American College of Emergency Physicians
California District Attorneys Association
Giffords Law Center to Prevent Gun Violence
Los Angeles City Attorney
Riverside Sheriffs' Association
16 Private Individuals

Oppose

American Civil Liberties Union of California
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action

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