Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

April 9, 2019
8:30 a.m. to 1:30 p.m. in State Capitol, Room 4202
1:30 p.m. in State Capitol, Room 126

PART III

AB 1600 (Kalra) – AB 1794 (Jones-Sawyer)

Date of Hearing: April 9, 2019
Counsel: David Billingsley

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

AB 1600 (Kalra) – As Introduced February 22, 2019

SUMMARY: Shortens the notice requirement in criminal cases when a defendant files a motion to discover police officer misconduct from 16 days to 10 days. Specifically, **this bill**:

1) Requires a written motion for discovery of peace officer personnel records or information from those records, to be served and filed, as specified, at least 10 court days before the hearing, by the party seeking the discovery in a criminal matter.

2) Requires all papers opposing a motion described above, be filed with the court at least five court days, and all reply papers at least two court day, before the hearing.

3) Requires proof of service of the notice to the agency in possession of the records, to be filed no later than five court days before the hearing.

4) Specifies that upon receiving notice of the motion to seek records, the governmental agency shall immediately notify the individual whose records are sought.

5) States that the court shall not issue an order limiting the use of peace or custodial officer records if those records were obtained pursuant to the CPRA.

6) Deletes language which states that records of peace officers or custodial officers, including supervisorial officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct is alleged to have occurred within a jail facility, shall not be subject to disclosure.

EXISTING LAW:

1) States that notwithstanding specified provisions of the California Public Records Act (CPRA), or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to CPRA:

   a) A record relating to the report, investigation, or findings of any of the following:

      i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or

ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury;

b) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public; and,

c) Any record relating to an incident in which a sustained finding was made by any law enforcement agency of dishonesty by a peace officer, as specified. (Pen. Code, § 832.7, subd. (b)(1)(A)-(C).)

2) States that a law enforcement agency may withhold a record of an incident that is the subject of an active criminal or administrative investigation, as specified. (Pen. Code, § 832.7, subd. (b)(7).)

3) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records, as specified, the party seeking the discovery shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records, and written notice shall be given at the times described in the Code of Civil Procedure. (Evid. Code, § 1043, subd. (a).)

4) Requires the motion to include all of the following:

a) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard;

b) A description of the type of records or information sought; and

c) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records. (Evid. Code, § 1043, subd. (b)(1)-(3).)

d) Specifies that no hearing upon a motion for discovery of law enforcement personnel records shall be held without full compliance with the required notice provisions, except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records. (Evid. Code, § 1043, subd. (c).)

5) Specifies that moving and supporting papers shall be served and filed at least 16 court days before the hearing, as specified. (Code of Civ. Proc., § 1005, subd. (b).)

6) Allows the party to a case the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer, participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation. (Evid. Code, §

1045, subd. (a).)

7) States that the court shall, in any case or proceeding permitting the disclosure or discovery of any peace officer records, order that the records discovered may not be used for any purpose other than a court proceeding pursuant to applicable law. (Evid. Code, § 1045, subd. (e).)

8) Provides that records of peace officers or custodial officers, as specified, including supervisorial officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct is alleged to have occurred within a jail facility, shall not be subject to disclosure. (Evid. Code, §1047.)

9) Specifies that a public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. (Evid. Code, §1040, subd. (b)(2).)

10) States that a case must be dismissed when a defendant in a misdemeanor is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea. (Pen. Code, §1382, subd. (a)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In an effort to bring Pitchess motion notice requirements into alignment with regular criminal discovery notice requirements, AB 1600 would amend Evidence Code §1043 to shorten the notice period for a Pitchess motion from sixteen days to ten days, bringing it into line with the notice period for discovery motions in criminal cases.

   "It would make a needed alignment correction to the changes made in SB 1421 by ensuring that courts may not issue protective order limiting the use of records that have already been made available under the Public Records Act.

   "Lastly, to improve transparency, it would eliminate restrictions exempting supervising officers from the disclosure of records of their prior misconduct when it is pertinent to a defendant's right to due process.

   "By making these modest changes, California can make Pitchess procedures less burdensome and time consuming while balancing the need to increase access to due process in criminal proceedings and provide greater transparency."

2) **Defense Motions to Discover Law Enforcement Misconduct:** In California, a criminal defendant's right to access relevant records regarding prior misconduct by a law enforcement officer was established by the California Supreme Court's ruling in *Pitchess v. Superior*

Court (1974) 11 Cal.3d 531. In *Pitchess*, a defendant charged with battery on four sheriff's deputies claimed he was defending himself against the deputies' use of excessive force. In his defense, the defendant claimed his actions were in self-defense and sought discovery of evidence of the deputies' propensity for violence, which he believed would be revealed through the examination of the deputies' personnel records.

The California Supreme Court held that the defendant had a limited right to discover records regarding previous complaints about the officers' use of excessive force. Following the *Pitchess* decision, the Legislature enacted statutes specifying the procedures by which a criminal defendant may seek access to those records.

The *Pitchess* statutes require a criminal defendant to file a written motion that identifies and demonstrates good cause for the discovery sought. If such a showing is made, the trial court then reviews the law enforcement personnel records in camera with the custodian, and discloses to the defendant any relevant information from the personnel file. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226.) Absent compliance with these procedures, peace officer personnel files, and information from them, are confidential and cannot be disclosed in any criminal or civil proceeding. The prosecution, like the defense, cannot discover peace officer personnel records without first following the *Pitchess* procedures. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1046.) Any records disclosed are subject to a mandatory order that they be used only for the purpose of the court proceeding for which they were sought. (*Id.* at p. 1042.)

As part of those procedures, there is a requirement that the party seeking discovery of the records provide notice to the agency 16 days before the date of the court hearing on discovery of the law enforcement personnel records. The 16 day notice requirement applies in criminal cases as well as in civil cases. In criminal cases, when a defendant is in custody, and time to investigate a case is at a premium, at 16 days notice requirement can impose a significant hurdle. Such a notice requirement is particularly challenging on a misdemeanor charge where a defendant has a right to have a trial within 30 days of entry of a plea of not guilty. A 16 day notice requirement force an in custody defendant to choose between taking the time to seek discovery regarding law enforcement personnel records or asserting their right to have a trial within 30 days. This bill would lower the notice requirement to the agency in custody of the law enforcement personnel records from 16 days to 10 days for criminal cases, while leaving the notice requirement at 16 days for civil cases, where time limitations are not as restrictive as in criminal cases.

3) **SB 1421 (Skinner), Chapter 998, Statutes of 2018, Made Some Police Personnel Records Accessible Through the CPRA:** SB 1421 (Skinner), Chapter 998, Statutes of 2018, permits inspection of specified peace and custodial officer records pursuant to the CPRA. Prior to the passage of SB 1421, all law enforcement personnel records were confidential. The only way the records could be accessed was by a party to a civil or criminal case, using the *Pitchess* procedure. As a result of the enactment of SB 1421, peace officer or custodial officer personnel records are not confidential and shall be made available for public inspection pursuant to requests through the CPRA when the records involve:

   a) Use of force by the officer, as specified;

b) Incidents in which a finding was sustained that an officer engaged in sexual assault; and

c) Incidents in which there was a sustained finding that an officer was dishonest with respect to the discharge of their official duties, as specified.

SB 1421 allows a law enforcement agency to withhold a record of an incident that is the subject of an active criminal or administrative investigation, as specified. SB 1421 also allows a law enforcement agency to redact a record before disclosure, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

Given that SB 1421, provides an avenue to discover certain instances of peace officer misconduct, the *Pitchess* procedure is no longer the only way such information can be discovered. The *Pitchess* procedure currently directs the court to order that the law enforcement records disclosed may not be used for any purpose other than a court proceeding. It is not clear how such an order would effect records disclosed by the *Pitchess* procedure, that were obtained by the defense through a CPRA request, previously or subsequently to the *Pitchess* motion. Records obtained through CPRA are not subject to similar orders regarding non-disclosure. Would a party be able to disclose the records obtained by CPRA even if a court ordered the very same record non-disclosable that was obtained through the *Pitchess* process? This bill states that the court shall not issue an order limiting the use of peace or custodial officer records if those records were obtained pursuant to the CPRA.

4) **Prohibition on Discovery of Personnel Records for Officers Not Directly Involved in the Incident Giving Rise to the Litigation at Issue:** Current law specifies that records of peace officers, including supervisorial officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, shall not be subject to disclosure. As a general matter, that prohibition makes sense because it is rare that an officer that was not at the scene of an incident that forms the basis of a criminal or civil case, will be relevant as a witness. However, this blanket prohibition prevents parties in civil and criminal cases from using the *Pitchess* procedures to get misconduct information on law enforcement witnesses who testify as expert witnesses. Some information on such a witness is now available through the CPRA based on SB 1421. However, for other misconduct information which might be relevant to the action before the court, current law does not provide any mechanism for review. This bill would delete the statutory language prohibiting use of *Pitchess* in relation to officers that were not at the scene of the arrest. In order to discover this information under *Pitchess*, the party seeking the information would still need to demonstrate that information sought was relevant to issues in the litigation, before a court would order the disclosure of any such information.

5) **Argument in Support**: According to the *Youth Justice Coalition*, "In California, a criminal defendant's right to access relevant records regarding prior misconduct by a law enforcement officer was established by the California Supreme Court's ruling in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). The *Pitchess* case provides a good example of how such records can be critically important to the defense: the defendant was charged with battery on four sheriff's deputies and claimed that he was defending himself against the

deputies' excessive use of force.

"AB 1600 makes several commonsense changes to the statutory *Pitchess* motion procedures. First, it reduces the notice period for hearings on *Pitchess* motions from 16 days to 10 days, in line with most criminal motions, streamlining the process and allowing misdemeanor defendants to file Pitchess motions without waiving their right to a speedy trial.

"Second, the bill clarifies that where *Pitchess* information is available through the Public Records Act, the court in the criminal case cannot make that information subject to a protective order limiting its use."

"Finally, to improve transparency, AB 1600 would repeal restrictions exempting supervising officers from the disclosure of case-relevant records of their prior misconduct

"AB 1600 will streamline criminal procedures while creating greater fairness and transparency in our criminal justice system."

6) **Argument in Opposition**: According to the *Peace Officers Research Association of California*, "Our greatest concerns are AB 1600's proposed amendments to Evidence Code Section 1045(e) and repeal of Section 1047. The proposed amendment to Evidence Code Section 1045(e) seeks to limit a reviewing court's ability to issue a protective order for disclosed personnel file information. In its current form, section 1045(e) explicitly affords courts the authority to issue protective orders for disclosed personnel file information limiting the use of such information to the court proceeding at issue. (Evid. Code § 1045(e) ["The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law."])

"AB 1600 proposes adding the following language to this subdivision:

"However, the court shall not issue an order limiting the use of peace or custodial officer records if those records were obtained pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or Section 832.7 of the Penal Code."

"This proposed language is unacceptable in light of the practical realities that have arisen since SB 1421 was enacted into law. In the wake of SB 1421, public entity employers throughout the state have been misinterpreting the new disclosure laws and disclosing personnel file information not authorized by SB 1421 and/or otherwise still considered confidential despite SB 1421's enactment in response to requests under the California Public Records Act ("CPRA"). This has resulted from either a misinterpretation of SB 1421's sometimes confusing language, or a more purposeful attempt to circumvent peace officer confidentiality rights by selectively interpreting the new law. Either way, the above language proposed by AB 1600 restrains a court's ability to issue a protective order limiting the use of disclosed personnel file information if such information is disclosed in response to a CPRA request - no matter whether that CPRA disclosure was lawful or not. Peace officers should retain the right to seek a protective order of their confidential information irrespective of whether their employer violates their rights pursuant to a CPRA request. Such a provision

appears targeted to take advantage of mistaken or unscrupulous actions by peace officer employers and PORAC is vigorously opposed to this change.

"Finally, AB 1600's proposed repeal of Evidence Code Section 1047 is likewise unacceptable. Evidence Code Section 1047 makes clear that the personnel file information of a peace officer having no contact or involvement with the Pitchess motion (civil plaintiff or criminal defendant) is not disclosable. Repealing this provision could be construed as a legislative intent to allow reviewing courts to delve into these non-involved officers' personnel files, and likewise appears to impose an expanded duty on peace officers' employers to provide personnel file information for a wide group of individuals for court review."

7) **Related Legislation**: AB 54 (Ting), would clarify the procedure for a law enforcement agency to delay access to a video or audio recording that it is otherwise required to disclose to certain individuals, as specified, under the CPRA if release of the record would impede an ongoing law enforcement investigation. AB 54 is awaiting assignment in the Senate Rules Committee.

8) **Prior Legislation**:

   a) SB 1421 (Skinner), Chapter 998, Statutes of 2018, permits inspection of specified peace and custodial officer records pursuant to the CPRA.

   b) AB 1039 (Quirk-Silva), of the 2017-2018 Legislative Session, stated that nothing in the Racial and Identity Profiling Act (RIPA) was or is intended to allow public access to, or disclosure of, the name or other means of identifying a peace officer in connection with the information that the peace officer collects under RIPA. AB 1039 was never heard in the Assembly Human Services Committee.

   c) SB 1286 (Leno), of the 2015-2016 Legislative Session, would have provided greater public access to peace officer and custodial officer personnel records and other records maintained by a state or local agency related to complaints against those officers. SB 1286 was held in the Senate Appropriations Committee.

   d) AB 1648 (Leno), of the 2007-2008 Legislative Session, as introduced, would have overturned the California Supreme Court decision in Copley Press, supra, 39 Cal.4th 1272, and restore public access to peace officer records. AB 1648 failed passage in the Assembly Public Safety Committee.

   e) SB 1019 (Romero), of the 2007-2008 Legislative Session, would have abrogated the holding in Copley Press, supra, 39 Cal.4th 1272, for law enforcement agencies operating under a federal consent decree on the basis of police misconduct. SB 1019 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
California Public Defenders Association (Co-Sponsor)
California Attorneys for Criminal Justice
Ella Baker Center for Human Rights
Youth Justice Coalition

Oppose

Peace Officers Research Association of California

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

Date of Hearing: April 9, 2019
Counsel: Matthew Fleming

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

AB 1603 (Wicks) – As Amended March 19, 2019

SUMMARY: Codifies the establishment of the California Violence Intervention and Prevention Grant Program (CalVIP) and the authority and duties of the board in administering the program, including the selection criteria for grants and reporting requirements to the Legislature. Specifically, **this bill**:

1) Establishes CalVIP, to be administered by the Board of State and Community Corrections (BSCC.)

2) States that CalVIP grants shall be used to support, expand, and replicate evidence-based violence reduction initiatives, including, without limitation, hospital-based violence intervention programs, evidence-based street outreach programs, and focused deterrence strategies, that seek to interrupt cycles of violence and retaliation in order to reduce the incidence of homicides, shootings, and aggravated assaults.

3) States that these initiatives shall be primarily focused on providing violence intervention services to the small segment of the population that is identified as having the highest risk of perpetrating or being victimized by violence in the near future.

4) States CalVIP grants shall be made on a competitive basis to cities that are disproportionately impacted by violence, and to community-based organizations that serve the residents of those cities.

5) States that for purposes of this section, a city is disproportionately impacted by violence if any of the following are true:

   a) The city experienced 20 or more homicides per calendar year during two or more of the three calendar years immediately preceding the grant application;

   b) The city experienced 10 or more homicides per calendar year and had a homicide rate that was at least 50 percent higher than the statewide homicide rate during two or more of the three calendar years immediately preceding the grant application; or,

   c) An applicant otherwise demonstrates a unique and compelling need for additional resources to address the impact of homicides, shootings, and aggravated assaults in the applicant's community.

6) States that an applicant for a CalVIP grant shall submit a proposal, in a form prescribed by the board, which shall include, but not be limited to, all of the following:

a) Clearly defined and measurable objectives for the grant;

b) A statement describing how the applicant proposes to use the grant to implement an evidence-based violence reduction initiative in accordance with this section;

c) A statement describing how the applicant proposes to use the grant to enhance coordination of existing violence prevention and intervention programs and minimize duplication of services; and,

d) Evidence indicating that the proposed violence reduction initiative would likely reduce the incidence of homicides, shootings, and aggravated assaults.

7) States that in awarding CalVIP grants, the board shall give preference to applicants whose grant proposals demonstrate the greatest likelihood of reducing the incidence of homicides, shootings, and aggravated assaults in the applicant's community, without contributing to mass incarceration.

8) Requires the amount of funds awarded to an applicant to be commensurate with the scope of the applicant's proposal and the applicant's demonstrated need for additional resources to address violence in the applicant's community.

9) Requires grant recipients to commit a cash or in-kind contribution equivalent to the amount of the grant awarded under this section but allows the board to waive this requirement for good cause.

10) Requires each city that receives a CalVIP grant shall distribute no less than 50 percent of the grant funds to one or more of any of the following types of entities:

a) Community-based organizations; or

b) Public agencies or departments, other than law enforcement agencies or departments, that are primarily dedicated to community safety or violence prevention.

11) Requires the board to form a grant selection advisory committee including, without limitation, persons who have been impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing evidence-based violence reduction initiatives, including initiatives that incorporate public health and community-based approaches.

12) States that the board may use up to 5 percent of the funds appropriated for CalVIP each year for the costs of administering the program including, without limitation, the employment of personnel, providing technical assistance to grantees, and evaluation of violence reduction initiatives supported by CalVIP.

13) Requires grant recipients to report to the board, in a form and at intervals prescribed by the board, their progress in achieving the grant objectives.

14) Requires the board, by no later than April 1, 2024, and every third year thereafter, to prepare and submit a report to the regarding the impact of the violence prevention initiatives

supported by CalVIP.

15) Requires the board shall make evaluations of the grant program available to the public.

EXISTING LAW:

1) Declares legislative intent to be the following:

   a) To develop community violence prevention and conflict resolution programs, in the state, based upon the recommendations of the California Commission on Crime Control and Violence Prevention, that would present a balanced, comprehensive educational, intellectual, and experiential approach toward eradicating violence in our society; and,

   b) That these programs shall be regulated, and funded pursuant to contracts with the Office of Emergency Services. (Pen Code § 14112.)

1) States that first priority shall be given to programs that provide community education, outreach, and coordination, and include creative and effective ways to translate the recommendations of the California Commission on Crime Control and Violence Prevention into practical use in one or more of the following subject areas:

   a) Parenting, birthing, early childhood development, self-esteem, and family violence, to include child, spousal, and elderly abuse;

   b) Economic factors and institutional racism;

   c) Schools and educational factors;

   d) Alcohol, diet, drugs, and other biochemical and biological factors;

   e) Conflict resolution; and,

   f) The media. (Pen. Code § 14114, subd. (a).)

2) States that first priority programs may additionally provide specific direct services or contract for those services in one or more of the program areas as necessary to carry out the recommendations of the commission when those services are not otherwise available in the community and existing agencies do not furnish them. (Pen. Code, § 14115.)

3) States that second priority shall be given to programs that conform to the same requirements as first priority programs, except that the educational component shall not be mandatory in each subject area, but shall be provided in at least three of those areas, and the programs shall provide specific direct services or contract for services in one or more program areas. (Pen. Code, § 14116.)

4) States that each program shall have a governing board or an interagency coordinating team, or both, of at least nine members representing a cross section of existing and recipient, community-based, public and private persons, programs, agencies, organizations, and institutions. Specifies the duties of the governing board or coordinating team. (Pen. Code, §

14117.)

5) Requires the Office of Emergency Services (OES) prepare and issue written program, fiscal, and administrative guidelines for the contracted programs that are consistent with this title, including guidelines for identifying recipient programs, agencies, organizations, and institutions, and organizing the coordinating teams. (Pen. Code § 14118, subd. (a).)

6) Requires OES to promote, organize, and conduct a series of one-day crime and violence prevention training workshops around the state, as specified. (Pen. Code § 14119.)

7) States that programs will be funded, depending on the availability of funds for a period of two years, with OES required to provide 50 percent of the program costs, to a maximum amount of fifty thousand dollars ($50,000) per program per year. The recipient shall provide the remaining 50 percent with other resources which may include in-kind contributions and services. (Pen. Code, § 14120.)

EXISTING FEDERAL LAW:

1) Allows the Attorney General of the United States to award grants to entities to provide personnel, training, technical assistance, advocacy, intervention, risk reduction (including using evidence-based indicators to assess the risk of domestic and dating violence homicide) and prevention of domestic violence. (34 U.S.C. § 20122.)

2) Allows the Attorney General of the United States, through the Director of the Violence Against Women Office, to make grants to community-based programs for the purpose of enhancing culturally specific services for victims of domestic violence, dating violence, sexual assault, and stalking. (34 U.S. Code § 20124.)

3) Allows the Attorney General of the United States to make grants to institutions of higher education, for use by such institutions or consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution, to develop and strengthen effective security and investigation strategies to combat domestic violence, dating violence, sexual assault, and stalking on campuses. (34 U.S. Code § 20125.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1603 would codify the California Violence Intervention and Prevention—known as CalVIP— Grant Program, the only dedicated source of state support for locally driven violence prevention initiatives that have helped cities and community-based organizations provide life-saving, cost-effective reductions in violence.

   "From 2007 to 2017, California's Budget Acts appropriated $9.215 million per year from the State Penalty Fund to fund the California Gang Reduction, Intervention, and Prevention (CalGRIP) grant program, which provided matching grants to cities for programs to reduce youth and gang-related crime.

"The program faced challenges due to declining revenues in the State Penalty Fund, but was reauthorized for one year with $9.5 million from the General Fund, alongside the adoption of various reforms. These reforms:

- Renamed the CalGRIP program as CalVIP to reflect a more targeted focus on evidence-based violence prevention strategies as opposed to anti-gang-affiliation and general community service activities;
- Prioritized localities with the highest rates of violence and the greatest demonstrated need;
- Authorized community-based organizations to apply directly for CalVIP grants and increased the portion of grant awards that must be distributed to them; and
- Strengthened grantees' data reporting requirements.

"A recent independent evaluation of Oakland's Ceasefire initiative cost roughly $250,000 per year for two years. A $2 million per year appropriation for at least two years would allow the UC Firearm Violence Research Center to conduct similar high-quality evaluations of roughly eight CalVIP-funded programs, helping to build the research base for violence prevention work and to establish best practices for CalVIP grantees. This amount is also consistent with many grant programs standard practice pf reserving 5% of grant funds for programmatic evaluation.

"Unfortunately, multiple Californian cities continue to grapple with alarming recent increases in bloodshed and violence, including Fresno, Sacramento, Salinas, San Bernardino, and Stockton. Many small rural communities have also been experiencing dramatic spikes in violent crimes.

"The cost of innovative, effective violence intervention programs is minor when compared to the enormous costs associated with gun violence in our state. Based on expenses the state can directly measure, the direct and indirect cost of gun violence in California is approximately $18.3 billion per year. This staggering price tag fails to justly capture violence's enormous personal and moral toll; the lives lost; generational, cyclical trauma; communities torn apart. The toll falls disproportionately on communities of color: in 2016, Latinos were nearly three times more likely to be shot to death than their white neighbors; African-Americans were twelve times more likely."

2) **CalVIP Grant Program**: From 2007 to 2017, California's Budget Acts appropriated $9.215 million per year to operate the California Gang Reduction, Intervention, and Prevention (CalGRIP) program, which provided matching grants to cities for initiatives to reduce youth and gang-related crime. The Budget Acts guaranteed $1 million annually for the City of Los Angeles, with the remainder distributed to other cities of all sizes through a competitive application process, overseen by the Board of State and Community Corrections (BSCC). In 2017, the Legislature turned CalGRIP funds into CalVIP funds by shifting the program away from initiatives targeting gang crime and affiliation toward a narrower and more objective focus on evidence-based violence prevention programs.

The 2017 State Budget Act provided $1 million to the City of Los Angeles and $8.215 million for other cities and Community Based Organizations (CBOs) to compete for up to $500,000 each. This Act provided that CalVIP funds could be used for violence intervention and prevention activities, with preference given to applicants that proposed programs that have been shown to be the most effective at reducing violence and to applicants in cities or regions disproportionately affected by violence. The Giffords Center to Prevent Gun Violence publishes additional information about CalGRIP and CalVIP legislation as well as the programs that they fund on its website. (Giffords, https://giffords.org/2017/06/calvip/.)

This bill would codify the CalVIP grant program established in the budget, providing a statutory basis for its existence. It would also codify the guidelines for the application and approval of grants.

3) **Argument in Support**: According to numerous organizations who collectively support this bill: "All of our organizations have made it a top priority to advocate for the Legislature to increase and strengthen California's investment in programs that work to interrupt cycles of community violence, injury, trauma, and retaliation. Other states, especially New York and Massachusetts, have achieved remarkable reductions in violence by both strengthening their gun safety laws and committing significant ongoing funding to effectively targeted violence prevention grant programs in their communities. The CalVIP grant program, administered by the Board for State and Community Corrections (BSCC), provides competitive grants to cities and nonprofit organizations in California that implement effective violence reduction initiatives, and is California's only dedicated source of state funding for these initiatives.

"AB 1603 (Wicks) would establish the California Violence Intervention and Prevention (CalVIP) grant program in statute for the first time, and would help guarantee that these funds are used as justly and effectively as possible by ensuring that resources are targeted on the most impactful programs in communities with the greatest need.

"By increasing California's investment in the CalVIP program and enacting AB 1603 (Wicks), you will ensure that CalVIP continues to support and replicate some of the nation's most innovative and effective efforts to prevent the loss of human life. AB 1603 will ensure that CalVIP funds are used justly and effectively, and will help make California a national model in efforts to treat violence as a preventable public health issue.

"For these reasons, we strongly urge you to support AB 1603 (Wicks)."

4) **Related Legislation**:

a) AB 18 (Levine,) would also codify the CalVIP grant program and additionally impose a firearm excise tax in the amount of $25 on the purchase of a new firearm. AB 18 is pending hearing on April 9th in the Assembly Public Safety Committee.

b) AB 656 (Eduardo Garcia), would appropriate six million dollars ($6,000,000) from the General Fund in order to establish the Office of Healthy and Safe Communities (OHSC) under the direction of the California Surgeon General and the Governor, which would provide a comprehensive violence prevention strategy.

5) **Prior Legislation**:

a) SB 934 (Allen), of the 2017-2018 Legislative Session, would have codified the CalVIP grant program. SB 934 died in the Senate Appropriations Committee.

b) AB 97 (Ting) Chapter 14, Statutes of 2017, was the Budget Act of 2017; among other things, it provided more than nine million dollars ($9,000,000) to the Board of State and Community Corrections for the purpose of administering CalVIP grants to cities and community-based organizations for violence intervention and prevention activities.

REGISTERED SUPPORT / OPPOSITION:

Support

Advance Peace
Alliance for Boys and Men of Color
Bay Area Student Activists
Brady California United Against Gun Violence
California Partnership for Safe Communities
California Religious Action Center of Reform Judaism
Children's Defense Fund-California
Cities United
City and County of San Francisco, Board of Supervisors
Community Justice Action Fund
Cure Violence
Ella Baker Center for Human Rights
Everychild California
Everytown for Gun Safety Action Fund
Faith in Action
Giffords Law Center to Prevent Gun Violence
Healing Dialogue and Action
Legacy LA
Moms Demand Action for Gun Sense in America
Motivating Individual Leadership for Public Advancement
National Association of Pediatric Nurse Practitioners, Los Angeles
National Institute for Criminal Justice Reform
Pacific Juvenile Defender Center
Public Health Advocates
San Joaquin General Hospital
Toberman Neighborhood Center
Urban Peace Institute
Youth Alive!

Opposition

None

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

Date of Hearing: April 9, 2019
Chief Counsel: Gregory Pagan

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

AB 1636 (Bonta) – As Amended April 4, 2019

SUMMARY: Requires the court at the time a defendant appears for arraignment on a felony complaint, to make a determination as to whether there is probable cause for each felony charged in the complaint. Specifically, **this bill**:

1) Provides that at the time the defendant appears before the magistrate for arraignment on a complaint, for each public offense charged in the complaint that is a felony, to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant, or the defendant shall determine whether there is probable cause to believe the offense has been committed and whether there is probable cause to believe the defendant has committed the offense.

2) Requires the determination of probable cause to be made at the time of arraignment unless the court grants a continuance for good cause which may not exceed three days.

3) States that in determining the existence of probable cause, the magistrate shall consider the complaint, any warrant of arrest, police reports, affidavits, and any other related documents the magistrate deems to be reliable.

4) Requires the court to dismiss any charge that is not supported by probable cause.

5) Specifies circumstances where a dismissal is a bar to subsequent prosecution.

6) Specifies that any finding of probable cause pursuant to these provisions shall not be binding on the court in the preliminary examination or any future hearing to determine the existence of probable cause.

EXISTING LAW:

1) Requires that if the defendant is in custody at the time he or she appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant's own motion, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof. (Pen. Code, § 991, subd. (a).)

2) Requires the determination of probable cause to be made immediately unless the court grants a continuance for good cause not to exceed three court days. (Pen. Code, § 991, subd. (b).)

3) States that in determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any

documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability. (Pen. Code, § 991, subd. (d).)

4) Provides that if, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. (Pen. Code, § 991, subd. (e).)

5) Requires the court dismiss the complaint and discharge the defendant if it determines that no probable cause exists. (Pen. Code, § 991, subd. (f).)

6) Allows the prosecution to refile the complaint within 15 days of the dismissal of a complaint pursuant to Penal Code section 991. (Pen. Code, § 991, subd. (g).)

7) States that a second dismissal pursuant to this section is a bar to any other prosecution for the same offense. (Pen. Code, § 991, subd. (h).)

8) Requires that when a defendant is arrested, he or she is to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hour, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)

9) Prescribes that the 48 hour limitation for arraignment be extended when:

   a) The 48 hours expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. (Pen. Code, § 825, subd. (a)(2).)

   b) The 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday. (Pen. Code, § 825, subd. (a)(2).)

10) Allows after the arrest, any attorney at law entitled to practice in California, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of $500, to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)

11) Requires the time specified in the notice to appear be at least 10 days after arrest when a person has been released by the officer after arrest and issued a citation. (Pen. Code, § 853.6(b).)

12) States that the information shall be set aside by the court in which the defendant is arraigned, upon his or her motion, in either of the following cases:

a) That before the filing thereof the defendant had not been legally committed by a magistrate.

b) That the defendant had been committed without reasonable or probable cause. (Pen. Code, § 995, subd. (a).)

13) States that both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found, as specified, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later. (Pen. Code, § 859b.)

14) Requires the judge to dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment, plea, , unless the defendant personally waives his or her right to a preliminary examination within the 60 days. (Pen. Code, § 859b.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1636 would apply protections to felonies that already exist for misdemeanors. The purpose of the bill is to ensure that the accused are treated fairly and not subject to any undue coercion by prosecutors after arrest but before any pretrial hearings. AB 1636 will also reduce waste in the criminal justice system and save valuable taxpayer resources."

2) **Judicial Review of Individuals Detained by Arrest:** In 1975, the United States Supreme Court decided, in *Gerstein v. Pugh* (1975) 420 U.S 103, that the 5th amendment right to due process required that a person arrested without a warrant receive a "prompt" probable cause determination from an impartial magistrate. That same year, the California Supreme Court decided, in the case of *In re Walters* (1975) 15 Cal.3d 738, that *Gerstein* was binding on California and applied to misdemeanors as well as felonies. The U.S Supreme Court refined its *Gerstein v. Pugh* decision by holding, in *County of Riverside v. McLaughlin* (1991) 500 U.S. 44, that "prompt" means within 48 hours, with no exception for weekends or holidays.

3) **Judicial Review of Criminal Charges:** After an individual has been arrested the district attorney's office will review the case and make a decision as to whether charges should be filed, and if so what charges to filed. If the district attorney decides to file charges against the individual, they file a charging document that is referred to as a complaint. Charges against a defendant can be at a misdemeanor or felony level. The district attorney has discretion to charge certain offenses as misdemeanors or felonies. The charges filed by the district attorney might be for criminal offenses which are different than the offenses for which the individual was arrested. After reviewing the case, the district attorney might decide to charge more or less offenses in the complaint than the number of offenses for which the individual was initially arrested.

   If defendant is in custody, and the complaint charges misdemeanors, the defendant can seek a probable cause determination from the judge presiding at his arraignment by way of a Penal Code 991 motion. A defendant charged in a felony case does not have corresponding right

for a judge to make a probable cause determination on felony charges at the arraignment. A defendant in a felony case charge by a complaint does have a right to a preliminary hearing. A preliminary hearing is an evidentiary hearing at which the court must find probable cause for the charges in the complaint.

This bill would require a court to make a probable cause determination as to each count in a felony complaint at the time a defendant is arraigned (initial court appearance), if the defendant requests the court to make that determination. This bill would allow the court to make the determination on the basis of documentary evidence such as police reports or probable affidavits submitted by a police officer. The probable cause determination required by this bill would not require an evidentiary hearing involving live testimony. If the judge did not find probable cause as to any charge(s), the judge would dismiss those charges.

4) **Argument in Support:** According to the *Bail Project*, "The proposed reform would allow a person charged with a felony to bring a motion at arraignment requiring the judge to make a determination of whether probable cause exists to believe the crime has been committed and the individual has committed the crime. After considering reliable evidence, the court can dismiss any charge not supported by probable cause.

"Overcharging directly impacts bail setting. In California, where bail is charge-based, overcharging results in significantly higher bail amounts being imposed in felony cases. Most people remain in jail as they cannot afford extremely expensive bail amounts, averaging over $56,000. Unfortunately, felony bail is typically set much higher. This leads to an increase in the number of people in county jail – at least 79% are there pretrial. Pretrial incarceration has spiraling consequences for accused persons. These devastating consequences — to a person's mental and physical health, family, livelihood, housing, immigration status — harm those incarcerated and, by extension, their families and communities. In addition, jail overcrowding creates a burden on taxpayers by costing counties as much as $180 a day per person to keep legally innocent people in jail.

"Overcharging also perpetuates racial disparities in the criminal justice system. Research shows racial disparities in how people are charged based on similar conduct. As a result, Black people are held in pretrial custody 62% longer, convicted of 60% more felonies, and receive sentences that are 28% longer than white people.

"Lastly, overcharging also substantially increases the likelihood that an innocent person will plead guilty to a crime they did not commit, out of fear of conviction on the unsupported crime with its crushing sentence. Unjustifiably threatening an accused person with a larger sentence is a dirty secret, which takes undue psychological advantage of individuals in this situation. It is designed to instill fear, panic and disproportionally long sentences. Today, 95% of all criminal convictions result from plea bargains. Further, overcharging leads to more wrongful convictions, as innocent people are accepting plea deals in fear of these charges. Research shows the rate of wrongful convictions is as high as 11.6%.

A simple change in California's penal code could help us begin righting these injustices. In misdemeanor cases, Penal Code section 991 empowers a judge, at arraignment, to dismiss charges that are unsupported by probable cause as reflected in the pleadings, police reports, and reliable documents of the police investigation. Proposed Penal Code Section 991.2 ["Truth in Charging Act"] would provide similar procedure in felony cases by allowing the

defense to request a determination of probable cause on each charge at the arraignment. It will allow both the prosecution and defense to submit documents, reports and other evidence to the court for the determination. Existing law already requires the District Attorney in each county to review police reports and other evidence before bringing a felony charge against a person.

"This change would make the proceeding not only more fair, but also more efficient. By adding judicial discretion at an earlier stage in the criminal proceeding than current law allows, Penal Code Section 991.2 would save labor and money by not utilizing limited judicial, court, and attorney resources to litigate charges that would later be dismissed."

5) **Argument in Opposition:** According to the *California District Attorneys Association*, "Under current law, all persons arrested for a felony offense have a right to a contested probable cause hearing (i.e., preliminary examination) within 10 court days of their arraignment. This longstanding procedure ensures that only those cases where probable cause exists that a felony has been committed proceed to trial. Otherwise, the charges will not be held to answer (i.e., dismissed). Adding an additional probable cause requirement will result in innumerable hearings requiring high-volume arraignment judges to review declarations, police reports and other records to justify charges on the complaint.

"AB 1636 is also unworkable. Many times arrests are made, but further investigation is continuing and police officers need time to write reports and collect evidence. The District Attorney makes a determination of the appropriate charges to file, often with more information than the initial arresting officer had at the time of arrest. Having 10 courts days to complete further investigation and compile investigative reports ensures that at the time the probable cause determination is made, the magistrate has all available information available and can evaluate the evidence based on the charges actually filed by the District Attorney.

"Furthermore, the preliminary examination is a live hearing where witnesses testify and can be cross-examined, and evidence is presented in an adversarial proceeding where both sides are present. In contrast, AB 1636 calls for a simple "paper" review. And, under AB 1636, the finding of probable cause "shall not be binding on the court" at any future hearing, thereby creating a duplicative process that has no weight on subsequent proceedings. This would result in an unnecessary expenditure of judicial and prosecutorial resources requiring multiple hearings to determine the same thing: probable cause.

"While a procedure similar to AB 1636 is currently in place for misdemeanor offenses via Penal Code section 991, there are key distinctions. First, misdemeanor cases do not require -- nor have the protections of -- a preliminary examination within 10 courts days of arraignment. Second, Section 991 only applies to misdemeanants who are in custody. AB 1636 would apply to all felonies, regardless of custodial status. Third, Section 991 provides for the refiling of a misdemeanor complaint, whereas AB 1636 is silent on the effect of a dismissal, thereby potentially negatively impacting the ability of prosecutors to pursue felony charges in the most serious of cases. Finally, AB 1636 requires the magistrate to consider "any evidence proffered by the defendant that supports a finding of no probable cause," whereas Section 991 only provides that the court can rely on documents such as the arrest declaration, police reports, etc. By conferring a right to present evidence, this provision will allow the defense to present un-tested and un-contradicted evidence at a hearing to establish

probable cause."

6) **Prior Legislation**:

a) AB 2013 (Jones-Sawyer), Chapter 689, Statutes of 2016, established a three year pilot program in three counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant.

b) AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, would have required the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge. AB 696 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Recidivism Coalition (Co-Sponsor)
California Public Defenders Association
Center on Juvenile and Criminal Justice
Courage Campaign
Ella Baker Center for Human Rights
Initiate Justice
Lawyers' Committee For Civil Rights
Pillars of the Community
Riverside Temple Beth El
San Francisco Public Defender's Office
Starting Over, Inc.
The Bail Project
The W. Haywood Burns Institute
Youth Justice Coalition

Oppose

California District Attorneys Association
California State Sheriffs' Association

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

Date of Hearing: April 9, 2019
Counsel: Nikki Moore

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

AB 1638 (Obernolte) – As Introduced February 22, 2019

As Proposed to be Amended in Committee

SUMMARY: Expands authorization for the issuance of a search warrant to obtain information from a motor vehicle's software that "tends to show the commission of a public offense involving a motor vehicle, resulting in death or serious bodily injury." Specifically, **this bill**:

1) Authorizes the issuance of a search warrant when the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a public offense involving a motor vehicle, resulting in death or serious bodily injury to any person.

2) Defines "recording device" to mean a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving data after an accident: (1) Records how fast and in which direction the motor vehicle is traveling; (2) Records a history of where the motor vehicle travels; (3) Records steering performance; (4) Records brake performance, including, but not limited to, whether brakes were applied before an accident; (5) Records the driver's seatbelt status; (6) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs.

3) Defines "serious bodily injury" to mean "a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement."

EXISTING LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

2) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

3) Provides that a search warrant may be issued upon any of the following grounds: (Pen. Code, § 1524):

   a) When the property was stolen or embezzled;

   b) When the property or things were used as the means of committing a felony;

   c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;

   d) When the property or things to be seized consist of any item or evidence that tends to show that a felony has been committed or that a particular person has committed a felony;

   e) When the property or things to be seized consist of evidence that tends to show sexual exploitation of a child or possession of child pornography;

   f) When there is a warrant to arrest a person;

   g) When a provider of electronic communication or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor, or in the possession of another to whom he or she may have delivered them for the purpose of concealment;

   h) When the things to be seized include evidence showing failure to secure workers compensation;

   i) When the property includes a firearm or deadly weapon and specified circumstances related to domestic violence, the examination of a person's mental condition, and protective orders, as specified;

   j) When the information to be received from the use of a tracking device tends to show a felony or misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;

   k) For purposes of obtaining a sample of the blood of a person in a driving under the influence matter when the person has refused to submit or complete, a blood test as required, as limited and specified;

   l) The property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, as specified;

   m) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding

pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law;

n) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code;

o) When all of the following apply: (1) a blood sample constitutes evidence that tends to show a violation of specified sections of the Harbors and Navigation Code relating to the operation of a marine vessel while under the influence of drugs or alcohol; (2) the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test; and (3) the sample will be drawn from the person in a reasonable, medically approved manner. This provision is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

p) When the property or things to be seized consists of evidence that tends to show that a violation privacy, as specified, that has occurred or is occurring.

4) The property, things, person, or persons described in the foregoing provisions may be taken on the warrant from any place, or from any person in whose possession the property or things may be. (Pen. Code, § 1524, subd. (b).)

5) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

6) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

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

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

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

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

11) Provides that if a government entity receives electronic communication voluntarily it shall destroy that information within 90 days except under specified circumstances. (Pen. Code, § 1546.1, subd. (g).)

12) Provides for notice to the target of a warrant or an emergency obtaining electronic information to be provided either contemporaneously with the service of the warrant or within three days in an emergency situation. (Pen. Code, § 1546.2, subd. (a).)

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

14) Defines "serious bodily injury" to mean a "serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement." (Pen. Code, § 24, subd. (f).)

15) Requires that when an "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)," is installed into a car, the owner's manual for the vehicle shall disclose that fact. Defines "recording device" to mean a device that is installed by the manufacturer of the vehicle and does one or more of the following, for the purpose of retrieving data after an accident:

    a) Records how fast and in which direction the motor vehicle is traveling;

    b) Records a history of where the motor vehicle travels;

    c) Records steering performance;

    d) Records brake performance, including, but not limited to, whether brakes were applied before an accident; and,

    e) Records the driver's seatbelt status.

    f) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs. (Veh. Code, § 9951.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill would give law enforcement statutory authority to obtain a search warrant in order to access EDR data in limited cases when an accident results in death or serious bodily injury. EDR technology is installed in

most newer motor vehicle models and generally captures data from a period of approximately five seconds before until one second after a collision. This data can include information regarding the vehicle's braking, steering, airbag deployment, seat belt use, seat belt pre-tensioners, speed, engine throttle, time between crash events, and other pertinent factors, which is crucial in aiding an officer during an accident investigation. Current law does not allow law enforcement to obtain EDR data for any motor vehicle manufactured on or after July 1, 2004 without a court order or the consent of the vehicle owner. Unfortunately, in solo accidents the driver may be deceased or critically injured and, therefore, unable to give consent. This bill will give law enforcement the statutory authority for a search warrant to in order to access the most crucial and scientifically reliable evidence regarding the cause of an accident."

2) **The Fourth Amendment:** Both the United States and the California constitutions guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591, citations and quotations omitted.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders*, 442 U.S. at 760.)

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

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

   Any California court issuing a warrant must decide whether to grant that warrant on a case by case basis. Under CalECPA, a law enforcement agency must have probable cause to search

electronic records held by a third party. The law limits the reach of any warrant to information described with particularity, under specific time periods, identifying the "target individuals or accounts, the applications or services covered, and the types of information sought."[1] The law also specifies that any information unrelated to the objective of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.[2]

4) **Warrant to Access Data on an Event Data Recorder**: Many cars are sold equipped with one or more recording devices commonly referred to as "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)."

   A car's black box is analogous to other electronic storage devices for which courts have recognized a reasonable expectation of privacy. CalECPA requires a law enforcement agency to obtain a warrant in order to access the data held on an EDR if it seeks the data from a third party. The author explains that in some cases, solo vehicle accidents that result in death may not result in criminal investigations, but law enforcement still investigates the accident to determine the cause. This bill seeks to give law enforcement the right to obtain information held in an EDR even if there is no criminal prosecution being sought.

   It is unclear why the existing ability to subpoena information from a third party is not sufficient to address the author's concerns. CalECPA recognizes that a subpoena may be issued to a third party holding electronic information, permitting a third party to disclose information "[p]ursuant to a subpoena issued pursuant to existing state law, provided that the information is not sought for the purpose of investigating or prosecuting a criminal offense, and compelling the production of or access to the information via the subpoena is not otherwise prohibited by state or federal law." (Pen. Code, § 1546.1, subd. (b)(4).)

5) **Proposed Amendments Limit the Information that Can Be Obtained through a Warrant**: Committee amendments limit the information that may be obtained from an EDR to the information articulated in Vehicle Code section 9951. That includes information regarding: 1) how fast and in which direction the motor vehicle is traveling, 2) a history of where the motor vehicle travels, 3) Records steering performance, 4) brake performance, including, but not limited to, whether brakes were applied before an accident, and the driver's seatbelt status.

   The amendments also limit the scope of information that may be obtained from the EDR to "data that is directly related to the public offense for which the warrant is issued." In practice, this means that EDR information related to a deadly accident may be released to the extent that the data sought is relevant to the accident, but a warrant would not be issued for wide-ranging access to the driver's data for long periods of time, for example, over the week prior to the accident.

   The opposition objects that this bill expands the ability for law enforcement to obtain a warrant in misdemeanor cases. While this may be true, the Legislature has previously authorized specific misdemeanor offenses that will justify the issuance of a warrant, for example, in certain misdemeanor invasion of privacy actions. AB 1638 may authorize the

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[1] Pen Code, Section 1546.1(d)(1).
[2] Pen Code, Section 1546.1(d)(2)

issuance of a warrant in a misdemeanor case which law enforcement is not currently authorized to obtain under the law. However, this bill only authorizes a warrant if the offense suspected to be committed resulted in serious bodily injury or death.

6) **Argument in Support**: None submitted.

7) **Argument in Opposition**: According to *American Civil Liberties Union of California*, "In accordance with fundamental constitutional principles, California's search warrant statute operates to curb governmental overreach, and to protect the privacy and personal security of those within our state. In order to balance these privacy concerns with the legitimate public safety concerns, our existing law is designed to permit the issuance of a search warrant only under narrow circumstances, for the most serious offenses, and only when governmental needs have been determined to outweigh those of private individuals.

"Privacy concerns are heightened when it is electronic information that is sought. Because the electronic information routinely collected by our phones, devices and cars is so extensive and contains such a wealth of highly private information, California's Electronic Communications Privacy Act puts in place additional protections when the government seeks access to this type of information. The kinds of information available from a motor vehicle recording device provide a good example of why additional protection is needed for electronic information: the data may include records of where the vehicle has been and the speeds at which it has been driven as well as steering and braking information and other information.

"AB 1638 would contravene the carefully crafted balance of our search warrant statute by allowing the issuance of a warrant for the extensive data available from a motor vehicle recording device when the crime under investigation is a misdemeanor. The bill would allow the privacy rights of the individual to be violated when the governmental interest, in investing a less-serious offense, does not warrant that violation."

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

9) **Prior Legislation**:

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

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

to the listed subscriber or to any other person.

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

d) AB 1104 (Rodriguez), Chapter 124, Statutes of 2015, authorizes the issuance of a search warrant when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance.

e) AB 1310 (Gatto), Chapter 643, Statutes of 2015, expanded a governmental entity's authority to gather specified records from a provider of electronic communication service or a remote computing service by search warrant to include contents of communications originated by or addressed to the service provider.

f) AB 1014 (Skinner), Chapter 872, Statutes of 2014, provided, in pertinent part, that a search warrant may be issued when the property or things to be seized are firearms or ammunition that are in the custody or control of, or is owned or possessed by, a person who is the subject of a gun violence restraining order.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Oppose

American Civil Liberties Union of California

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

Amended Mock-up for 2019-2020 AB-1638 (Obernolte (A))

Mock-up based on Version Number 99 - Introduced 2/22/19
Submitted by: Nikki Moore, Assembly Committee on Public Safety

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

SECTION 1. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.

(10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.

(13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence

restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.

(16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

(17) (A) When all of the following apply:

(i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

(ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.

(iii) The sample will be drawn from the person in a reasonable, medically approved manner.

(B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

(18) When the property or things to be seized consists of evidence that tends to show that a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is occurring.

(19) (A) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a public offense involving a motor vehicle, resulting in death or serious bodily injury to any person. The data that is subject to access by a warrant pursuant to this paragraph shall not exceed the scope of data that is directly related to the public offense for which the warrant is issued.

(B) For the purposes of this paragraph, "recording device" has the same meaning as defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of data accessible by a warrant issued pursuant to this paragraph is limited to the information articulated in subdivision (b) of Section 9951 of the Vehicle Code.

(C) For the purposes of this paragraph, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), a search warrant shall not be issued for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) (1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code,

relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or that party's designee to accompany the special master as the special master conducts the search. However, that party or that party's designee may not participate in the search nor shall they examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

(k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

Date of Hearing: April 9, 2019
Counsel: Matthew Fleming

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

AB 1669 (Bonta) – As Amended April 3, 2019

SUMMARY: Updates existing law by applying the same gun show regulations that already apply to firearms dealers to ammunition vendors, increases the Dealer Record of Sale fee (DROS) for firearm purchases from $14 to $32.19, and authorizes the Department of Justice to adjust the DROS fee as needed to ensure adequate funding to fund programs paid for by that account. Specifically, **this bill**:

1) Updates existing law by aligning the requirements of ammunition vendors at guns shows with those of firearms dealers.

2) Increases the DROS fee that the DOJ may require a firearms dealer to collect from a firearm purchaser from $14 to $32.19.

3) Deletes the limitation that the fund not be increased at a rate exceeding the California Consumer Price Index.

4) Expands use of the DROS funds to any firearms-related activity required of the Department of Justice (DOJ) for which there is no sustainable source of funding.

5) Authorizes DOJ to increase or decrease the DROS fee in order to ensure that adequate funding is available to fund the programs paid for by the DROS account.

6) Prohibits an increase in the DROS fee that exceeds the costs necessary to continue to fund programs paid for by DROS, and other firearms-related activity, as specified.

7) Requires, as of July 1, 2020, that DOJ review its DROS revenues and expenses annually and determine whether a change in the fee is necessary.

8) Requires, as of January 10, 2021, and on or before January 10 for each subsequent year that the DOJ publish on its website notice of whether or not any adjustment will be made to the DROS fee.

9) Requires that when an adjustment to the fee is needed, DOJ must provide notice 30 days before the adjustment is to take place, by doing all of the following:

   a) Notifying each person who has filed a request for notice of adjustment, as specified;

   b) Notifying each dealer listed on the centralized list of firearms dealers;

c) Clearly posting the information on the department's public internet website; and,

d) Notifying, in writing, the Director of Finance, the chairpersons of the committees in each house of the Legislature that consider public safety policy, the chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees that consider the State Budget.

10) Allows a person to file a request with DOJ to be notified by either United States mail, electronic mail, or text message of any adjustment to the amount of the DROS fee.

11) Exempts these provisions from administrative implementation procedures, as specified.

12) Changes the DOJ's authorization to charge the DROS fee from permissive to mandatory, and allows DOJ to fund any firearms-related activity required of DOJ for which there is no sustainable source of funding with DROS money.

EXISTING LAW:

1) Authorizes DOJ to require the dealer to charge each firearm purchaser a DROS fee not to exceed fourteen dollars ($14), and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen Code § 28225, subd. (a).)

2) States that the DROS fee shall be no more than what is necessary to fund specified costs to the DOJ. (Pen Code § 28225, subds. (b) and (c).)

3) Authorizes DOJ to require each dealer to charge each firearm purchaser or transferee a fee not to exceed one dollar ($1) for each firearm transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 23690.)

4) Authorizes DOJ to require firearms dealers to charge each person who obtains a firearm a fee not to exceed five dollars ($5) for each transaction, and allows that fee to be adjusted upward at a rate not to exceed the increase in the California Consumer Price Index. (Pen. Code, § 28300.)

5) Authorizes a certified instructor of the firearm safety test to charge a fee of twenty-five dollars ($25), fifteen dollars ($15) of which is to be paid to DOJ to cover its costs in carrying out and enforcing firearms laws. (Pen. Code, § 31650.)

6) Authorizes DOJ to allow a certified instructor to not to exceed fifteen dollars ($15), for a duplicate firearm safety certificate. (Pen. Code,§ 31660.)

7) Requires the producer of a gun show or event, prior to the show or event, upon written request by the law enforcement agency with jurisdiction over the facility, to provide a list of all persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms, as specified. (Pen. Code § 27205,

subd. (a).)

8) Requires the producer of a gun show or event, for every day the gun show or event operates, upon written request by the law enforcement agency, to provide an accurate, complete, and current list of the persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms. (Pen. Code § 27205, subd. (b).)

9) States that the following information may be requested by the law enforcement agency in regards to any firearms dealer:

   a) The vendor's complete name; and

   b) A driver's license or identification card number. (Pen. Code § 27205, subd. (d).)

10) States that the producer and facility's manager of a gun show or event shall prepare an annual event and security plan and schedule that shall include, at a minimum, the following information for each show or event:

   a) The type of show or event, including, but not limited to, antique or general firearms; and

   b) The estimated number of vendors offering firearms for sale or display. (Pen. Code § 27210.)

11) Requires that within seven calendar days of the commencement of a gun show or event, but not later than noon on Friday for a show or event held on a weekend, the producer shall submit a list of all prospective firearms dealers to the Department of Justice (DOJ) for the purpose of determining whether these prospective vendors and designated firearms transfer agents possess valid licenses and are thus eligible to participate as firearms dealers at the show or event. (Pen. Code § 27220, subd. (a).)

12) Requires DOJ to examine its records and if it determines that a vendor's license is not valid, it shall notify the show or event producer of that fact before the show or event commences. (Pen. Code § 27220, subd. (b).)

13) Prohibits a firearms dealer who fails to cooperate with a producer of a gun show or event, or fails to comply with gun show regulations, form participating in the show or event. (Pen. Code § 27225.)

14) Requires every producer of a gun show or event to have a written contract with each gun show vendor selling firearms at the show or event. (Pen Code § 27235.)

15) Requires the producer of a gun show or event to post signs in a readily visible location at each public entrance to the show containing the following notices, among others:

   a) This gun show follows all federal, state, and local firearms and weapons laws, without exception; and

b) Persons possessing firearms at this facility must shall have in their immediate possession government-issued photo identification, and display it upon request to any security officer or any peace officer, as defined. (Pen. Code, § 27240, subd. (a).)

16) Requires the show producer to post, in a readily visible location at each entrance to the parking lot at the show, signage that states: "The transfer of firearms in the parking lot of this facility is a crime." (Pen. Code, § 27240, subd. (b).)

17) Requires all gun show or event vendors to certify in writing to the producer that they, among other things:

a) Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited;

b) Acknowledge that they are responsible for knowing and complying with all applicable federal, state, and local laws dealing with the possession and transfer of firearms. firearms; and,

c) Will process all sales or transfers of firearms through licensed firearms dealers as required by state law. (Pen. Code § 27305.)

18) Requires each ammunition vendor, before commencement of a gun show or event, to provide to the producer all of the following information relative to the vendor, the vendor's employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor's display space:

a) The person's complete name;

b) The person's driver's license or state-issued identification card number; and,

c) The person's date of birth. (Pen. Code, § 27320.)

19) Provides that any firearm carried onto the premises of a gun show or event by members of the public shall be checked and secured in a manner that prevents the firearm from being discharged. (Pen. Code, § 27340, subd. (a).)

20) Provides that an identification tag or sticker shall be attached to the firearm prior to the person being allowed admittance to the show and the identification tag or sticker shall state that all firearm transfers between private parties at the show or event shall be conducted through a licensed dealer or firearm dealer in accordance with applicable state and federal laws. (Pen. Code, § 27340, subd. (b).)

21) Provides that all firearms carried onto the premises of a gun show or event by members of the public shall be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker shall be attached to the firearm, prior to the person being allowed admittance to the show. The identification tag or sticker shall state that all firearms transfers between private parties at the show or event shall be conducted through a licensed dealer in accordance with applicable state and federal laws. The person possessing the firearm shall complete the following information on the tag before it is

attached to the firearm:

a) The gun owner's signature;

b) The gun owner's printed name; and,

c) The identification number from the gun owner's government-issued photo. (Pen. Code, § 27340.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1669 will promote greater public safety and more a comprehensive policy enforcement model for independent ammunition vendors. Currently, existing regulations under Proposition 63 set the bar higher for firearms dealers who also sell ammunition. Independent ammunition vendors do not receive the same scrutiny. The discrepancy needs to be corrected so law enforcement can receive adequate information about all ammunition vendors. By removing this discrepancy and increasing the per transaction fee to more accurately offset the enforcement costs of the program, the public can have greater surety that all ammunition vendors are complying with California's laws."

2) **Proposition 63**: Proposition 63, the Safety for All Act, passed in 2016 by the people of California, contained several provisions related to firearms and ammunition. Among other things, it required sales of ammunition to be conducted by or processed through a licensed dealer so that a background check could be conducted. Prop 63 also defined the term "ammunition vendor" and established that a current firearms dealer was to be automatically considered an "ammunition vendor."

   Currently, firearms dealers must adhere to a set of standards to be eligible vendors at gun shows or gun show events. Among other things, they are required to notify DOJ, provide identification and other information, and certify that any firearm transfer will be conducted through a licensed firearms dealer, ensuring that the purchaser undergoes a background check. Ammunition vendors who do not sell firearms, however, are not required to adhere to those requirements prior to participating in gun shows.

   This discrepancy has caused an inconsistency in the way in which firearms and ammunition vendors are treated at California gun shows. Independent ammunition vendors, those that only sell ammunition and are federally licensed, can sell ammunition at gun shows in California without being required to obtain the same state licenses that are required of California based vendors. Additionally, gun show organizers and promoters are exempted from having to include independent ammunition vendors in the list of expected dealers that must be reported to the Department of Justice within a week of the event. Knowing who is expected at a gun show gives DOJ the ability to prepare for possible enforcement actions against vendors that have a history of problematic practices such as allowing straw purchases. This bill would eliminate the discrepancy by requiring ammunition vendors to abide by the same requirements as firearms dealers.

3) **Dealer of Record Sale Fee (DROS)**: The DROS fee was first established in 1982 in order to cover DOJ's cost of performing a background check on firearms purchasers. The initial DROS Fee was $2.25. Over the years, the amount of the DROS Fee increased, and so did the number of activities that it funded. In 1995, the Legislature amended the statute to fix the DROS Fee at $14 and allowed it to be adjusted to account for inflation. In 2004, the Department adopted regulations adjusting the fee to $19. The DROS fee is one of several fees that is attached to the purchase of a new firearm. In addition, there is a $1 firearm safety fee, and a $5 firearms safety and enforcement fee. (DOJ website, https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/firearms-fees.pdf.)

   The DROS fee is implemented in two separate statutes, one that allows DOJ to charge the fee to the dealer for each firearms purchased and another that effectively allows the firearms dealer to pass that cost along to the purchaser. This bill would increase that fee to $32.19. According to DOJ, this change is necessary because over the last several years, program activities have been initiated and funded from the DROS Special Account (DROS Fund) that were unrelated to previous DROS responsibilities without a corresponding increase to the DROS Fund. DOJ asserts that the DROS fund will be empty by fiscal year 2020-21. They further state that the $32.19 fee is calculated to create sufficient revenues to avert the need for additional General Fund or significant programmatic service reductions.

   Although the initial DROS fee was only intended to cover the cost of background checks, subsequent legislation has contemplated that DROS funds be used for other purposes, such as enforcement of the Armed Prohibited Persons System (APPS.) Specifically, SB 819 (Leno), Statutes of 2011, allowed DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System. Under the provisions of this bill, DOJ would be authorized to adjust the DROS fee in order to fund any firearms activity that is required of DOJ for which there is no sustainable source of funding.

   Recently, the DROS fee was challenged in court by a group of plaintiffs made up of gun owners and enthusiasts. (*Gentry v. Becerra*, (Mar. 4, 2019, No. 34-2013-80001667) Sacramento Sup. Ct.) The plaintiffs argued that DROS fee was not properly calculated, that DOJ was using DROS funds outside of their statutory authority, and that the fee was in fact a tax, thus violating the California Constitution. (*Id.* at 1.) Ultimately the superior court ruled against the plaintiffs, finding that the DROS fee was a reasonable approximation of the costs of the government-provided regulatory services and that the DROS fee was not a tax. (*Id.* at 13.) Because this bill would both increase the DROS fee and expand the activities for which that fee can be used, it is likely to subject the fee to renewed legal challenges.

4) **Argument in Support**: According to the bill's sponsor, Xavier Becerra, the *Attorney General of California*: "Attorney General Becerra is pleased to sponsor AB 1669, a bill that addresses the inconsistency with which firearms and ammunition vendors at California gunshows are treated under state law. The bill would also grant the Department of Justice (DOJ) the authority to adjust the Dealer Record of Sale (DROS) fee.

   "Proposition 63, the Safety for All Act, passed in 2016 and among several provisions related to firearms and ammunition, required sales of ammunition to be conducted by or processed through a licensed dealer. Unfortunately, not all vendors were covered by the resulting law. "Independent ammunition vendors" – those that only sell ammunition, are federally-licensed, and are based outside of California – can sell ammunition at gun shows without being

required to obtain the same state licenses that are required of California-based vendors. AB 1669 closes this loophole by requiring any entity selling ammunition in the state to be licensed by the state.

"Another loophole allows a gunshow organizer or promoter from having to include independent ammunition vendors in the list of expected dealers that must be reported to the DOJ within a week of the event. Knowing who is expected at a gunshow gives DOJ the ability to prepare for possible enforcement actions against vendors that have a history of problematic practices such as allowing straw purchases. AB 1669 closes the loophole and requires independent ammunition vendors to be included in the report to the DOJ.

"Finally, AB 1669 would grant DOJ the authority to adjust the DROS fee. The DROS fee is collected each time a firearm is sold by a licensed dealer in California and is meant to address the cost of the background check as well as other program costs. Current law sets the DROS fee at $14.00 and allows for the fee to be increased annually by the Consumer Price index as compiled and reported by the California Department of Industrial Relations. The fourteen dollars was established in 1995 and has been raised only once – to $19.00 in 2004.

"Over the past several years numerous bills were signed into law that drew from the DROS Special Account. During that time there were no compensating increases in the base DROS fee to cover the resulting increase in DOJ's workload. Even if the DOJ had raised the fee each year since 2004 to account for any increase in the Consumer Price index, there would still be a shortfall of $5.38 per transaction. The Governor's 2019-20 Budget recognized the need to stabilize funding for DROS programs and included $6.9 million in General Funds to address some of the recent workload increases. Unfortunately, this amount does not fully cover the unfunded workload.

"AB 1669 proposes to raise the base DROS fee to $32.19 to fund current costs. Without this bill, the DROS fund will continue to decline and will become negative in Fiscal Year 2020-21. The proposed adjustment will create sufficient revenues to avert the need for additional General Fund or significant service reductions. In anticipation of future legislation, AB 1669 would also provide DOJ with the authority to readjust the fee as new laws that are funded by the DROS Special Account take effect."

5) **Argument in Opposition**: According to the *National Shooting Sports Foundation, Inc.*: "This is to inform you of the opposition National Shooting Sports Foundation to AB 1669 that would increase the cost of the Dealers Record of Sale (DROS) fee paid by firearms purchasers to fund "…any other activity not listed in this subdivision that is funded by DROS, or any other firearms-related activity required of the department for which no sustainable funding source is provided."

"This proposed language is completely open-ended without any spending constraints and would give the Department of Justice a "blank check" to charge the DROS fund for any department costs as long as it could establish a connection to firearms.

"The increased costs would be paid for by firearms buyers in the form of increased DROS fees. They would be forced to pay for department costs that are totally unrelated to the cost of their purchase of a firearm.

"A fee is to be no higher than the actual costs of rendering the services provided, in this case the cost of the criminal and mental history background check conducted by the department to verify that a prospective purchaser is eligible to possess a firearm.

"The increases proposed in AB 1669 are thus a tax, not a fee."

6) **Related Legislation**: AB 340 (Irwin), would authorize a county or counties to establish and implement a Disarming Prohibited Persons Taskforce (DPPT) program for the purpose of assisting DOJ in the investigation and prosecution of APPS cases. AB 340 is pending in the Assembly Appropriations Committee.

7) **Prior Legislation**:

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

   b) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated $24 million from the Dealers Record of Sale (DROS) Special Account to the DOJ to fund enforcement of illegal gun possession by relieving weapons from prohibited persons and required the DOJ to report specified information to the Joint Legislative Budget Committee by March 1, 2015 and every March 1 until 2019.

   c) SB 819 (Leno), Chapter 743, Statutes of 2011, authorized the DOJ to use DROS fees to fund the department's firearms-related regulatory and enforcement activities related to the possession of firearms, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General of California (Sponsor)
Bay Area Student Activists

Oppose

Gun Owners of California, Inc.
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters

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

Date of Hearing: April 9, 2019
Counsel: Nikki Moore

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

AB 1747 (Gonzalez) – As Amended March 28, 2019

SUMMARY: Prohibits state law enforcement agencies from creating or maintaining databases including an individual's citizenship or immigration status for the purpose of immigration enforcement. Specifically, this bill:

1) Provides that any agreements in effect on January 1, 2020, that conflict with the provisions of this bill are terminated on that date.

2) Permits a law enforcement agencies to include in databases citizenship information about, or immigration status of, an individual for whom an arrest warrant has been issued.

EXISTING STATE LAW:

1) Prohibits California law enforcement agencies from (Gov. Code, § 7282.5, subd. (a)):

   a) Using agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

      i) Inquiring into an individual's immigration status.

      ii) Detaining an individual on the basis of a hold request.

      iii) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities.

      iv) Providing personal information, as defined, about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

      v) Making or intentionally participating in arrests based on civil immigration warrants.

      vi) Assisting immigration authorities "for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;"

      vii) Performing the functions of an immigration officer.

b) Placing peace officers under the supervision of federal agencies or employing peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement;

c) Using immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody;

d) Transferring an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or as otherwise authorized by statute;

e) Providing office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility; and,

f) Contracting with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody, except as otherwise authorized by statute.

2) States that a law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act. Specifies that coordination shall only occur with respect to specified convictions and offenses. (Gov. Code, § 7282.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Six years ago, undocumented Californians gained the right to a driver's license so they could be law abiding drivers, an effort aimed at providing us all peace of mind on the road. Now, fear is undermining the AB 60 license program. AB 1747 prohibits California law enforcement agencies from making their databases, including those maintained by private vendors, available for the purpose of immigration enforcement, except for the individual's citizenship or immigration status, which is required by federal law to be shared. This would not apply to information within those databases on individuals with active arrest warrants.

"Law enforcement agencies with access to CLETS are allowed to access certain information from driver's license or identification card records, including name, date of birth, residence and/or mailing address, and photos, as well as conviction information, accidents, and any licensing actions taken by the DMV. The DMV does not release any applicant documents except in response to a criminal subpoena, a court order, or a certification from law enforcement attesting to an urgent health or safety need for the release of the documents.

"These federal immigration policy tactics are concerning. AB 1747 limits the involvement of state and local law enforcement agencies in federal immigration enforcement. It is imperative that we protect the privacy of California residents."

2) **Need for this Bill**: According to the bill's fact sheet, "In 2013, Assembly Bill 60 (Alejo) created a driver's license program for undocumented residents to ensure these residents could drive legally, safely and obtain insurance. California residents were assured repeatedly that

the driver's license would not be used as evidence of their immigration or citizenship status, and not be used as a basis for a criminal investigation, arrest, or detention.

"However, recent news reports have uncovered that I.C.E. has been accessing state-run databases containing information about individuals with licenses that were made available under Assembly Bill 60. Pursuant to Vehicle Code Section 1810.5, law enforcement agencies may access certain information from driver license or identification card records either directly from the California Department of Motor Vehicles (DMV) via a requester account, or via the Department of Justice's California Law Enforcement Telecommunications System (CLETS) and Cal-Photo programs. Available information includes name, date of birth, residence and/or mailing address, and photos, as well as conviction information, accidents, and any licensing actions taken by the DMV.

"CLETS is available to all law enforcement agencies for criminal investigations purposes. According to the DMV, pursuant to Vehicle Code Section 12800.7, the Department does not release any document provided by an applicant for purposes of proving the applicant's identity, true full name, California residency, or legal presence, except in response to a criminal subpoena, a court order, or a certification from law enforcement attesting to an urgent health or safety need for the release of the documents.

"The Department of Homeland Security (DHS) must first apply for access to CLETS and once approved, they can submit individualized inquiries to obtain driver's license or vehicle registration information collected by the DMV and maintained in standardized fields, such as name, address, physical characteristics and license plate information, which appear on the face of the driver's license. The systems may also be used to obtain driver history such as accidents or tickets.

"Once DHS has access to CLETS, they are not required to explain the purpose for each inquiry they make. While the number of arrests that have resulted from information accessed through DMV databases and CLETS is unknown, the ACLU and the National Immigration Law Center report that between Jan. 1, 2017 and April 10, 2018, DHS made 594 inquiries to the DMV driver's license database and 1,085 inquiries to the DMV vehicle registration database by telephone.

"Use of state databases by I.C.E. for immigration enforcement is concerning. Data that is collected by the DMV for the purpose of issuing drivers licenses, should not be used for other purposes, like immigration enforcement. Data already shows that the number of applicants for AB 60 driver's licenses has sharply dropped, and new reports cite individuals discussing their fear of immigration enforcement in relation to the licenses. This fear is undermining the purpose of the AB 60 program to enable residents to drive legally and to be insured, since now eligible residents may hesitate to apply for the license if I.C.E. is able to access to sensitive personal information."

3) **The California Department of Motor Vehicles Shares Information with Law Enforcement Under Specified Circumstances:** On January 25, 2019, the author of this bill sent a letter to the acting director of the DMV requesting DMV's policy on permitting access to DMV's database. On February 4, 2019, DMV responded that it does share information in its DMV database in response to a criminal subpoena or a certification from law enforcement that the records are needed for an urgent health or safety reason. However, DMV stated that

it does not identify in any records available to any person whether an applicant applied for a license under AB 60. DMV states that it also does not maintain a separate database for AB 60 licenses.

4) **Reports of Data Sharing with ICE and DMV's Response**: Despite DMV's statements that it does not share information about immigration status, news reports conflict with those assurances. (*See* Flores, Sergio and Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC San Diego, February 19, 2019, Available at https://www.nbcsandiego.com/news/local/DMV-Confirms-ICE-Has-Limited-Access-to-AB-60-License-Information-506071521.html.) NBC San Diego reports that ICE officials have copies of AB 60 licenses when they locate and detain individuals in at least two known cases.

   The American Civil Liberties Union (ACLU) and the National Immigration Law Center (NILC) released a report in December 2018 with the purpose of providing "as much information as possible about how and what information is shared with the Department of Homeland Security and its agencies, so that California residents can effectively weigh the risks and benefits of obtaining a driver's license." (*How California Driver's License Records are Shared with the Department of Homeland Security*, ACLU and NILC, at 2, available at https://www.nilc.org/wp-content/uploads/2019/01/DMV-PRA-report-2018-12.pdf.) The report states, "Yet it is well-known that immigration agents frequently use DMV information, such as addresses, to locate individuals for civil immigration enforcement. The California DMV and CADOJ do not assess whether a DHS agency applying for a Government Requester Account or CLETS access will use DMV information for immigration enforcement purposes when DMV and CADOJ determine whether to approve that agency's application." (*Id.* at 3-4) In the first three months of 2018, the Department of Homeland Security apparently conducted 89,223 queries in CLETS. (*Id.* at fn. 14.)

   In the report's recommendations on how to address potential abuse by DHS in accessing information about California licenses, the report suggests that California "Terminate any approvals or memoranda of agreement between the state and DHS agencies that allow the agencies to obtain information from DMV databases for enforcement of civil immigration law." (*Id.*) This bill would codify that recommendation.

5) **Scope of this Bill**: This bill terminates any "agreements" between local or state law enforcement agencies and the federal government in which the California entity agrees to share is law enforcement data regarding immigration status, except it permits disclosure of immigration information regarding an individual for whom an arrest warrant has been issued.

   The California Values Act, enacted in 2018, generally prohibits, with exceptions, a California law enforcement agency from using its moneys or personnel to investigate, detain, or arrest persons for immigration enforcement purposes. This bill would extend that concept to prohibiting law enforcement from using its data to facilitate the investigation, detention, or arrest of a person for immigration enforcement purposes.

   However, this bill does not state that any "contracts" that conflict with the mandate it imposes are void, only agreements. It is unclear whether there are any California entities that have a contractual obligation to share information at issue in this bill. If so, this bill appears to be silent with respect to those contracts. However, any contract that does exist, if renewed

or modified after January 1, 2020, would need to comply with the mandates in this bill moving forward if this bill is signed into law.

As currently drafted, this bill would include an exception that permits data sharing of immigration information if an arrest warrant is issued. However, I.C.E. has the ability to execute an arrest warrant without a judge's signature, meaning that I.C.E. would still be able to access immigration information without any oversight. Should this bill be amended to permit disclosures only in cases where there is a judicial warrant issued? This would ensure that I.C.E. is not issuing warrants on its own accord in order to bypass the prohibition on access established by this bill.

6) **Argument in Support**: According to the *American Civil Liberties Union of California*, "In 2017, California enacted the California Values Act (SB 54, de León) because entanglement of state and local public safety resources with the federal deportation system undercut immigrant communities' confidence in law enforcement and undermined the public safety and well-being of all Californians. From 2009-2015, ICE's controversial and failed Secured Communities program had California's local officers detain and transfer people to ICE. It operated as an indiscriminate mass deportation program and cost the state's taxpayers $65M annually. California officers were responsible for 30% of all deportations under this program.

"AB 1747 builds on the foundation laid by SB 54 by limiting access to local enforcement agencies' databases and continues to uphold California's core values of community, family unity, and common humanity. While the number of arrests that have resulted from information accessed through Department of Motor Vehicle databases and California Law Enforcement Telecommunications System is unknown, the ACLU of Northern California and the National Immigration Law Center report that between Jan. 1, 2017 and April 10, 2018, DHS agencies made 594 inquiries to the DMV driver's license database and 1,085 inquiries to the DMV vehicle registration database by telephone. In 2017, DHS agencies made 113 inquiries to the driver's license database and 1,149 inquiries to the vehicle registration database through online access, and in the first three months of 2018, those agencies made 80 inquiries to the driver's license database and 341 inquiries to the vehicle registration database. At a time when the current federal administration continues to target immigrant communities, AB 1747 will reaffirm California's commitment to promoting public safety and protecting and integrating its immigrant communities."

7) **Related Legislation**:

   a) AB 1073 (Rubio) would authorize the Attorney General to enter into a memorandum of understanding with ICE to treat shelters in this state that provide services to individuals who are victims of domestic violence or sexual assault as sensitive locations for purposes of federal immigration enforcement activities. AB 1073 is currently before the Assembly Judiciary Committee.

   b) AB 1563 (Santiago) would make it unlawful for any person to falsely represent themselves to be a public official or public employee conducting a government census with the knowing intent to deceive an undocumented immigrant. AB 1563 is currently before the Assembly Judiciary Committee.

c) AB 1408 (Mathis) would require that a person who is taken into custody for a specified category of misdemeanor receive a pretrial risk assessment and would allow information regarding the release or transfer of an individual to be provided to immigration authorities if the individual is deemed a medium or high risk by the pretrial risk assessment or if the sheriff or chief of police of the arresting agency deems the individual to be a risk or danger to public safety. The hearing was canceled at the request of the author.

8) **Prior Legislation**:

a) AB 4 (Ammiano), Chapter 570, Statutes of 2013, known as the TRUST Act, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

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

c) SB 713 (Nielsen), of 2015-2016 Legislative Session, would have expanded the list of prior felony convictions under the TRUST Act to include the conviction of a felony which formed the basis upon which the individual was previously deported, thereby allowing a law enforcement official, to detain an individual with that felony conviction on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody. SB 713 was held in the Senate Public Safety Committee.

d) SB 417 (Stone), of 2015-2016 Legislative Session, would have required a law enforcement official to detain an individual on the basis of a United States Immigration and Customs Enforcement hold for up to 48 hours after that individual becomes eligible for release from custody if that individual has been convicted of, or arrested for, specified crimes. The bill would have required a local agency that violates these provisions to pay a fine of $100,000. SB 417 was returned to the Senate desk without further action.

e) SB 54 (De Leon), Chapter 495, Statutes of 2017, established the California Values Act which, among other things and with some exceptions, prohibits state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
Asian Americans Advancing Justice - California

California Public Defenders Association
California Rural Legal Assistance Foundation, Inc.
Coalition For Humane Immigrant Rights
Electronic Frontier Foundation

Opposition

None

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

Date of Hearing: April 9, 2019
Chief Counsel: Gregory Pagan

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

AB 1794 (Jones-Sawyer) – As Amended March 21, 2019

SUMMARY: Exempts various law enforcement entities or sworn officers of those entities from the prohibitions against the sale or purchase of an "unsafe" handgun. Specifically, **this bill**: exempts the following agencies or sworn members of these entities that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST):

1) The California Horse Racing Board;

2) The State Department of Health Care services;

3) The State Department of Public Health;

4) The State Department of Social Services;

5) The Department of Toxic Substances Control;

6) The Office of Statewide Planning and Development;

7) Investigators of the Department of Business Oversight;

8) The Chief and coordinators of the Law Enforcement Branch of the Office of Emergency Services;

9) Lottery security personnel assigned to the California State Lottery Commission;

10) The Franchise Tax Board;

11) Investigators of the office of Protective Services of the State Department of Developmental Services; and,

12) Firefighters and Security Guards of the Military Department.

EXISTING LAW:

1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code § 32000, subd. (a).) Specifies that this section shall not

apply to any of the following:

a) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state;

b) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;

c) Firearms listed as curios or relics, as defined in federal law; and,

d) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person; (Pen. Code, § 32000, subd. (b).)

2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

3) Defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010.)

5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd, (a).)

6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in

California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code, § 32015, subd. (b)(1).)

7) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

8) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

   a) The manufacturer petitions the AG for reinstatement of the handgun model;

   b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

   c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   d) The three handguns samples shall only be tested once. If the sample fails it may not be retested;

   e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

   f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

   g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subds. (a)-(g).)

9) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

   a) Finish, including, but not limited to bluing, chrome plating or engraving;

   b) The material from which the grips are made;

   c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,

   d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

10) Requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following:

    a) The model designation of the listed firearm;

    b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns; and,

    c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's roster of safe handguns exists so that law enforcement officers, and the public, can identify which guns have passed rigorous Department of Justice lab tests, and more importantly, which guns have not passed those lab tests. To keep a weapon on the roster of safe handguns, a manufacturer must also pay a small fee annually. Unfortunately, many law enforcement agencies and state agencies find themselves making large handgun purchases only to find that manufacturers are not paying the annual fee to keep a gun on the roster. This means that our state officers are out of compliance with state law, and must make new, costly orders, because gun manufacturers are refusing to pay the annual fee. The state already makes exempts various state law enforcement officers due to these circumstances. However, the list of exempt entities is not comprehensive. AB 1794 adds a number of the remaining law enforcement entities and state agencies to the list of exempt entities so that they can continue to use safe handguns even if a manufacturer is unwilling to renew the guns place on the roster."

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

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

    b) *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk

of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

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

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

4) **Argument in Support**: "AB 1794 will extend the exemption provided in Penal Code §32000 to peace officers serving and protecting communities throughout California, and who have completed the requisite firearms training and currently carry non-roster firearms.

"In 2001, Penal Code §32000 created a list of non-exempt agencies who may purchase non-roster firearms for use in the discharge of their official duties. Questionably, certain trained peace officers and law enforcement personnel were left off the list. These peace officers are often required to participate in mutual aid situations, task forces, sting operations and arrests. These high-risk situations require that these officers be properly armed.

"In years past the Department of Justice permitted these agencies and departments to acquire these firearms for their public safety personnel. However, recent enforcement of the gun roster by the Department of Justice would require thousands of law enforcement to forfeit their guns. This legislation is necessary because it will allow officers, who have gone through the appropriate training to carry and keep their 'non-roster' handguns, while on active duty. Thereby also not creating a new expense for the State to repurchase new firearms and to retrain these personnel on these new firearms. In particular, this bill will expand the unsafe handgun exemption to sworn officers within various state departments, including the California Horse Racing Board, the State Department of Public Health, the Department of Toxic Substances Control, Investigators at the Department of Business Oversight, and others whom have the necessary training to carry these particular handguns."

5) **Prior Legislation**:

a) AB 1872 (Voepel), Chapter 56, Statutes of 2018, Exempts sworn peace officers of a harbor or port district including the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles who have satisfactorily completed the

Commission on Peace Officer Standards and Training (POST) firearms training course from the state prohibition relating to the sale or purchase of an unsafe handgun.

b) AB 2165 (Bonta), Chapter 640, Statutes of 2016, provided that specified peace officers, who have satisfactorily completed the Commission on Peace Officer Standards and Training (POST) prescribed firearms training course, shall be exempt from the state prohibition relating to the sale or purchase of an unsafe handgun.

c) AB 892 (Achadjian), Chapter 203, Statutes of 2015, exempted from the prohibition on unsafe handguns the purchase of a state-issued handgun by the spouse or domestic partner of a peace officer who died in the line of duty.

REGISTERED SUPPORT / OPPOSITION:

Support

California Statewide Law Enforcement Agency (Sponsor)

Opposition

None

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