### 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

**SPECIAL ORDER**  
8:30 A.M.

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**REGULAR ORDER OF BUSINESS**

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13. AB 1282 (Kalra) Mr. Fleming Immigration enforcement: private transportation.
14. AB 1294 (Salas) Ms. Moore Criminal profiteering.
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22. AB 1450 (Lackey) Ms. Uribe Child abuse reporting: cross-reporting among local agencies.
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Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.
SUMMARY: Limits the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person. Specifically, this bill:

1) States that homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under any of the following circumstances:

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

b) When the homicide results from a peace officer’s use of force, other than deadly force, that is in compliance with other provisions of this bill;

c) When, except in specified situations involving criminal negligence, the homicide would be justifiable pursuant defenses to homicide that are available to non-peace officers, in self-defense or the defense of another person;

d) When, except in specified situations involving criminal negligence, the officer reasonably believes, based on the totality of the circumstances, that the use of force resulting in a homicide is necessary to prevent the escape of a person, and all of the following are true:

i) The peace officer reasonably believes that the person has committed, or has attempted to commit, a felony involving the use or threatened use of deadly force;

ii) The peace officer reasonably believes that the person will cause death or inflict serious bodily injury to another unless immediately apprehended; and

iii) If feasible, the peace officer has identified themselves as a peace officer and given a warning that deadly force may be used unless the person ceases flight, unless the officer has reasonable ground to believe the person is aware of these facts.

2) Specifies that with respect to justifiable homicide for a fleeing felon, “necessary” means that, given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person. The totality of the circumstances means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force.
3) States that defenses to justifiable homicide do not provide a peace officer with a defense to manslaughter, as specified, if that person was killed due to the criminally negligent conduct of the officer, including situations in which the victim is a person other than the person that the peace officer was seeking to arrest, retain in custody, or defend against, or if the necessity for the use of deadly force was created by the peace officer’s criminal negligence.

4) States that a peace officer who has reasonable cause to believe that the person to be arrested has committed a crime may use reasonable force, other than deadly force, to effect the arrest, to prevent escape or to overcome resistance.

5) Provides that a peace officer who makes or attempts to make an arrest need not abandon or desist from the arrest by reason of the resistance or threatened resistance of the person being arrested.

6) States that a peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

7) Specifies that a peace officer shall, however, attempt to control an incident through sound tactics, including the use of time, distance, communications, tactical repositioning, and available resources, in an effort to reduce or avoid the need to use force whenever it is safe, feasible, and reasonable to do so. This language does not conflict with the limitations on the use of deadly force set forth in the defenses of justifiable homicide by a peace officer.

8) States that a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

   a) To defend against a threat of imminent death or serious bodily injury to the officer or to another person;

   b) To prevent the escape of a fleeing felon, as specified;

   c) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

9) States that the language of 9(a)-(c) does not provide the legal standard and shall not be used in any criminal proceeding against a peace officer relating to the use of force by that peace officer, or to any defenses to criminal charges under theories of justifiable homicide or any other defense asserted by that officer, but may be used in any civil or administrative proceeding.

10) Define the following terms:

   a) “Deadly force” means “any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm;”
b) A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed;

c) "Necessary" means that, given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person.

d) "Totality of the circumstances" means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force.

11) Finds and declares all of the following:

a) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;

b) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies;

c) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force; and,

d) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

EXISTING LAW:

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

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

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

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

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

4) States that homicide is justifiable when committed by any person in any of the following cases: (Pen. Code, § 197)

   a) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person;

   b) When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein;

   c) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he or she was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

   d) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "American political ideals require careful consideration of how government exercises power over its people. Vigilance is especially necessary in policing where, on a daily basis, democratic notions of liberty, security and autonomy are poised against the demands of public safety and the force that may be required
to effect it. Because the power to use force is granted by the governed, every effort must be made to ensure that force is exercised with careful attention to preserving the life and dignity of the individual to remain legitimate.

“In 2017, officers killed 172 people in California, only half of whom had guns. Police kill more people in California than in any other state – and at a rate 37% higher than the national average per capita. Of the 15 police departments with the highest per capita rates of police killings in the nation, five are in California: Bakersfield, Stockton, Long Beach, Santa Ana and San Bernardino. A 2015 report found that police in Kern County killed more people per capita than in any other U.S. county. These tragedies disproportionately impact communities of color as California police kill unarmed young black and Latino men at significantly higher rates than they do white men.

“Community trust in law enforcement is undermined when force is used unnecessarily and disproportionately. Police are less able to do their job when community distrust leads to decreased respect and cooperation, a situation that increases the risks to officers and civilians.

“AB 392 reflects policies that policing experts recognize as effective at better preserving life while also allowing officers the latitude needed to ensure public safety. Under President Obama, the U.S. Department of Justice helped many cities adopt similar policies, including San Francisco and Seattle. Seattle’s federal monitor determined that the policy change resulted in a marked reduction in serious uses of force without compromising the safety of officers.

“AB 392 is the necessary step to affirming the sanctity of human life. For nearly a century and a half Californians have witnessed the justification of police homicides due to a standard that says it can be reasonable to use deadly force even if there were other alternatives. Far too many days and far too many deaths have gone by with inaction by those who have the power to enact change. As recent events have made clear, Californians will no longer tolerate these deaths as acceptable collateral damage for preserving the status quo, especially when there are effective best practices that will save both officer and civilian lives.”

2) **Fleeing Felon Rule:** California’s current law regarding justifiable homicide was enacted in 1872 and has not been amended since that time. Meanwhile, the U.S. Supreme Court has placed limits on police use of deadly force which are not reflected in existing law. Under the current statute, the law regarding use of deadly force on fleeing felons is significantly outdated and does not comply with constitutional standards based on the U.S. Supreme Court’s decision in *Tennessee v. Garner*, (1985) 471 U.S. 1.

Current California law provides that a homicide committed by a police officer is justified “When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.” (Pen. Code, § 196). Based on the statutory language, such a homicide is justified whether or not the person poses a danger to the officer or another person.
The standard as set forth in *Garner* is:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. . . . A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.

" . . . if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. (Id. at 11-12.)

This bill would establish the following standard for justifiable use of deadly force on a fleeing felon: When the officer reasonably believes, based on the totality of the circumstances, that the use of force resulting in a homicide is necessary to prevent the escape of a person, and all of the following are true:

i) The peace officer reasonably believes that the person has committed, or has attempted to commit, a felony involving the use or threatened use of deadly force;

ii) The peace officer reasonably believes that the person will cause death or inflict serious bodily injury to another unless immediately apprehended; and,

iii) If feasible, the peace officer has identified themselves as a peace officer and given a warning that deadly force may be used unless the person ceases flight, unless the officer has reasonable ground to believe the person is aware of these facts.

As used in the context of justifiable homicide with a fleeing felon, this bill defines "necessary" as "given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person. The totality of the circumstances means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force." The requirement of necessity is one which current law employs when evaluating whether the use of force in self defense is appropriate.

The provisions in this bill regarding fleeing felons are generally consistent with the standards set forth in *Garner*.

It is interesting to note that the court in *Garner* made the following observation regarding the effect of their ruling: "Nor do we agree with petitioners and appellant that the rule we have adopted requires the police to make impossible, split-second evaluations of unknowable facts. We do not deny the practical difficulties of attempting to assess the suspect's dangerousness. However, similarly difficult judgments must be made by the police in equally uncertain circumstances." (Id. at 20.) In spite of the concerns at the time the law was changed, officers and police departments have adapted to the rule established by *Garner*. 
3) **Justifiable Homicide by Police Officers Under Other Circumstances:** This bill would establish criteria which provide legal justification for a homicide committed by a police officer. The circumstances which justify the killing of a fleeing felon have been described above. This bill would also provide that a killing is justified under all the same circumstances which provide justification for a citizen, including self defense or defense of others.

Every person in the State of California has the right to self-defense and to defend others. The following California jury instruction explains the right to self-defense and defense of others:

a) “[A] defendant is not guilty of [homicide] if he or she was justified in killing or attempting to kill someone in self-defense or defense of another. The defendant acted in lawful self-defense defense of another if:

i) The defendant reasonably believed that he, she, or someone else was in imminent danger of being killed or suffering great bodily injury or was in imminent danger of being raped, maimed, or robbed;

ii) The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and,

iii) The defendant used no more force than was reasonably necessary to defend against that danger. (CALCRIM 505 Justifiable Homicide: Self-Defense or Defense of Another.)

This bill does not change current statutory language which specifies that a peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Ordinarily, self defense is not available to an individual that is an “aggressor” unless, the other party escalates the amount of force. Police officers are required to respond to situations that can require a lawful and legitimate use of force. Those circumstances include situations in which an officer is making an arrest. Although this bill maintains the current statutory language, it limits the reasonable use of force when making an arrest to non-deadly force. That limitation might affect the analysis regarding a justification based on self defense in situations involving the use of deadly force.

5) **This Bill Redefines Police Use of Force During Arrests and Use of Deadly Force:** In *Graham v. Connor*, 490 U.S. 386 in 1989, the U.S. Supreme Court issued a ruling regarding standards regarding police use of force. In *Graham*, the court held that an objective reasonableness test should be used as the standard to determine whether a law enforcement official used excessive force in the course of making an arrest, or other action. The court stated:

“As in other Fourth Amendment contexts... the ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation...[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather
than with the 20/20 vision of hindsight.”

This bill amends the penal code section describing the parameters for police use of force during an arrest. This bill would specify that reasonable, non-deadly force should be used to make an arrest, prevent escape, or overcome resistance. That would be a change from current statutory language which states that the force must be reasonable, but does not make any distinction between deadly and non-deadly force.

This bill would define “deadly force” as “any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.”

With respect to deadly force, this bill would allow its use only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against a threat of imminent death or serious bodily injury to the officer or to another person, or to prevent the escape of a fleeing suspect, as specified.

This bill would add additional language directing an officer making an arrest to, “... attempt to control an incident through sound tactics, including the use of time, distance, communications, tactical repositioning, and available resources, in an effort to reduce or avoid the need to use force whenever it is safe, feasible, and reasonable to do so.” This bill goes on to state that such language does not conflict with the limitations on the use of deadly force or justifiable homicide by a peace officer, as described in this bill. Some law enforcement agencies have adopted use of force policies consistent with the language above. The use of force provisions of this bill would apply to all California law enforcement agencies.

The language of this bill is likely to expose law enforcement agencies to civil liability for police actions that are inconsistent with the provisions of this bill regarding the use of force. For the same reasons, individual officers could be subject to discipline from their employing agency if they fail to comply with this bill’s provisions.

12) It is Not Clear How the Provisions of This Bill Limiting Certain Defenses For Peace Officers Apply to Voluntary and Involuntary Manslaughter: This bill provides exceptions of the justifications for homicide based on self defense/defense of others and fleeing felons. This bill states that the provisions regarding justifiable homicide of a fleeing felon and existing law regarding self defense, do not provide a peace officer with a defense to voluntary and involuntary manslaughter, as specified, if a person is killed due to the criminally negligent conduct of the officer. This bill also states that this includes situations in which the victim is a person other than the person that the peace officer was seeking to arrest, retain in custody, or defend against, or if the necessity for the use of deadly force was created by the peace officer’s criminal negligence.

According the proponents, this language is intended to address situations, where the police have acted in a fashion that creates a dangerous situation through poor police practices. As a result of those actions, the officer creates a confrontation with another individual, the individual then presents an imminent threat to the officer or other people, and the officer then kills the individual in self defense or defense of others.
It is not clear how this principle would interact with California’s law regarding homicide. This language applies to the statutory section that covers (1) voluntary manslaughter and (2) involuntary manslaughter. Voluntary manslaughter occurs when a killing is intentional and accompanied by one of the following circumstances: (1) The intentional killing occurs in the heat of passion, or (2) imperfect self defense, where the defendant has an honest, but unreasonable belief that self defense was necessary.

Involuntary manslaughter is an unintentional killing. The killing results because a person committed a crime or lawful act in an unlawful manner; the person committed the crime or act with criminal negligence; and the crime or act caused the person’s death.

A person acts with criminal negligence when:

a) He or she acts in a reckless way that creates a high risk of death or great bodily injury; and

b) A reasonable person would have known that acting in that way would create such a risk. (CalCrim 581.)

This bill would place limits on the use of self defense/defense of others if an officer faces criminal charges involving the offenses of voluntary or involuntary manslaughter, if the officer acts with criminal negligence. Self defense/defense of other is a justification when a person intends to kill the decedent. This bill seeks to limit the use of such a defense by a peace officer when the defendant faces involuntary manslaughter, a crime that results from an unintentional killing. Self defense is not a defense to a crime of involuntary manslaughter.

The limitation also includes voluntary manslaughter. Imperfect self defense is one form of voluntary manslaughter. In order to be convicted of voluntary manslaughter based on imperfect self defense, the jury must find a honest belief in self-defense, or the crime would be a murder. It is not clear how this language would be interpreted by a court in analyzing criminal liability for voluntary manslaughter.

4) **Argument in Support:** According to *PolicyLink*, “In 2017, 172 Californians were killed by the police, and our state’s police departments have some of the highest rates of killings in the nation. Of the unarmed people California police killed, three out of four were people of color. Black and Latino families and communities are disproportionately vulnerable to police violence, creating generations of individual and community trauma. Given the significant racial disparity and the disproportionate number of men of color killed by police, passing AB 392 is imperative to achieving racial justice and securing human rights. Boys and men of color have a right to be free from fear and violence, and changing the outdated standard for law enforcement use of deadly force is necessary to ensuring their safety.

“California must update its outdated law on deadly use of force. Current law allows police to use deadly force whenever “reasonable”, even if there is no threat to life or bodily security, and even if safe alternatives to deadly force are available. California law even authorizes deadly force that is below the standard of the Constitution. This disturbing level of discretion has had dire consequences: Police in California kill community members at a rate 37 percent
higher than the national average, per capita, and several of our state’s police departments have among the highest rates of killings in the country.

“In line with recommendations from policing and legal experts, including the California Attorney General, AB 392 updates California law so that police can use deadly force only when necessary to prevent death or serious injury, and requires them to use tactics to de-escalate a situation or use alternatives to deadly force when reasonable. Changing this standard will mean that officers will be trained to use deadly force less often and will be held accountable when they shoot and kill unnecessarily.

“The harm from police killings extends beyond the lives lost and impacts all involved. Police shootings cause extraordinary trauma for the families and communities impacted – trauma that disproportionately impacts communities of color. Studies show that police departments with more restrictive use of force policies not only have fewer shootings by police, but also lower rates of assaults against officers and lower crime rates. One of the Legislature’s primary goals is to protect public safety, and safeguarding Californians’ right to be safe from unnecessary deaths by law enforcement is a critical step in that direction.”

5) Argument in Opposition: According to California State Sheriffs’ Association, “Longstanding state and federal case law argued, reviewed, shaped, and clarified over decades, as well as thoroughly vetted policies and strict, evolving training guide law enforcement officers and agencies when it comes to the use of deadly force. The decision to apply this level of force is the most solemn, serious, and scrutinized choice an officer could be asked to make. It must often occur without notice and with only milliseconds to contemplate his or her actions. As such, shifting the standard that guides the use of lethal force from one of objective reasonableness in light of the facts and circumstances (the existing standard as described in Graham v. Connor) to necessity given the totality of the circumstances (as proposed by this measure to require an objectively reasonable peace officer in the same situation to conclude that there was no reasonable alternative to the use of deadly force) will necessarily require second-guessing of an officer’s decision, potentially with facts and information not available or known to the officer during the pendency of the encounter. In fact, this standard of necessity elicits not-so-exaggerated scenarios where an officer, so as to ensure he or she does not risk violating the new paradigm, might wait until a subject discharges a firearm at the officer before engaging. He or she might choose this course of action because the language of the bill opens the door for an after-the-fact analysis that could find a use of lethal force unnecessary when a subject points an unloaded firearm at an officer. While there is little chance an officer would be able to ascertain such a fact made crucial by the implementation of a necessity standard, he or she could nevertheless be in violation of the law given possible interpretations of this proposed statute.

“In addition to creating tremendous and routinely life-threatening risk to peace officers, AB 392 could discourage proactive policing. Fearing repercussions ranging from employee discipline to criminal prosecution based on this new standard, it is possible that officers who today would purposefully put themselves in harm’s way to do their job might tomorrow decline to act. Knowing this reality, criminals will be given carte blanche, if not encouraged, to flee from officers, disobey commands, and victimize our communities.

“Peace officers and their agencies will be subjected to levels of personal and organizational liability that will hamstring them from fulfilling their duties to protect the public safety.
Instead, cops and law enforcement agencies will be forced to decide how to do their jobs with monetary risks and criminal prosecution guiding their thinking instead of the best way to defend communities from wrongdoers.

"Even if this sea change in standard were appropriate, agency policies would have to be changed and tens of thousands of peace officers would have to receive all new training. That said, the bill does not contemplate this reality. Perhaps the only thing worse than converting to this standard, which will jeopardize the lives of peace officers and those who they are sworn to protect, is the possibility that it will be done without time to adjust and train."

6) **Related Legislation:** SB 230 (Caballero), would require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. SB 230 is awaiting hearing in the Senate Public Safety Committee.

7) **Prior Legislation:** AB 931 (Weber), would have limited the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person. AB 931 was held in the Senate Rules Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

- Alliance for Boys and Men of Color (Co-Sponsor)
- American Civil Liberties Union of California (Co-Sponsor)
- Anti Police-Terror Project (Co-Sponsor)
- Black Lives Matter (Co-Sponsor)
- California Faculty Association (Co-Sponsor)
- California Families United 4 Justice (Co-Sponsor)
- Communities United for Restorative Youth Justice (Co-Sponsor)
- PICO California (Co-Sponsor)
- PolicyLink (Co-Sponsor)
- Stop Terrorism and Oppression by the Police Coalition (Co-Sponsor)
- United Domestic Workers of America-AFSCME Local 3930/AFL-CIO (Co-Sponsor)
- Youth Justice Coalition (Co-Sponsor)
- All Saints Church, Pasadena
- Alliance San Diego
- American Friends Service Committee
- Amnesty International USA
- Annual Pan African Global Trade & Investment Conference
- Anti-Defamation League
- Asian Americans Advancing Justice - California
- Asian Law Alliance
- Asian Pacific Environmental Network
- Asian Solidarity Collective
- Associate Professor Stoughton at the University of South Carolina
AYPAL: Building API Community Power
Bay Area Student Activists
Black American Political Association of California
Brothers, Sons, Selves Coalition
California Black Health Network
California Calls
California Civil Liberties Advocacy
California Immigrant Policy Center
California Latinas for Reproductive Justice
California League of United Latin American Citizens
California Nurses Association
California Pan-Ethnic Health Network
California Public Defenders Association
California State Conference of the National Association for the Advancement of Colored People
California Urban Partnership
California Voices for Progress
Center for African Peace and Conflict Resolution
Center on Juvenile and Criminal Justice
Change Begins With ME
Children's Defense Fund - California
City and County of San Francisco District Attorney
Clergy and Laity United for Economic Justice
Cloverdale Indivisible
Coalition for Humane Immigrant Rights
Coalition for Justice and Accountability
Committee for Racial Justice
Community Coalition for Substance Abuse Prevention and Treatment
Council on American-Islamic Relations, California
Courage Campaign
Davis People Power
Disability Rights California
Drug Policy Alliance
Earl B. Gilliam Bar Association
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Exonerated Nation
Fair Chance Project
Fannie Lou Hamer Institute
Fathers & Families of San Joaquin
Feminists in Action Los Angeles
Friends Committee on Legislation of California
Greater Sacramento Urban League
Green Party of Sacramento County
HAWK Institute
Hillcrest Indivisible
Human Impact Partners
If/When/How: Lawyering for Reproductive Justice
Indivisible CA 37
Indivisible CA-43
Indivisible CA: Statestrong
Indivisible Colusa County
Indivisible Marin
Indivisible Peninsula and CA-14
Indivisible Project
Indivisible Sausalito
Indivisible South Bay-LA
Indivisible Stanislaus
Indivisible Ventura
Indivisible Watu
Indivisible: San Diego Central
Indivisibles of Sherman Oaks
Initiate Justice
InnerCity Struggle
International Human Rights Clinic at Santa Clara Law
Japanese American Citizens League, San Jose Chapter
Jewish Voice for Peace, San Diego Chapter
Justice & Witness Ministry of Plymouth United Church of Christ
Justice Teams Network
Kehilla Community Synagogue
LA Voice
League of Women Voters of California
Legal Services for Prisoners with Children
Los Angeles Black Worker Center
Mid-City Community Advocacy Network
Motivating Individual Leadership for Public Advancement
National Center for Youth Law
National Juvenile Justice Network
National Lawyers Guild Los Angeles
National Nurses United
Oakland Police Commission
Oakland Privacy
Orange County Communities Organized For Responsible Development
Orchard City Indivisible
Our Revolution Long Beach
Pacifica Social Justice
Partnership for the Advancement of New Americans
Paving Great Futures
Peace and Freedom Party of California
People Power LA | West
Pillars of the Community
Professor Alpert at the University of South Carolina
Progressive Students of Miracosta College
Public Health Advocates
Public Health Justice Collective
Resistance Northridge-Indivisible
Reverend Al Sharpton-National Action Network
Revolutionary Scholars
Riverside Temple Beth El
Rooted In Resistance
Sacramento Area Black Caucus
Sacramento Jewish Community Relations Council
Sacramento LGBT Community Center
San Diegans for Criminal Justice Reform
San Diego City College's Urban Scholar's Union
San Diego High School's Cesar Chavez Service Club
San Diego La Raza Lawyers Association
San Diego LGBT Community Center
San Francisco No Injunctions Coalition
San Francisco Peninsula People Power
San Francisco Public Defender's Office
San Jose/Silicon Valley NAACP
Santa Barbara Women's Political Committee
Service Employees International Union, Local 1000
Showing Up for Racial Justice, Bay Area
Showing Up for Racial Justice, Boston
Showing Up for Racial Justice, Greater Dayton
Showing Up for Racial Justice, Marin
Showing Up for Racial Justice, Sacred Heart
Showing Up for Racial Justice, San Diego
Showing Up for Racial Justice, Santa Barbara
Sister Warrior Freedom Coalition
Social & Environmental Justice Committee of the Universalist Unitarian Church of Riverside
Southeast Asia Resource Action Center
The Pacific Palisades Democratic Club
The Partnership for the Advancement of New Americans
The Praxis Project
The Resistance Northridge-Indivisible
The W. Haywood Burns Institute
The Women's Foundation of California
Think Dignity
Together We Will/Indivisible - Los Gatos
United Food and Commercial Workers, Western States Council
We The People - San Diego
White People 4 Black Lives
Women For: Orange County
Youth Alive!
Youth Forward

20 Private individuals

Oppose

Anaheim Police Association
Association for Los Angeles Deputy Sheriffs
Brawley Public Safety Employee Association
Brisbane Police Officers Association
California Association of Code Enforcement Officers
California Association of Highway Patrolmen
California College and University Police Chiefs Association
California Correctional Supervisors Organization, Inc.
California Narcotic Officers’ Association
California Peace Officers Association
California Police Chiefs Association
California Rifle and Pistol Association, Inc.
California State Sheriffs’ Association
California Statewide Law Enforcement Association
Chula Vista Police Officers Association
El Cerrito Police Employees Association
Fresno Police Officers Association
Glendale Police Officers’ Association
Hanford Police Officers’ Association
Hawthorne Police Officers Association
Kern Law Enforcement Association
League of California Cities
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Napa County Deputy Sheriff’s Association
North Valley Chapter of PORAC
Peace Officers Association of Petaluma
Peace Officers Research Association of California
Riverside County Sheriff’s Department
Riverside Sheriffs’ Association
Sacramento County Alliance of Law Enforcement
San Diego County Probation Officer Association
San Diego District Attorney Investigator’s Association
San Diego Harbor Police Officers Association
San Francisco Police Officers Association
San Joaquin County Deputy Sheriff’s Association
San Jose Police Officers’ Association
Santa Barbara County Deputy Sheriff’s Association
Solano County Deputy Sheriffs Association
Stockton Police Officer’s Association
Sunnyvale Public Safety Officers Association
Union City Police Officer’s Association
Ventura County Deputy Sheriffs Association

11 Private individuals

Analysis Prepared by:  David Billingsley / PUB. S./ (916) 319-3744
SUMMARY: Codifies the California Violence Intervention and Prevention Grant Program (CalVIP) and imposes a $25 excise tax on the sale of a new firearm, the proceeds of which are to be deposited into the CalVIP firearm Tax Fund, which the bill also creates. 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.

16) Defines terms for purposes of the firearm tax law.

17) Imposes a $25 excise tax, as of January 1, 2020 on every retailer upon the sale of a firearm sold as new.

18) Exempts any firearm purchased by any peace officer or by any law enforcement agency employing that peace officer, for use in the normal course of employment, from paying the $25 excise tax.

19) Requires California Department of Tax and Fee Administration (CDTFA) to administer and collect the taxes imposed by these provisions, as specified.

20) Makes the taxes imposed by these provisions due and payable to CDTFA quarterly on or before the last day of the month next succeeding each quarterly period of three months.

21) States that the taxes imposed by this part are due and payable to CDTFA quarterly on or before the last day of the month next succeeding each quarterly period of three months.

22) Requires that on or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with CDTFA.

23) Requires that the taxed amounts be paid to CDTFA in the form of remittances payable to the department, and those revenues, net of refunds and costs of administration, shall be deposited in the CalVIP Firearm Tax Fund.

24) Establishes in the State Treasury the CalVIP Firearm Tax Fund to receive moneys from the $25 firearm excise tax and continuously appropriates them, without regard to fiscal years, to the Board of State and Community Corrections for the purpose of funding grants, as specified.

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.)

2) 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).)

3) 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.)

4) 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.)

5) 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.)

6) 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).)

7) 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.)

8) 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.)

9) Imposes an eighteen cent ($0.18) tax on each gallon of fuel sold in the state. ((Rev. and Tax. Code, § 7360.)
10) Imposes taxes on cigarettes. (Rev. and Tax Code §§ 30101, et. seq.)

11) Imposes taxes on cannabis. (Rev. and Tax. Code §§ 34010, et. seq.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, “California needs to bolster violence prevention initiatives so that they are commensurate with our state’s tough gun laws and as effective as violence prevention programs of other states. To that end, AB 18 would impose a statewide excise tax of $25 on the sale of each handgun and semiautomatic rifle. The revenue would add funds to the California Violence Intervention and Prevention Grant Program (CalVIP).

“The State of Massachusetts, which is the nation's leader in investing in violence intervention, is now spending over $20 million annually on similar statewide grant programs for a state that has 1/6th California's population and 1/16th the number of gun homicides.

“Stronger, sustained investments in CalVIP, which this bill would help provide, would enable California to replicate the extraordinary successes of Massachusetts and other states’ targeted violence prevention and intervention initiatives and to better meet the enormous, unmet need in our state for resources to address serious violence in the most impacted communities.”

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. Additionally, this bill would also create a firearm excise tax of $25 that would be used as a continuous source of funding for CalVIP grants.
3) **Firearm Excise Tax:** California's excise taxes are flat, per-unit taxes that must be paid by the merchant before specified goods can be sold. Gasoline, cigarettes, cellphones, and cannabis are all subject to excise taxes in California. Even though excise taxes are collected from businesses, virtually all California merchants pass on the excise tax to the customer through higher prices for the taxed goods.

This bill would impose a $25 excise tax on the sale of a new firearm in California, and would use that revenue stream to fund the CalVIP program. This bill was also referred to the Assembly Committee on Revenue and Taxation. A more complete analysis of the taxation portion of this bill will be completed in that committee.

4) **Argument in Support:** According to the *American Academy of Pediatrics:* "Gun violence is among the greatest public health crises facing children and youth. Nearly 7,000 children younger than 18 are killed or wounded by gunshots each year. Firearm-related deaths are the third leading cause of death for children ages 1 to 17, outpaced only by death from car crashes and drownings and illnesses like cancer.

"Reasonable strategies to prevent gun violence are critically needed now. The CalVIP Program was established in 2017 to provide funds for community-driven efforts to intervene and prevent violence, with preference given to applicants that propose programs shown to be the most effective at reducing violence. AB 18 would help fund this effective program through the imposition of a statewide excise tax on some of the very things that contribute to the violence in our communities.

"Pediatricians across the state of California urge an AYE vote on AB 18 (Levine)."

5) **Argument in Opposition:** According to the *California Rifle and Pistol Association:* "Our organizations certainly support the implementation of successful programs which address gun violence prevention and intervention. However, because all of California’s law-abiding public support and would benefit from these efforts, all should equally help to fund their implementation. Yet, under your AB 18, only law-abiding citizens who legally purchase their firearms from retailers would be subject to this additional excise tax. As such, AB 18 would inappropriately place the entire obligation of funding these violence prevention and intervention programs on the backs of law-abiding hunters and shooters who have no more to do with firearm violence than any other law-abiding Californian.

"Further, AB 18 would also impact California’s wildlife and the enjoyment they provide our public. Law-abiding hunters, shooters and others who legally purchase sporting arms and munitions already pay an 11% federal excise tax on the purchase of these goods via the Pittman-Robertson Act. This tax contributes tens of millions of dollars annually to the Department of Fish and Wildlife – revenue which funds a large portion of our state’s wildlife management, conservation and research efforts. Placing another tax on top of the excise tax sporting arms are already subject to will only further drive up the cost of these goods, reduce their sales and, in turn, reduce the critical annual revenues available for California’s wildlife conservation and management efforts.

"Our organizations support balanced programs intended to reduce crime and take criminals off our streets. All of California’s citizens support and benefit from these efforts. Yet, your AB 18 would unfairly place the entire burden of funding CalVIP on a very small law-abiding
segment of our public and have unintended impacts on our state’s wildlife conservation efforts.”

6) Related Legislation:

a) AB 1669 (Bonta), among other things, would raise the Dealer Record of Sale fee associated with the purchase of a firearm from $14 to $32.19.

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.

7) 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, 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
American Academy of Pediatrics, California
Bay Area Student Activists
National Association of Social Workers, California Chapter
Santa Barbara Women's Political Committee

Oppose
Cal-Ore Wetlands and Waterfowl Council
California Bowmen Hunters/State Archery Association
California Chapter-Wild Sheep Foundation
California Deer Association
California Houndsmen for Conservation
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
California State Chapter-National Wild Turkey Federation
California Waterfowl Association
Congressional Sportsmen's Foundation
Gun Owners of California
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Rocky Mountain Elk Foundation
Safari Club International
San Diego County Wildlife Federation
San Francisco Bay Area Chapter - Safari Club International
The Black Brant Group
Tulare Basin Wetlands Association

5 Private Individuals

**Analysis Prepared by:** Matthew Fleming / PUB. S. / (916) 319-3744
Date of Hearing: April 9, 2019
Counsel: David Billingsley

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

AB 303 (Cervantes) – As Introduced January 29, 2019

As Proposed to be Amended in Committee

SUMMARY: Establishes procedures for requesting and granting continuances in Sexually Violent Predator (SVP) proceedings, as specified. Specifically, this bill:

1) Requires that written notice be filed and served on all parties to the proceeding, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, in order to continue a trial.

2) States that all moving and supporting papers shall be served and filed at least 16 court days before the hearing, except as provided.

3) Specifies that if the written notice is served by mail, the 10-day period of notice before the hearing shall be increased as follows:
   a) Five calendar days if the place of mailing and the place of address are within the State of California;
   b) Ten calendar days if either the place of mailing or the place of address is outside the State of California, but within the United States;
   c) Twenty calendar days if either the place of mailing or the place of address is outside the United States; and
   d) Two calendar days if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery.

4) Requires all papers opposing a continuance motion be filed with the court and that a copy be served on each party at least four court days before the hearing.

5) Require that all reply papers be served on each party at least two court days before the hearing. A party may waive the right to have documents served in a timely manner after receiving actual notice of the request for continuance.

6) Specify that if a party makes a motion for a continuance that does not comply with the requirements described in this subdivision, the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements.

7) States that at the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the
facts proved that justify its finding. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

8) Requires that continuances only be granted only upon a showing of good cause.

9) States that the court shall not find good cause solely based on the convenience of the parties or a stipulation of the parties. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding.

10) Specifies that in determining good cause, the court shall consider the general convenience and prior commitments of all witnesses. The court shall also consider the general convenience and prior commitments of each witness in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

11) States that a continuance shall be granted only for the period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

12) States that “good cause” includes, but is not limited to, those cases where the attorney assigned to the case has another trial or probable cause hearing in progress. A continuance granted pursuant to this subdivision as the result of another trial or hearing in progress shall not exceed 10 court days after the conclusion of that trial or hearing.

EXISTING LAW:

1) A court may grant a continuance before or during trial on an affirmative showing of good cause and each request for a continuance must be considered on its own merits (Cal. Rules of Ct., Rule 3.1332, subd. (c).)

2) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served his or her prison commitment. (Welf. & Inst. Code § 6600, et seq.)

3) Defines a “sexually violent predator” as “a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” (Welf. & Inst. Code § 6600, subd. (a)(1).)

4) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code § 6604.1.)

5) Allows an SVP to seek conditional release with the authorization of the DSH Director when DSH determines that the person’s condition has so changed that he or she no longer meets the SVP criteria, or when conditional release is in the person’s best interest and conditions to
adequately protect the public can be imposed. (Welf. & Inst. Code § 6607.)

6) Allows a person committed as an SVP to petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code § 6608, subd. (a).)

7) Provides that the court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. Provides that the attorney designated in the county of commitment shall represent the state and have the committed person evaluated by experts chosen by the state and that the committed person shall have the right to the appointment of experts, if he or she so requests. (Welf. & Inst. Code § 6608, subd. (e).)

8) Specifies that continuances in criminal cases shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause. (Pen. Code, § 1050, subd. (e).)

9) States that at the conclusion of the motion for continuance in a criminal case, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes. (Pen. Code, § 1050, subd. (f).)

10) Specifies that in deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. (Pen. Code, § 1050, subd. (g)(1).)

11) Provides that a continuance in a criminal case shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes. (Pen. Code, § 1050, subd. (i).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "A loophole in existing law allows certain dangerous individuals who were previously judged to be sexually violent predators (SVPs) to 'game the system' and gain release from state custody after claiming that his or her right to a speedy trial has been violated.

"A defendant judged to be an SVP by the Department of State Hospitals (DSH) may be in DSH custody for many years before actually receiving a trial. Such a defendant could remain in DSH custody as long as DSH continues to determine that he or she is an SVP using annual evaluations. While the defendant is in DSH custody, a court will often grant continuances delaying the commencement of his or her trial."
"However, existing case law only provides the defendant, and not the prosecution, with the right to a speedy trial. This lack of a symmetrical speedy trial right allows a defendant to exploit the loophole in current law once DSH determines they are no longer an SVP. After that determination, the defendant could claim that commitment at a state hospital prevented him or her from receiving a trial, which violated the right to a speedy trial. In 2018, a Los Angeles court ordered the release of an individual who was formerly classified as an SVP who had been in DSH custody for 17 years for this very reason.

"AB 303 (Cervantes) would close this loophole by providing a statutory, symmetrical right to a speedy trial to both the defendant and the prosecution in cases involving SVPs. This would allow the prosecution to properly request a trial while the defendant is still in DSH custody, preventing the state from being blamed for any further trial delays. This would eliminate the possibility that a court will order the release of a formerly SVP defendant due to a state violation of his or her right to a speedy trial. By closing this dangerous loophole, AB 303 will help improve public safety across California."

2) **SVPs:** The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others.

The DSH uses specified criteria to determine whether an individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a SVP if: (a) the defendant has committed specified sex offenses against one or more victims; (b) the defendant has a diagnosable mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually-violent criminal behavior; and, (3) two licensed psychiatrists or psychologists concur in the diagnosis. If both clinical evaluators find that the person meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. The state must prove "(1) a person who has been convicted of a sexually violent offense against (at least one) victim and (2) who has a diagnosed mental disorder that (3) makes the person a danger to the health and safety of others in that it is likely that he or she will engage in (predatory) sexually violent criminal behavior." *(Cooley v. Superior Court (Martinez) (2002) 29 Cal.4th 228, 246.)* If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The DSH must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. In addition, DSH has an obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually.

The SVPA was substantially amended by Proposition 83 ("Jessica's Law"), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term
upon commitment or until it is shown that the defendant no longer poses a danger to others. (See People v. McKee (2010) 47 Cal.4th 1172, 1185-87.)

3) People v. Superior Court (Vasquez): In the case of People v. Superior Court (Vasquez) (2018), 27 Cal.App.5th 36, an SVP petition against George Vasquez was dismissed for due process violations based on the lengthy delay in bringing the case to trial. Mr. Vasquez was detained in state hospitals for over 17 years awaiting trial on the petition, as a series of six appointed attorneys slowly moved his case toward trial. (Id. at 40.)

Fourteen years into Mr. Vasquez's confinement, the public defender's office suffered a 50 percent cut to its attorney staffing and the loss of paralegals, which further slowed down Mr. Vasquez's third deputy public defender in her preparation for trial. After two more years of slow progress, this attorney was transferred out of the SVP unit just months before Vasquez's January 2017 trial date. After Mr. Vasquez's fifth attorney requested yet another continuance to prepare for trial, Vasquez objected, declaring, "Enough is enough." At this point, 16 years after the petition was filed, the trial court granted Mr. Vasquez's motion to relieve the public defender's office as his counsel and appointed a bar panel attorney to represent Mr. Vasquez. Id. at 41.

Eight months later Mr. Vasquez's new attorney filed a motion to dismiss the petition for violation of Mr. Vasquez's due process right to a speedy trial. By then no new trial date had been set. After the trial court granted Mr. Vasquez's motion to dismiss and ordered that Mr. Vasquez be released, the Appellate Court upheld the dismissal based the violation of Vasquez's right to due process under the Fourteenth Amendment to the U.S. Constitution. The Appellate Court found that a substantial portion of the delay resulted from a systemic breakdown in the public defender system that was attributed to the state. The Appellate court found that the breakdown forced Mr. Vasquez to choose between having prepared counsel and a timely trial, and that Mr. Vasquez had a right to both.

During the course of the time that Mr. Vasquez was awaiting trial, he began sex offender treatment at the state hospital and one of the state evaluators reached the opinion that Vasquez no longer qualified as a SVP.

The Appellate Court applied a due process balancing test established by U.S. Supreme Court. The Appellate Court concluded that under the balancing test Mr. Vasquez had suffered prejudice due to the excessive delay and that the delay was caused by state action. In reaching that holding, the Appellate Court stated, "[t]he ultimate responsibility for bringing a person to trial on an SVP petition at a 'meaningful time' rests with the government." (Id. at 58.) The Appellate Court did not find that the prosecution was at fault for the delay.

In discussing the trial courts' responsibility to manage Mr. Vasquez's case, the Appellate Court stated, "We recognize the trial court did not initiate any of the continuances, instead granting continuances at the request of Vasquez's counsel or by stipulation of counsel. The record shows that many of these continuances were granted for good cause, including, for example, while the attorneys were waiting for new expert evaluations or after the trial court ruled that a new probable cause hearing was required. However, during the first 14 years of Vasquez's confinement, his case was continued over 50 times, either by stipulation of counsel or a request by Vasquez's counsel. The Appellate Court cited language from the California Supreme Court which stated, "[I]t is entirely appropriate for the court to set deadlines and to
hold the parties strictly to those deadlines unless a continuance is justified by a concrete showing of good cause for the delay." The Appellate Court found that it did not appear from the record that during the first 14-year period the trial court took meaningful action to set deadlines or otherwise control the proceedings and protect Vasquez's right to a timely trial. The Appellate Court said that even where the attorneys stipulate to continue a trial date, the trial court has an obligation to determine whether there is a good cause for the continuance. (Id. at 74-75.)

This bill would establish timelines to file and respond to motions to continue SVP trials. The time line in this bill requires initial notice of the request for continuance to be served and filed 10 days before the hearing on the motion to continue. This bill would also provide criteria to be used by judges when evaluating the request to continue a trial in an SVP case. The criteria requires courts to make findings that good cause exists for continuance of an SVP trial and requires the court to make a record of facts justifying good cause. The criteria to evaluate a request to continue a trial in an SVP case is consistent with the criteria currently utilized by courts in criminal cases.

4) **Amendments Proposed to be Adopted in Committee:** The proposed amendments: (1) shorten the notice required when making a request to continue a SVP trial from 16 days to 10 days before the hearing; (2) Shortens the time to file a response from 9 nine days before the hearing to 4 days; (3) Shortens the time to file a reply from 5 days before the hearing to 2 days; and (4) Deletes language concerning petitioner's and respondent's speedy trial rights.

5) **Argument in Support:** According to the Los Angeles County District Attorney's Office, "Currently, there is no express provision for a speedy trial in the Sexually Violent Predator (SVP) Act. (Welfare and Institutions Code section 6600 et seq.). This is problematic for both the prosecution ("Petitioner") and the defense ("Respondent"). Historically, the defense has rarely sought to bring these cases to trial for tactical reasons. Because lengthy delays increase the time between the respondent's last offense and the trial, they can result in a number of problems such as jurors becoming desensitized to the enormity of the underlying sexual offenses and sexual assault victims who are no longer available as witnesses because the crimes are remote in time. These delays are also problematic for the actual respondents themselves as the delays often result in their remaining in custody for many years without a trial.

"People v. Vasquez (2018) 27 Cal. App. 5th 36 recognized the deficiency in the current law but attributed any 'systemic delay,' to the state, even when caused by defense counsel. In that case, respondent Vasquez was convicted in criminal court of four counts of lewd and lascivious acts on a child under the age of 14. He was sentenced to 12 years in prison. Prior to his release, the People filed an SVP petition. Although Mr. Vasquez had his probable cause hearing, he remained in custody for 17 years without a trial while several of his attorneys from within the Public Defender's Office replaced one another over the years and requested time to prepare for trial. During the first 14 years, the trial had been continued over 50 times, either by stipulation of counsel or a request by Vasquez's attorneys.

"AB 303 adds a speedy trial provision to the Sexually Violent Predator Act (SVPA) in Welfare and Institutions Code sections 6600 et seq. In addition, the legislation adds language to section 6603 setting forth procedures for continuing SVP trials only upon a finding of good cause, using language from the Code of Civil Procedure as well as Penal Code section
1050 as guidance. Conceptually, AB 303 would codify the finding and conclusions of the Vasquez case which is the controlling case law on this topic.

“Because the burden of bringing SVP cases to trial in a timely manner falls on the petitioner, the amendments proposed by this legislation are a necessary mechanism whereby prosecutors could effectively fulfill their obligation to ensure due process for respondents while at the same time protecting the public from the premature release of dangerous, sexually violent predators. It would also codify the respondents' right to a speedy trial under the due process clause of the Constitution, as recognized in Vasquez.”

6) **Argument in Opposition:** According to the American Civil Liberties Union of California, “The proposed changes will deny due process to individuals facing SVP commitments by importing civil procedures for continuances into the procedures for imposing a commitment that deprives the individual of his or her liberty.

“The proposed changes will give both the prosecution and the person subject to the petition a speedy trial right in SVP case. Individuals facing SVP commitment have been held to have such a right, with dismissal of the case as the remedy for a violation of that right. (People v. Litmon (2008) 162 Cal.app.4th 383.) By putting in the statute the right to a speedy trial without codifying the remedy, AB 303 will create confusion as to the appropriate remedy where case law now is clear.

“AB 303 also imports from the code of Civil Procedure procedures for continuances of SVP trials. In most case now, SVP cases are tried by criminal court judges. The proceedings, although technically civil in nature, are more akin to criminal cases. The person against whom the petition is filed, facing the loss of liberty, has the right to counsel, to the assistance of experts, and to a trial by jury and a unanimous jury verdict.

“Judges therefore generally apply Penal code section 1050, governing continuances in criminal trials, to SVP proceedings. Under these procedures, unlike the civil case procedures in AB 303, an attorney can file an affidavit or declaration in support of a continuance under seal, as may be necessary if the reason for the continuance rests on attorney work product or privileged information. Moreover, judges in SVP cases have readily applied Penal Code 1050 to decide whether good cause has been shown for continuance. The good cause standard will have to be relitigated if the new procedures and standards proposed by AB 303 go into effect.”

7) **Prior Legislation:**

a) **AB 2661 (Arambula), Chapter 821, Statutes of 2018**, clarified that a person's subsequent conviction for an offense that is not a sexually violent offense committed while in the custody of the California Department of Corrections and Rehabilitation (CDCR) or the Department of State Hospitals (DSH) while awaiting the resolution of a petition to have the person committed to the DSH as SVP does not change the jurisdiction over the pending SVP petition.

b) **AB 255 (Gallagher), Chapter 39, Statutes of 2017**, specified that courts must consider the connections to the community when designating the placement of a SVP in a county for
conditional release.

c) AB 262 (Lackey), of the 2015-16 Legislative Session, would have placed additional residency restrictions on SVP's conditionally released for community outpatient treatment by requiring that an SVP shall only reside in a dwelling or abode within 10 miles of a permanent physical police or sheriff station that has jurisdiction over the location and has 24 hour a day peace officer staffing on duty and available to respond to call for service. AB 262 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support
Los Angeles County District Attorney's Office (Sponsor)
California Police Chiefs Association
Riverside Sheriffs' Association

Oppose
American Civil Liberties Union of California

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-303 (Cervantes (A))

Mock-up based on Version Number 99 - Introduced 1/29/19
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on the person’s behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist that person and, upon the person’s request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person’s behalf. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) The petitioner and respondent shall have the right to a speedy trial upon the court’s determination that there is probable cause to believe that the person named in the petition is likely to engage in sexually violent predatory criminal behavior upon the person’s release.

(d) To continue a trial, written notice shall be filed and served on all parties to the proceeding, together with affidavits or declarations detailing specific facts showing that a continuance is necessary.

(1) All moving and supporting papers shall be served and filed at least 10 days before the hearing, except as provided in paragraph (2). The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court.

(2) If the written notice is served by mail, the 10-day period of notice before the hearing shall be increased as follows:

(A) Five calendar days if the place of mailing and the place of address are within the State of California.

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(B) Ten calendar days if either the place of mailing or the place of address is outside the State of California, but within the United States.

(C) Twenty calendar days if either the place of mailing or the place of address is outside the United States.

(D) Two calendar days if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery.

(3) All papers opposing a continuance motion noticed pursuant to this subdivision shall be filed with the court and a copy shall be served on each party at least nine four court days before the hearing. All reply papers shall be served on each party at least five two court days before the hearing. A party may waive the right to have documents served in a timely manner after receiving actual notice of the request for continuance.

(4) If a party makes a motion for a continuance that does not comply with the requirements described in this subdivision, the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(5) Continuances shall be granted only upon a showing of good cause. The court shall not find good cause solely based on the convenience of the parties or a stipulation of the parties. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(6) In determining good cause, the court shall consider the general convenience and prior commitments of all witnesses. The court shall also consider the general convenience and prior commitments of each witness in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(7) Except as specified in paragraph (8), a continuance shall be granted only for the period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(8) For purposes of this subdivision, “good cause” includes, but is not limited to, those cases where the attorney assigned to the case has another trial or probable cause hearing in progress. A continuance granted pursuant to this subdivision as the result of another trial or hearing in progress shall not exceed 10 court days after the conclusion of that trial or hearing.

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(e) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, “no longer available to testify for the petitioner in court proceedings” means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator’s license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in the evaluator’s most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(f) This section does not prevent the defense from presenting otherwise relevant and admissible evidence.

(g) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(h) A unanimous verdict shall be required in any jury trial.

(i) The court shall notify the State Department of State Hospitals of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

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(j) This section does not limit any legal or equitable right that a person may have to request DNA testing.

(k) Subparagraph (D) of paragraph (2) of subdivision (e) does not affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(l) (1) Notwithstanding any other law, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (e). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

(2) This subdivision does not affect the right of a party to object to the introduction at trial of all or a portion of a record subpoenaed under paragraph (1) on the ground that it is more prejudicial than probative pursuant to Section 352 of the Evidence Code or that it is not material to the issue of whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600, or to any other issue to be decided by the court. If the relief is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

(3) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

(4) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.
SUMMARY: Establishes 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. Specifically, this bill:

1) Creates OHSC under the supervision of the California Surgeon General.

2) States that the Governor and the Surgeon General shall appoint a director of the OHSC.

1) States that the duties of the Director of the OHSC shall be all of the following:

   a) Hire and manage a staff team and consultants to execute the duties of the OHSC;

   b) Assemble an advisory committee as described in Section 8782;

   c) Develop, implement, and monitor a California vision and plan for violence prevention, safety, and healing with clear systems change goals aligned with funding to drive population-level results for decreasing exposure to violence among California’s most vulnerable people and places, including all of the following activities:

      i) Connect the vision and plan described in this paragraph to the Governor’s strategies for youth development, criminal and juvenile justice reform, health care services, and other related areas of opportunity.

      ii) Develop a strategy and plan for the consolidation, coordination, or alignment of funding for violence intervention and prevention programming.

      iii) Identify and integrate trauma-centered diagnostic tools, such as early and periodic screening, diagnosis, and treatment services, to support violence prevention, intervention, and healing.

      iv) Create an interactive community engagement strategy that prioritizes the voices of people directly impacted and doing the work to prevent violence and promote peace and healing in communities;

   d) Create a learning community of practice that includes community meetings and the sharing of promising practices, research, data, and innovative approaches to violence intervention and prevention throughout California, including both of the following activities:
i) Supporting coordination and sharing among counties and cities that are advancing a violence prevention strategy;

ii) Tracking and monitoring data and research on violence statewide and in communities throughout California;

e) Strengthen the professionalization of community violence intervention and prevention as a licensed occupation; and,

f) Facilitate the coordination and alignment of programming across statewide departments and agencies, such as the State Department of Public Health, the Department of Corrections and Rehabilitation, the Department of Housing and Community Development, and State Department of Education, with the potential to support violence intervention and prevention goals utilizing a social determinants of health orientation program that is inclusive of those who are exposed to violence, who have caused harm, and who have been harmed.

3) Requires the Director of the OHSC to establish an advisory committee to inform and guide the execution of the duties of the OHSC.

4) States that the advisory committee shall be selected by the President pro Tempore of the Senate and the Speaker of the Assembly and shall reflect the diversity of California and the complexity of violence.

5) States that the advisory committee shall be comprised of a specified group of persons from various agencies, organizations and community representatives

6) Appropriates six million dollars ($6,000,000) from the General Fund for the 2019–20 fiscal year.

7) Declares that it is the intent of the Legislature in enacting this chapter to create the Office of Healthy and Safe Communities, under the direction of the California Surgeon General and the Governor, to provide a comprehensive violence prevention strategy and to promote and expand the use of, and access to, community-based programs for Californians who are exposed to, involved with, or at risk for involvement in violence. It is the further intent of the Legislature to direct this office to consolidate and administer various violence prevention grant programs and promote the creation of alternatives to incarceration.

EXISTING LAW:

1) Makes the following legislative findings:

a) The incidence of violence in our state continues to present an increasing and dominating societal problem that must be addressed at its root causes in order to reduce significantly its effects upon our society.

b) As an initial step toward that goal, the Legislature passed Assembly Bill No. 23 of the 1979–80 Regular Session which created the California Commission on Crime Control and Violence Prevention which was charged with compiling the latest research on root
causes of violence, in order to lay the foundation for a credible, effective violence eradication program.

c) The commission produced a final report in 1982 entitled “Ounces of Prevention,” which established that long-term prevention is a valuable and viable public policy and demonstrated that there are reachable root causes of violence in our society.

d) The report contains comprehensive findings and recommendations in 10 broad categorical areas for the removal of individual, familial, and societal causal factors of crime and violence in California.

e) The recommendations in the report are feasible and credible, propose an effective means of resolving conflict and removing the root causes of violence in our society, and should be implemented, so that their value may be provided to our citizenry.

f) It is in the public interest to translate the findings of the California Commission on Crime Control and Violence Prevention into community-empowering, community-activated violence prevention efforts that would educate, inspire, and inform the citizens of California about, coordinate existing programs relating to, and provide direct services addressing the root causes of violence in California.

g) The recommendations in the report of the commission can serve as both the foundation and guidelines for short-, intermediate-, and long-term programs to address and alleviate violence in California.

h) It is in the public interest to facilitate the highest degree of coordination between, cooperation among, and utilization of public, nonprofit, and private sector resources, programs, agencies, organizations, and institutions toward maximally successful violence prevention and crime control efforts.

i) Prevention is a sound fiscal, as well as social, policy objective. Crime and violence prevention programs can and should yield substantially beneficial results with regard to the exorbitant costs of both violence and crime to the public and private sectors.

j) The Office of Emergency Services is the appropriate state agency to contract for programs addressing the root causes of violence. (Pen. Code §§ 14110 – 14111.)

2) 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.)

3) 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).)

4) 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.)

5) 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.)

6) 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.)

7) 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).)

8) 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.)

9) 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.)
FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “Violence occurs in relationships, homes, schools, communities, and throughout places where people are confined. These different environments and forms -- from state violence to interpersonal violence require separate, but coordinated, intersectional strategies to address the factors that contribute to violence at every stage of life. California policymaking and funding have ignored the inter-related nature of different forms of violence, the factors which cause violence, the nuanced environments in which it occurs, and the strategies necessary to promote healing. Because of this, the programs that do exist are woefully inadequate, underfunded, and limited to suppression and intervention at best. Stopping the cycle of violence requires a prevention-oriented approach, inter-connected, and coordinated strategies and funding commiserate with the need and size of the people and places that need these supports.

“California needs an Office of Healthy and Safe Communities (OHSC). Inspired by Governor Newsom’s Executive Order N-02-19 which appoints a Surgeon General to advise the Governor on policy to address the root causes of health inequities, the OHSC will be overseen by the Surgeon General as the proposed office aligns with the purpose of this new role and position.”

2) **CalVIP Grant Program:** The 2017 State Budget Act provided $1 million to the City of Los Angeles and $8.215 million for other cities and 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.

Statute required city grantees to establish a coordinating and advisory council to prioritize the use of the funds, commit to collaborating and coordinating with area jurisdictions and agencies with the goal of reducing violence in the city and adjacent areas and to pass through to CBOs a minimum of 50 percent of their grant award. $9,215,000 was awarded to ten cities and ten CBOs (Cohort 1) for a two-year grant cycle that began on May 1, 2018 and ends on April 30, 2020. The 2018 State Budget Act appropriated an additional $9 million for this program. In addition to a $1 million set aside for the City of Los Angeles, an additional eight cities and seven CBOs (Cohort 2) were funded for a two-year grant cycle that began on September 1, 2018 and ends on August 31, 2020.

This bill would create the Office of Healthy and Safe Communities (OHSC) under the supervision of the new Surgeon General. OHSC would be tasked with developing, implementing, and monitoring a statewide vision and plan for violence prevention, safety, and healing.

4) **The Need for this Bill:** Existing law provides for community-based violence prevention programs. In 1984, the Legislature established Title 10 to the Penal Code, entitled “Community Violence Prevention and Conflict Resolution.” That law allows for grants to 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. More recently, the California Violence Intervention and Prevention Program (CalVIP) was established by AB 97, the Budget Act of 2017. CalVIP funds may be used for violence intervention and prevention activities, with preference given to applicants that propose programs that have been shown to be the most effective at reducing violence. This would create a comprehensive, statewide approach above and beyond the efforts taking place at the local, community level. According to materials provided by the author, similar offices have been established in the states of Washington, Massachusetts, and Maryland.

5) **Argument in Support:** *According to the Public Health Advocates:* “Through the creation of the Office of Healthy and Safe Communities (OHSC), California has an opportunity to advance a bold paradigm shift in violence prevention by emphasizing asset-based empowerment approaches to peacemaking, restorative justice, healing and safety, and advancing community prevention and intervention strategies that heal and restore people and ensure all communities are full of the opportunities necessary for their residents to thrive and be well.”

6) **Related Legislation:**

   a) **AB 1603 (Wicks),** would codify the California Violence and Intervention Program established by the Budget Act of 2017. AB 1603 is set for hearing on April 9th in the Assembly Public Safety Committee.

   b) **AB 18 (Levine),** would also codify the California Violence and Intervention Program established by the Budget Act of 2017 and impose a $25 excise tax on the purchase of firearms. AB 18 is set for hearing on April 9th in the Assembly Public Safety Committee.

7) **Prior Legislation:** AB 97 (Ting), the Budget Act of 2017, among other things, provided more than nine million dollars ($9,000,000) to the Board of State and Community Corrections for the purpose of administering grants to cities and community-based organizations for violence intervention and prevention activities.
REGISTERED SUPPORT / OPPOSITION:

Support

Motivating Individual Leadership For Public Advancement (Co-Sponsor)
Public Health Advocates (Co-Sponsor)
California Peace Alliance/ Department of Peacebuilding Campaign

Opposition

None

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

AB 691 (McCarty) – As Amended March 21, 2019

SUMMARY: Requires the State Department of Public Health (DPH) to develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect. Specifically, this bill:

1) Requires DPH to develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death.

2) States that DPH may consult with the Counties of Los Angeles and Sacramento in developing the protocol.

3) Requires DPH to provide access to the protocol, free of charge, to any county that requests a copy, and requires that the protocol include data collection, confidentiality, and reporting provisions.

4) Requires a child death review team to implement a data collection process that includes, but is not limited to, all of the following information about a deceased child: race, gender, cause of death, and age.

5) Increases the time between reports that the child death review teams must make their findings public from yearly to once every three years.

EXISTING LAW:

1) Allows counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases, but does not require counties to establish child death review teams. (Pen. Code, § 11174.32.)

2) States that interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has expired. (Pen. Code, § 11174.32, subd. (a).)
3) States that each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32, subd. (b).)

4) States that in developing an interagency child death review team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:

   a) Experts in the field of forensic pathology;

   b) Pediatricians with expertise in child abuse;

   c) Coroners and medical examiners;

   d) Criminologists;

   e) District attorneys;

   f) Child protective services staff;

   g) Law enforcement personnel;

   h) Representatives of local agencies which are involved with child abuse or neglect reporting;

   i) County health department staff who deals with children's health issues; and

   j) Local professional associations of persons described in paragraphs (1) to (9), inclusive. (Pen. Code, § 11174.32, subd. (c).)

5) Clarifies that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32, subd. (d).)

6) Requires no less than once each year, each child death review team to make available to the public findings, conclusions and recommendations of the team, including, aggregate statistical data on the incidences and causes of child deaths. In its report, the team is required to withhold the last name of the child that is the subject to a review, except as specified. (Pen. Code, § 11174.32, subd. (f)(1)&(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “It is devastating to see children die, more so by causes that could be prevented. AB 691 builds upon the great success of our local child death review teams in creating educational campaigns, to educate the public of frequent
causes of child deaths. This measure will ensure we are acting in the interest of our children’s safety and protection.”

2) **Need for the Bill:** The author’s background on this bill states, “The child death review teams in California began as informal gatherings of concerned parents and professionals that wanted to take proper steps in order to review child deaths and learn from them in order to save other children’s lives.

“In 1988, California legislation was enacted to establish child death review teams in order to investigate suspicious child deaths and facilitate communication among the various entities that could provide useful information for the annual report.

“Today, the Centers for Disease Control and Prevention and World Health Organization found that there were over 20,360 child and adolescent deaths in the United States for 2016. In California, the Department of Social Services (CDSS) reported that 88 child fatalities resulted from abuse and/or neglect for 2014, but a complete summary of child death reports had not been finalized at the time the data was collected. Despite efforts to produce an annual child death report, there are only an estimated 22 active child death review teams throughout the state, leaving many counties without a reporting mechanism. We believe that one reason for the lack of participation in every county that people do not have the tools to necessarily carry out the report. It is the intent of this legislation to create uniformity among counties by specifying what should be included in the data collection but also ensuring that smaller counties are able to connect with counties like Sacramento and Los Angeles which have successful teams and data collection.”

3) **Background on Child Death Review Teams:** The primary purpose of child death review teams is to prevent future child deaths. At the county level, these teams produce educational materials so that the more common causes of child death can be prevented. For example, according to the author, in Sacramento “The Sacramento County Child Death Review Team, which reviews the deaths of every child that dies in Sacramento County, has used the report’s findings in order to create public awareness campaigns. The recommendations have translated to the Shaken Baby Syndrome Prevention Campaign, the Infant Safe Sleep Campaign, and the Drowning Prevention Campaign to reduce preventable deaths.” However, each county’s experience is different. This is where statewide child death review can help prevent counties from duplicating efforts.

The statewide child death review council is responsible for collecting data and information from the counties and turning it into reports to the public and the Legislature. Part of the statutory scheme that created child death review teams included creation of the Child Death Review Council "to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths." (Penal Code Section 11174.34(a)(1).) The Child Death Review Council is required to "analyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to California public officials who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year." (Penal Code Section 11174.34(d)(1).) Therefore, a report analyzing the data collected by each local child
death review team is currently a public document. Requiring each local child death review team to also make public its own data appears to be consistent with the overall objectives of the teams, i.e., creating a body of information on the causes of child deaths to help prevent such tragedies. Increased transparency may also enhance the public’s trust in local child death review.

4) **Change in Reporting Requirement from One to Three Years:** This bill would change the reporting requirements for public findings, conclusions, and recommendations issued by a child death review team, including aggregate statistical data on the incidences and causes of child deaths and recommendations to prevent future deaths. Current law requires release of this information ever year. One fundamental purpose of the reporting requirement is to give the public timely access to the conclusions of the child death review teams. By increasing the reporting requirement to only every three years, this bill would substantially diminish the value of information reported. Moreover, because this information is already in the aggregate, reports of yearly, aggregated data will be much less precise.

The Sacramento County Blue Ribbon Commission reported in 2013 that there is a disproportionate number child deaths in the African American committee. The Steering Committee on Reduction of African American Child Deaths for Sacramento County released an implementation plan in 2015 with the goal of reducing “the disproportionate African American child mortality rate in Sacramento County.” In its report, the committee the importance of the yearly reporting of the committee’s findings in maintaining public awareness of the issue of child deaths, monitoring trends in African American child deaths, and ultimately reducing the disproportionate African American child death rate in Sacramento County from 10% to 20%.

Should the Legislature consider retaining the yearly reporting requirement?

5) **Prior Legislation:**

a) **AB 1098 (McCarty),** of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 1098 was held in the Senate Appropriations Committee.

b) **AB 2083 (Chu),** Chapter 297, Statutes of 2016, authorizes the voluntary disclosure of specified information, including mental health records, criminal history information, and child abuse reports, by an individual or agency to an interagency child death review team.

c) **AB 1737 (McCarty),** of the 2015-2016 Legislative Session, would have mandated that counties establish an interagency child death review team. AB 1737 was held in the Assembly Appropriations Committee.

d) **SB 39 (Migden),** Chapter 468, Statutes of 2007, requires the custodian of records within a county welfare agency or department to disclose, within five days from a request, or upon substantiation, specified records, subject to the redaction of certain identifying personal information, of child abuse or neglect that results in the death of a child. Requires all county welfare agencies and departments to notify the State Department of Social Services, as provided, of all child fatalities that occurred within its jurisdiction that were the result of child abuse or neglect, and requires the State Department of Social Services
to establish a procedure for, and annually report on, that notification, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support
None

Opposition
None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Provides a person who is exonerated of a crime $5,000 upon release from prison, to be used to pay for housing, and entitles the exonerated person to receive direct payment or reimbursement for reasonable housing costs for between one and four years thereafter. Specifically, this bill:

1) States that in addition to any other payment to which the person is entitled to by law, a person who is exonerated shall be paid the sum of five thousand dollars ($5,000) upon release, to be used for housing, including, but not limited to, a down payment, security deposit, or any payment necessary to secure rental housing accommodations.

2) States that the exonerated person shall also be entitled to receive direct payment or reimbursement for reasonable housing costs for a period of not less than one year and not more than four years following release from custody.

3) Provides that payment for reimbursement pursuant to this paragraph is permitted for any rent or mortgage expense, hotel costs, or other housing accommodations. The Department of Corrections and Rehabilitation shall approve payments or reimbursements pursuant to this paragraph from funds to be made available upon appropriation by the Legislature for this purpose.

EXISTING LAW:

1) States that whenever a person is convicted of a charge, and the conviction was set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case, including records of arrest and detention, be sealed and allows the defendant to state that he or she was not arrested, convicted of that charge or that he or she was found innocent of that charge by the court. (Pen. Code, § 851.86.)

2) States that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the California Victim Compensation (CalVCB). (Pen. Code, § 851.865.)

3) Requires the CalVCB to recommend to the Legislature that an appropriation be made, without a hearing, upon receipt of the application. (Pen. Code, § 851.865.)

4) Specifies that the rate of compensation be $140 per day of incarceration served subsequent to the claimant’s conviction. (Pen. Code, § 4904.)
5) Prohibits this compensation from being considered gross income for state tax purposes. (Pen. Code, § 4904.)

6) States that any person who, having been convicted of any felony and imprisoned in the state prison or county jail for that conviction, is granted a pardon by the Governor for the reason he or she was innocent of the crime with which he or she was convicted, is eligible to present a claim against the state to the CalVCB for the monetary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

7) Requires erroneously convicted and pardoned individual to present a claim to the CalVCB against the state within a period of two years after judgment of acquittal or after pardon granted, or after release from custody. (Pen. Code, § 4901, subd. (a).)

8) Requires the Department of Corrections and Rehabilitation to assist a person who is exonerated as to a conviction for which he or she is serving a state prison sentence at the time of exoneration with transitional services, including housing assistance, job training, and mental health services, as applicable. (Pen. Code, § 3007.05, subd. (c).)

9) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to determine the extent of transitional services to be made applicable. (Pen. Code, § 3007.05, subd. (c).)

10) Requires that the CDCR provide transitional services to an exonerated person for a period of not less than six months and not more than one year from the date of release, as specified, including housing assistance, job training, and mental health services. (Pen. Code, § 3007.05, subd. (e)(1) to (5).)

11) Requires that a person be entitled to, in addition to any other payment to which that person is entitled by law, upon release be paid the sum of one thousand dollars ($1,000) from funds to be made available upon appropriation by the Legislature. (Pen. Code, § 3007.05, subd. (d).)

12) Requires the CDCR to establish a case management reentry pilot program for offenders who are likely to benefit from case management reentry strategies designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. (Pen. Code, § 3016, subd. (a).)

13) Defines “exonerated” as a person who has been convicted and subsequently either of the following occurred:

   a) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person’s conviction was reversed on appeal on the basis of insufficient evidence;

   b) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges or following a determination that the person is entitled to release on their own recognizance , or to bail, pending retrial or pending appeal; or
c) The person was given an absolute pardon by the governor on the basis that the person was innocent. (Pen. Code, § 3007.05, subd. (d.).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, “People who are wrongfully convicted of crimes lose much more than their freedom. They often lose their jobs, homes, family and community as well.

“The exonerated experience warrants extensive support for the injustices suffered while in prison, as well as the problems they encounter upon their release, particularly housing assistance. AB 701 will help an exonerated individual secure a safe place to live upon release.

“The wrongfully convicted clearly have suffered an injustice at the hands of the state and many others, and the state is in the best position to provide meaningful support.”

2) **Need for the Bill:** According to the author, “Exonerees are released from prison without the same reentry services as parolees – live-in programs, residential programs including transitional housing.”

“Based on national data, there is a strong relationship between homelessness and the criminal justice system. In addition, recently released individuals do not have a traditionally recognized work history or credit history which affects their ability to find and obtain housing. Without access to housing, the exonerated individual is forced to either rely on friends and family or resort to homelessness, with at least 44% living someone else’s house or apartment indefinitely.”

According to one law review article, “Unless there is serious attention paid to community economic development, and the development of affordable housing and opportunities for gainful employment in the communities where entanglement in the criminal justice system is concentrated, these communities will be unable to break out of the ‘carceral lattice spanning the prison and neighborhoods deeply penetrated and constantly destabilized by the penal state.’” (Orains, “I'll Say I'm Home, I Won't Say I'm Free”: Persistent Barriers to Housing, Employment, and Financial Security for Formerly Incarcerated People in Low-Income Communities of Color (2016) 25 UCLA NATIONAL BLACK LAW JOURNAL 23, 46.)

“Even if lenders, housing providers, and employers did not inquire about conviction history, or even if people who have a conviction history were considered a class protected from discrimination, the collateral consequences of incarceration would still act as a barrier to financial services. Put simply, there are a lot of ways to tell that someone has been in prison besides a formal record. Even a few days in jail can cost someone their job and their housing. Several years in prison stands as an obvious and difficult to explain gap in employment and rental history.” (Id. at 48.) These issues exist even if a person is ultimately exonerated for the crime they were imprisoned for committing. However, the importance of providing assistance to someone who was wrongly convicted in the first place is arguable.
even greater than for someone who has not been exonerated.

3) **Additional Costs for Providing Assistance to Exonerated Individuals**: Current law mandates that an exonerated person be provided $1,000 upon release; the person receiving the funds is permitted to spend it however they want. This bill provides for an additional $5,000 in initial disbursement upon release, and additional funds be provided throughout the first year of release, and for up to four years following release specifically for housing purposes “including, but not limited to, a down payment, security deposit, or any payment necessary to secure rental housing accommodations.”

Money for exonerees comes from the state’s General Fund. While this bill appropriates additional funds to an exonerated person upon release, it comes from the California Victim Compensation Board. It is not clear whether this bill will present a significant cost to the state; only approximately 200 people have been exonerated from California prisons since 1989.

In last year’s annual bill appropriating funds to be paid by the state, AB 212 (Gonzalez), Chapter 66, Statutes of 2017, appropriated $2,967,160 to pay the costs owed by the state for three erroneous conviction claims.

The bulk of funds owed to a wrongly incarcerated person come from the $140 per day a person is owed for each day of wrongful incarceration, which a person may recover after following procedures established in by SB 618 (Leno) Statutes of 2013. If a person has secured a declaration of factual innocence from the court after having a conviction set aside, the finding is grounds for payment of a claim against the state and upon application by the petitioner, the California Victim Compensation Board shall, without a hearing, recommend to the Legislature an appropriation to cover the claim. Likewise, if the court finds the petitioner has proven their innocence by a preponderance of the evidence, or the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned, or when the court vacates a judgment for a person on the basis of new evidence concerning a person who is no longer unlawfully imprisoned, and the court finds the evidence points unerringly to innocence, the board shall, upon application by the claimant, without a hearing, recommend to the Legislature an appropriation to cover the petitioner’s claim.

Otherwise, a claimant is required to introduce evidence in support of their claim at a hearing before the board, and the Attorney General may introduce evidence in opposition. The claimant must prove, by a preponderance of the evidence: (a) the crime was not committed at all, or, if committed, was not committed by the claimant; (b) the claimant did not contribute to the arrest or conviction for the crime; and (c) the claimant sustained pecuniary injury though the erroneous conviction and imprisonment.

If a claimant meets the burden of proof, the board shall recommend to the Legislature an appropriation of $140 per day of incarceration served in a state prison subsequent to the claimant’s exonation. This money comes from the General Fund.

Claimants are also provided access to transitional services for exonerated persons, including enrollment in Medi-Cal and CalFresh, state and federal social security benefits, and referral to Employment Development Department, along with payment of $1,000 upon release from incarceration. DOJ is required to put a notation on the person’s criminal history information
that the person has been exonerated. These additional benefits and services were added to law in 2018 with SB 1050 (Lara) Chapter 979, Statutes of 2017-2018.

4) **Lack of Oversight Regarding Disbursement or Spending of Funds Appropriated by this Bill:** This bill proposal lacks specificity in how to ensure that funds dispersed for housing purposes will actually be used for housing purposes. The initial disbursement of $5,000 “to be used for housing” would occur upon an exonerated person’s release from prison. It is not clear how CDCR, which “shall approve payments or reimbursements” made under this bill, will monitor the exoneree’s spending. In addressing this issue, the Legislature should be mindful that a person who is exonerated did nothing wrong and should not be treated as if they are a parolee, or otherwise guilty of the crime for which they were imprisoned.

Additionally, this bill states that an exoneree may continue to receive payments to fund housing costs for at least one year following release, and up to four years, which would be made as “direct payment or reimbursement for reasonable housing costs.” Again, this bill does not provide any instruction on how CDCR will ensure that funds disbursed pursuant to this bill will be spent for the purposes for which they are appropriated. Should this bill model other existing programs for providing funding for housing, like Section 8 vouchers? Again, the Legislature should be mindful of what restrictions it places on an exoneree and take care not to treat exonerees as if they are on parole.

5) **Exonerees are Denied Access to Housing Because they Lack Income:** Exonerees often face housing discrimination because they have no income, which many apartment owners use to disqualify a person from consideration for renting or leasing housing. No provision in law prevents this discrimination. Should this bill be amended to ensure that exonerees are not discriminated against in seeking and obtaining housing?

6) **Argument in Support:** According to the *California Public Defenders Association*, “AB 701 would increase the support offered to those wrongfully convicted and exonerated from prison. Exonervations are incredibly painful for all involved; victims have been denied justice, law enforcement and prosecutors have to grapple with their mistake, and the whole community worries about the large implications of an innocent person spending time in prison. However, no one suffers more than the person who was incarcerated for something they did not do. Many exonerated individuals struggle to find housing while they come to terms with their release. This bill would entitle exonerees to receive $5,000 upon release for housing, and allow them to seek funds for reasonable housing costs from one to four release after their release. As a society it is our duty to right the wrongs, we have committed against each other. The first step in the process is to allow those who have been wrongfully convicted and sentenced to prison to have the opportunity to find shelter and heal from their experience. Unfortunately, California has had more than a few exonerees to date, and a common theme amongst them is the difficulty they have expressed at the financial burden of finding housing upon their release. AB 701 would provide resources to help exonerees to put their lives back together, and help California put our criminal justice system back together.”

7) **Related Legislation:** AB 702 (Weber) would require the California Victim Compensation Board from the Restitution Fund to provide reimbursement from the fund to any exonerated individual, as defined, for mental health services, as specified. AB 702 will be heard in this committee today.
8) Prior Legislation:

a) SB 1050 (Lara), Chapter 979, Statutes of 2018, requires transitional services be offered within the first week, and again 30 days later, of exoneration; provides $1,000 to be paid to the exoneree upon release, along with services to provide assistance with Medi-Cal and CalFresh enrollment, referral to Employment Development Department and other regional workforce services and assistance with enrollment in federal supplemental security income benefits program and state supplemental program.

b) SB 336 (Anderson), Chapter 728, Statutes of 2017, revised the definition of "exonerated" for the purpose of eligibility for assistance with transitional services to include a person who has been convicted and subsequently was granted a writ of habeas corpus.

c) SB 1134 (Leno), Chapter 785, Statutes of 2016, permits a writ of habeas corpus to be prosecuted on the basis of new evidence that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome of the trial.

d) AB 672 (Jones-Sawyer), Obie's Law, Chapter 403, Statutes of 2015, requires the state to provide exonerees reentry services, including identification cards, housing assistance, job training, and mental health services for no less than six months and up to one year.

e) SB 618 (Leno), Chapter 800, Statutes of 2013, provides clarity to the process for compensating persons who have been exonerated after serving time incarcerated.

REGISTERED SUPPORT / OPPOSITION:

Support

Exonerated Nation (Sponsor)
California Attorneys for Criminal Justice (Co-Sponsor)
California Public Defenders Association
Ella Baker Center for Human Rights

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Date of Hearing: April 9, 2019
Counsel: Sandy Uribe

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

AB 702 (Weber) – As Amended April 3, 2019

SUMMARY: Require the Victim Compensation Board (board) to provide reimbursement to exonerated individuals for mental health services. Specifically, this bill:

1) Requires the board to reimburse an exonerated person for mental health services which are reasonably related to incarceration, or to provide payment to the person’s provider, as follows:

   a) If a person was incarcerated for less than three years, reimbursement shall be for no less than one year of services; or

   b) If a person was incarcerated for three or more years, reimbursement shall be for no less than two years of services.

2) Prohibits the board from reimbursing the exoneree for services for a period of time longer than the time the person was incarcerated.

3) Clarifies that the direct payment or reimbursement for these mental health services are in addition to the mental health services provided to exonerees by the California Department of Corrections and Rehabilitation (CDCR).

4) Requires the board to provide payment or reimbursement within 30 days after submission of a claim.

5) Defines “exonerated” for purposes of this section as a person who:

   a) Had a writ of habeas corpus granted on the basis that the evidence unerringly points to innocence, or had their conviction reversed on appeal based on insufficient evidence;

   b) Had a writ of habeas corpus granted resulting in dismissal of the criminal charges; or

   c) Was granted an absolute pardon by the Governor on the basis that the person was innocent.

EXISTING LAW:

1) Requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those
2) States that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the California Victim Compensation Board. Upon application the board shall, without a hearing, recommend to the Legislature that an appropriation be made. (Pen. Code, § 851.86.)

3) States that any person who, having been convicted of any felony and imprisoned in the state prison or county jail for that conviction, is granted a pardon by the Governor for the reason he or she was innocent of the crime with which he or she was convicted, is eligible to present a claim against the state to the board for the monetary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

4) Gives erroneously convicted individuals two years to file a claim against the state. (Pen. Code, § 4901.)

5) Sets the rate of compensation at $140 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Pen. Code, § 4904.)

6) Requires the CDCR to assist a person who is exonerated as to a conviction for which he or she is serving a state prison sentence at the time of exoneration with transitional services, including housing assistance, job training, and mental health services, as applicable. (Pen. Code, § 3007.05, subd. (c).)

7) Requires that the CDCR provide transitional services to an exonerated person for a period of not less than six months and not more than one year from the date of release, unless the person qualifies for services beyond one year. (Pen. Code, § 3007.05, subd. (c).)

8) Provides that each person who is exonerated shall be paid $1,000 upon his or her release from incarceration from funds to be made available upon appropriation by the Legislature. This amount is in addition to any other payment to which the exonerated person is entitled to by law. (Pen. Code, § 3007.05, subd. (d).)

9) Defines "exonerated" as a person who has been convicted and subsequently either of the following occurred:

   a) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person’s conviction was reversed on appeal on the basis of insufficient evidence;

   b) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges or following a determination that the person is entitled to release on his or her own recognizance, or to nail pending retrial or pending appeal; or

   c) The person was given an absolute pardon by the governor on the basis that the person was innocent. (Pen. Code, § 3007.05, subd. (e).)

   d)
FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “People who are wrongfully convicted lose much more than their freedom. They may also lose their jobs, homes, family, and community. The alienation and trauma that exonerated individuals experience warrants extensive support, including mental health services. The state can never right the wrongs inflicted on exonerated Californians, but we can ensure that they have the tools necessary to lead healthy, fulfilling lives when they are released.”

2) **Current Mental Health Services for Exonerees:** Existing law requires CDCR to provide some transitional services for exonerees, including mental health services. (Pen. Code, § 3007.05, subd. (c).) However, CDCR must only provide transitional services, including mental health services, for a minimum of six months and a maximum of one year from the date of release, unless the person otherwise qualifies for services beyond one year. *(Ibid.)* This bill would specify that the mental health services which are reimbursable by the board are in addition to those provided through CDCR.

3) **Financial Condition of Restitution Fund:** In addition to the Victim Compensation Program, the board currently administers claims of erroneously convicted persons. (See [https://victims.ca.gov/board/pe4900.aspx](https://victims.ca.gov/board/pe4900.aspx); see also Pen. Code, § 4900.) Although the board administers the program, these claims are paid through the state’s General Fund, not through the Victim Compensation Program.

In contrast, it would seem that the reimbursements for mental health services for exonerees provided for in this bill would be reimbursed through the board as other expenses eligible through the Victim Compensation Program, which relies on the restitution fund.

The Legislative Analyst’s Office (LAO) has informed this committee that restitution fund revenue is depleting and that the fund is facing insolvency. Based on budget documents, the LAO has provided this committee with the following figures regarding the financial status of the CalVCP.¹

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¹ The figures are represented in thousands. So, for example, the projected fund balance for FY 2019-2020 is $17,288,000.
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<th>Net Revenue</th>
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Although there are not many claims from exonerated persons submitted each year, should the Legislature add to the types of expenses covered through this fund while revenue is depleting and there are concerns about insolvency? Should another funding source be identified.

4) **Argument in Support**: According to *Exonerated Nation*, a co-sponsor of this bill, “AB 702 would provide reimbursement to exonerees, or direct payment to mental health services provider, for mental health services. An exoneree suffers from extensive trauma as a result of their wrongful imprisonment. Mental health services are crucial to ensuring an exoneree can heal and move forward after their release.

“In a survey conducted by the Life After Exoneration Program, a California based program, at least 28% of exonerees suffer from Post-Traumatic Stress Disorder, 38% suffer significant anxiety and 40% suffer from depression. These statistics show there is a critical need for access of mental health services. AB 702 would provide much needed relief for exonerees.”

5) **Argument in Opposition**: According to the *California District Attorneys Association*, “This bill requires the California Victim Compensation Board (VCB) to use funds collected from criminal convicted defendants and paid into the Restitution Fund to pay exonerated persons for mental health services reasonably related to their incarceration. Such exonerees may well deserve compensation for future mental health services, but those funds must come from appropriated sources other than victim compensation funds.

“Our association has had to make hard choices in supporting even victim compensation expansion bills this year. This result is due to the fact that any such compensation additions tax an already strained system. New applications are likely to increase, requiring a concomitant increase in VCB staffing to help process them. Such larger caseloads could then potentially lead to a backlog in applications, delay processing of applications, and thus delay payments to victims/survivors, which can increase the hardship on such already-victimized persons for whom the entire fund was created. Over time, increases in both applications and payments may well challenge the stability of compensation funding, because more funds will be needed to support payments than those currently collected and appropriated for victims of crime.

“For these reasons, we believe that the Legislature should give consideration to appropriations from an alternative source to fund mental health needs of exonerees, rather than cause an increase in VCB work-loads and diminution of restitution funds to compensate crime victims - those citizens for whom this entire scheme was created and who have a state constitutional right to restitution.”

6) **Related Legislation**: AB 701 (Weber), would provide an exonerated person $5,000 upon release to be used to pay for housing. AB 701 will be heard in this committee today.
7) **Prior Legislation:**

   a) SB 1050 (Lara), Chapter 979, Statutes of 2018, expanded transitional services for exonerated persons, and requires exonerated persons to be paid $1000 upon release from incarceration.

   b) SB 336 (Anderson), Chapter 728, Statutes of 2017, revised the definition of "exonerated" for the purpose of eligibility for assistance with transitional services to include a person who has been convicted and subsequently was granted a writ of habeas corpus.

   c) AB 672 (Jones-Sawyer), Chapter 403, Statutes of 2015, requires the California Department of Corrections and Rehabilitation to provide transitional services to exonerated persons upon their release.

   d) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons exonerated after being wrongfully convicted and imprisoned.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Exonerated Nation (Sponsor)
California Attorneys for Criminal Justice (Co-Sponsor)
California Public Defenders Association
Ella Baker Center for Human Rights

**Opposition**

California District Attorneys Association

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Makes any person convicted of committing a lewd act upon a child under 14 years of age, a tier 3 offender, subject to lifetime registration as a sex offender.

EXISTING LAW:

1) Establishes the Sex Offender Registration Act (the Act). (Pen. Code, § 290, subd. (a).)

2) Requires persons convicted of the following offenses to register under the Act as a sex offender with law enforcement and with any school they attend, while residing, working, or studying in California:

Murder, Kidnapping and Assault, committed with the intent to commit specified offenses; Sexual Battery; Rape; Aiding and abetting a rape; Pimping or pandering a minor; Child Procurement; Aggravated sexual assault of a child under 14 years of age; Contributing to the delinquency of a minor with lewd or lascivious conduct; Incest; Sodomy; Lewd or lascivious act with a minor; Oral Copulation; Showing obscene material to minors; Contacting a minor with the intent to commit certain felonies; Arranging a meeting with a minor for lewd purposes; Continuous sexual abuse of a minor; Engaging in sodomy with a child 10 years or younger; Sexual penetration by force or fear; Child pornography laws; Indecent exposure; Annoying or molesting a child; Solicitation to commit a sex crime; Any statutory predecessor that includes all elements of one of the above-mentioned offenses; and Attempt or conspiracy to commit any of the above-mentioned offenses. (Pen. Code, §§ 290, subds. (b) – (c).)

3) Implements a three-tiered sex offender registration as of January 1, 2021. (Pen. Code, § 290 subds. (d) – (g).)

4) Provides specifically that a person required to register under the Act for an adult court conviction is subject to lifetime registration (tier three), if any of the following apply:

a) Following conviction of a registerable offense, the person was subsequently convicted of a violent registerable felony sex offense in a separate proceeding;

b) Following conviction of a registerable offense, the person was convicted of a violent felony, committed as a result of sexual compulsion or for purposes of sexual gratification, for which he or she was ordered to register;

c) The person was committed to a state mental hospital as a sexually violent predator;

d) The person was convicted of any of the following: (Pen. Code, § 290, subd. (d)(3).)
i) murder while attempting to commit or committing a specified sex offense;

ii) kidnapping with the intent to commit a specified sex offense;

iii) assault with intent to commit a specified sex offense or commission of the same act(s) in the course of a first degree burglary;

iv) pimping a minor;

v) pandering with a minor;

vi) procurement of a child under age 16 for lewd or lascivious acts;

vii) abduction of a minor for purposes of prostitution;

viii) aggravated sexual assault of a child;

ix) lewd or lascivious acts on a child by force, violence, duress, menace, or fear

x) lewd or lascivious acts on a child under age 14 or by a caretaker upon a dependent person by force or violence, or lewd acts on a child 14 or 15 years of age by a person at least 10 years older than the child;

xi) sending harmful matter to a child that depicts a minor(s) engaged in sexual conduct;

xii) contacting a minor with the intent to commit a specified sex offense other than sodomy, oral copulation, or sexual penetration with a person under age 18;

xiii) contacting a minor with the intent to expose oneself or engage in lewd or lascivious behavior;

xiv) continuous sexual abuse of a child;

xv) sex offense with a child 10 years of age or younger;

xvi) solicitation of rape, sodomy, or oral copulation by force or violence, or solicitation of other specified sex offenses; and,

xvii) any offense for which the person is sentenced to a life term under the habitual sex offender law.

e) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO) is well above average risk at the time of release into the community;

f) The person is a habitual sex offender;

g) The person was convicted of lewd or lascivious acts on a child under age 14 in two separate proceedings brought and tried separately;

h) The person was sentenced to 15 to 25 years to life for an offense under the habitual sex offender law;
i) The person is required to register as a mentally disordered sex offender;

j) The person was convicted of specified felony human trafficking offenses;

k) The person was convicted of felony sexual battery by restraint or while the victim was unconscious of the nature of the act;

l) The person was convicted of rape of a child, or by force or violence, or where the victim was prevented from resisting by an intoxicating or controlled substance, or where the victim was unconscious of the nature of the act;

m) The person was convicted of spousal rape by force or violence;

n) The person was convicted of rape in concert;

o) The person was convicted of contributing to the delinquency of a minor involving lewd or lascivious conduct;

p) The person was convicted of sodomy by force or violence, or in concert, or where the victim was unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

q) The person was convicted of oral copulation upon by force or violence, or in concert, or where the victim is unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

r) The person was convicted of an act of sexual penetration by force or violence, or where the victim is unconscious of the nature of the act, or where the victim is prevented from resisting by an intoxicating or controlled substance, or where with a child under age 14 and who was more than 10 years younger than the person;

s) The person was convicted of child pornography (other than misdemeanor possession of child pornography).

5) Provides that unless a person is subject to registration under tier three as specified above, a person required to register under the Act for an adult court conviction of a serious or violent or other specified felony sex offenses must register for a minimum of 20 years (tier two). (Pen. Code, § 290, sub. (d)(2).)

6) Provides that unless a person is subject to registration under tier two or tier three as specified above, a person required to register under the Act for an adult court conviction of a misdemeanor or non-violent, non-serious sex offense must register for a minimum of 10 years (tier one). (Pen. Code, § 290, sub. (d)(1).)

7) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her minimum registration period. (Pen. Code, § 290.5, subd. (a).)
8) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier two or tier three to petition to be removed from the sex offender registry before the expiration of his or her registration period, if specified criteria are met. (Pen. Code, § 290.5, subd. (b).)

9) Gives the judge discretion to order sex offender registration for any offense if it finds that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. (Pen. Code, § 290.006.)

10) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony of the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subds. (a) and (b).)

11) States that a person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)

12) Provides that person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code, § 288, subd. (b)(1).)

13) Specifies that person who commits any lewd or lascivious act, including any of the acts upon a child, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code, § 288, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Under the new tiered registration system for sex offenders, predators that molest 14 or 15 year olds are required to register for life, while those who molest young children (under 14) only have to register for 20 years.

"AB 884 cleans up the registration requirement for adults who commit lewd acts on children under the age of 14 from tier 2 status, registration for 20 years, to tier 3 status, registration for life. This is one of the most common sex crimes and the most common sex offense against children, in which we cannot allow registrants to fall out of the system. In California from 2014 to 2018, there were over 9,000 convictions of molesting a child under the age of 14, which doesn't including all those that went unreported and not convicted."
“Requiring lifetime registration for those who molest a child under the age of 14, this will protect victims by mandating that child molesters be registered for life, and that their information will always be made available to law enforcement.”

2) The Sex Offender Registration Act: California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (Wright vs. Superior Court (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) Review of Selected 2007 California Legislation: Closing a Loophole in California’s Sex Offender Registration Laws, 38 McGeorge L. Rev. 276, 278.)

In enacting the Sex Offender Registration Act in 2006 (P.C. 290 et seq.), the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders. (9 Witkin Cal. Crim. Law, supra, § 136.) The Act includes a lifetime registration requirement for persons convicted of or adjudicated for specified sex offenses. (See Pen. Code, § 290 et seq.) It also created a “standardized, statewide system” and a “comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities.” (People v. Nguyen (2014) 222 Cal.App.4th 1168, 1179.) These statutes regulate numerous aspects of a sex offender’s life including restricting the places a sex offender may visit and the people with whom he or she may interact. (Ibid.)

3) California Has Established a Tiered System of Registration Which Will Go Into Effect on January 1, 2021: SB 384 (Wiener) Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.

“The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.” (Cal. Sex Offender Management Board, Recommendations Report (Jan. 2010) p. 5

<http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf> [as of July 1, 2017].)

In a 2010 report, the CASOMB made several key recommendations, including the recommendations below:

- California should concentrate state resources on more closely monitoring high and-moderate risk sex offenders. A sex offender’s risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.

- Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to
higher-risk offenders.

(Recommendations Report, supra, at p. 6.)

At the time of the report, California had the largest number of registered sex offenders of any state in the United States. This large number was attributed "to the large overall population of the state, the length of time California ha[s] been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration. (Recommendations Report, supra, at p. 50.)

The CASOMB noted that California is one of the few states that has lifetime registration for all sex offenders. "On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime." (Recommendations Report, supra, at p. 50.)

Specifically, the CASOMB recommended that:

- Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created[.]

- Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life[.]

- A sex offender’s risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:

  Whether the sex offense was violent[.]

  Whether the sex offense was against a child[.]

  Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction[; and,]

  Whether the person was civilly committed as a sexually violent predator[.]

(Recommendations Report, supra, at p. 51.) The CASOMB "recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism[.]

The proposed changes to California law take into consideration the seriousness of the offender’s criminal history, the empirically assessed risk level of the offender,
and whether the offender is a recidivist or has violated California’s sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses.

(Recommendations Report, supra, at p. 56.)

In its 2014 report, the CASOMB noted there were nearly 100,000 registrants in California, as a result of California’s “universal lifetime” registration for persons convicted of most sex offenses. “California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending.” (Cal. Sex Offender Management Board, A Better Path to Community Safety – Sex Offender Registration in California, “Tiering Background Paper” (2014) p. 3 <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%2 04-2-14.pdf> [as of July 2, 2017].)

According to the CASOMB: “Effective policy must be based on the scientific evidence. Research on sex offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests. (Tiering Background Paper, supra, at p. 4.) The CASOMB also noted the unintended consequences of lifetime registration. “These consequences include serious obstacles to finding appropriate housing – or any housing; obstacles to finding employment; obstacles to developing positive support systems; obstacles to developing close relationships; and obstacles to reintegrating successfully into communities.” (Ibid.)

In line with its 2010 report, the CAOMB’s 2014 report proposed a new registration system that would take into account the following considerations:

• A tiered system of registration should be introduced so that the length and level of registration matches the risk level of the offender.

• In the future, all those convicted of a sex offense which currently requires registration would continue to be required to register. The list of registrable sex crimes would not change.

• The duration of registration would be [sic] no longer be for life for each and every registrant, no matter what the type of crime or the risk level.

• Only high risk offenders, such as kidnappers, sexually violent predators and selected high risk offenders would be required to register for life.

• The Megan’s Law web site would display specified higher risk offenders.

• Local law enforcement would have the ability to notify the public about any registered sex offender posing a current risk to the public.

(Tiering Background Paper, supra, at p. 7.)
In January of 2011, the Assistant Director of the California Research Bureau (CRB) testified before this committee after the CRB had examined: (a) registration requirements, (b) tiered registration, (d) the duration of registration, and (d) best practices and the overall cost-effectiveness of sex offender registration requirements. Specifically, as the Assistant Director testified, the CRB had also examined how other states have implemented registration requirements:

In our more detailed review of sex offender registration practices in other states, we selected states bordering California (Arizona, Nevada, and Oregon) as well as states with large populations and/or similar demographic characteristics to California: Florida, New Jersey, New York, Pennsylvania and Texas. Of the states we reviewed, only one, Florida, requires lifetime registration for all sex offenders. The others have tiers for registration – meaning that the offenders register for ten, 15 or 20 years for first-time offenses, and face lifetime registration for more violent or repeat offenses.

Some of the states do allow registrants to petition for removal from the list, generally after a period of not having committing any registrable offenses. In contrast, California requires lifetime registration for all offenses, and only allows people convicted of certain misdemeanor sex offenses to apply for relief via a certificate of rehabilitation with a trial court.


4) **Under the Tiered Registry, the Crimes Which Are the Subject of This Bill Would Fall Under Tier 2, 20 Year Period of Registration:** This bill addresses the crime of a lewd act on a child under the age of 14 that does not involve the use of force, violence, or duress. Under the tiered registration law, conviction of such an offense would place the individual in Tier 2, 20 year minimum registration. This bill would make conviction of such a crime, Tier 3, registrable for life. SB 384 (Wiener), which established tiered registration, was enacted in 2017. The tiered system of registration will go into effect on January 1, 2021.

5) **Argument in Support:** According to the California Police Chiefs Association, “Existing law only requires lifetime registration if the victim is 14 or 15 years of age; however, if the victim is younger than 14 years of age, the offender is only required to be registered for 20 years – this is unfair to the victims younger than the age of 14. AB 884 protects victims by mandating child molesters be registered for life and allows law enforcement to continually have access to this information.”

6) **Argument in Opposition:** According to the *California Public Defenders Association*, “In 2017, the California legislature passed historic reform to the 290 registration system, creating three tiers of registration and enumerating the criminal offenses that would fall into each tier. The impetus for this reform was to make the sex offender registry more humane, accurately tailored, and effective. The reform was supported by a wide variety of interest groups, including District Attorneys, law enforcement organizations, Public Defenders, and civil liberties groups. It was also extremely careful in its implementation, only taking effect in 2021.”
“AB 884 seeks to undercut this reform two years before it is implemented. It would effectively move 40,000 people from Tier 2 (20 years registration) to Tier 3 (lifetime registration). Though the bill only makes changes for one category of offense, it would substantially weaken The Tiered Registry Law.

“The Tiered Registry Law was a recognition that not all sex offenses are the same and they should not be treated in an identical manner. The law’s second tier, out of which the 40,000 people who will be affected by this bill would be moved, requires registration for 20 years after the date of conviction. This 20 year requirement, carries with it all of the burdens and collateral consequences that sex offender registry entails, but it allows for some relief after an appropriate amount of time. At the time that the Tiered Registry Law was passed, there was a fulsome debate about which offenses should be assigned to which tiers. AB 884 is an attempt to rehash that debate and change a fundamental aspect of that law’s promised reform.

“AB 884 would upset the careful balance that went into the passage of the Tiered Registry Law in 2017. It would deny relief to a substantial number of Californians, even after 20 years of onerous registration. It is a misguided step backwards.”

7) Related Legislation:

a) AB 135 (Cervantes), would make it a crime to contact or communicate with a minor, or attempt to contact or communicate with a minor, as specified, with the intent to commit human trafficking of the minor. AB 135 has been referred to the Assembly Appropriations Committee Suspense File.

b) AB 444 (Choi), would require a person convicted of who solicits, or who agrees to engage in, an act of prostitution with another person who is a minor, to register as a sex offender. AB 444 is awaiting hearing the Assembly Public Safety Committee.

c) SB 145 (Wiener), would authorize a person convicted of certain offenses involving minors to seek discretionary relief from the duty to register if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register. SB 145 is set for hearing in the Senate Public Safety Committee on April 9, 2018.

8) Prior Legislation:

a) SB 384 (Wiener), Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.

b) AB 484 (Cunningham), Chapter 526, Statutes of 2017, added rape by fraud and rape by authority of a public official to the list of offenses that require registration as a sex offender.

c) SB 757 (Glazer), of the 2017-2018 Legislative Session, would have required a person convicted of prostitution with a minor to register unless the court finds that the defendant had reason to believe the victim was not a minor, was misled about the victim’s age, or
was less than three years older than the victim at the time of the solicitation. SB 757 is pending referral from the Assembly Rules Committee. SB 757 was held in the Assembly Public Safety Committee.

d) AB 1912 (Achadjian), of the 2015-2016 Legislative Session, would have required a person convicted of soliciting a minor, who the person knew or reasonably should have known, was both a minor and a victim of human trafficking to register as a sex offender for a period of five years after a first conviction, 10 years after a second conviction, and 20 years after a third or subsequent conviction. AB 1912 failed passage in the Assembly Public Safety Committee.

e) AB 733 (Chavez), of the 2015-2016 Legislative Session, would have required sex offender registration for a person convicted of the offense of solicitation of a minor. AB 733 failed passage in the Assembly Public Safety Committee.

f) SB 303 (Morell), of the 2017-2018 Legislative Session, would have added an additional term to the sentence of a convicted human trafficker if it was pled and proved that the offense involved a victim who was under the age of 16. SB 303 died in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support
California Family Council
California Police Chiefs Association
Riverside Sheriffs' Association

Oppose
Alliance for Constitutional Sex Offense Laws
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Building Opportunities for Self-Sufficiency
California Attorneys for Criminal Justice
California Public Defenders Association
California Sex Offender Management Board
East Bay Community Law Center
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Root and Rebound Reentry Advocates
Rubicon Programs

96 Private Individuals

Analysis Prepared by:  David Billingsley / 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 904 (Chau) – As Amended March 28, 2019

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

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

AB 1064 (Muratsuchi) – As Introduced February 21, 2019

As Proposed to be Amended in Committee

REVISED

SUMMARY: Imposes security requirements on firearms retailers, prohibits a firearms licensee from operating in a residential neighborhood, and requires a firearms licensee to obtain a $1,000,000 liability insurance policy. Specifically, this bill:

1) Permits the Department of Justice (DOJ) to impose a civil fine of up to $1,000 against firearms dealers for a breach of specified prohibitions. Additionally, provides for a fine of up to $3,000 for breaches when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or those which the DOJ determines that the licensee committed the breach knowingly or with gross negligence.

2) Allows DOJ to adopt regulations setting fine amounts and setting up an appeals process.

3) Requires, commencing January 1, 2021, a licensee to obtain a policy of commercial insurance that insures the licensee against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises, in the amount of $1,000,000 per incident, as specified.

4) Provides that these provisions would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding insurance pertaining to the licensee’s business.

EXISTING LAW:

1) States that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license. (Pen. Code § 26805, subd. (a).)

2) Provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if
any. (Pen. Code § 26805, subd. (b)(1).)

3) Provides an exception for a person licensed, as specified, who may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections. (Pen. Code § 26805, subd. (c)(1).)

4) Provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified. (Pen. Code § 26805, subd. (c)(2).)

5) Provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

a) The building designated in the license;

b) The places specified as express exceptions; and,

c) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm. (Pen. Code § 26805, subd. (d).)

6) Provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

7) Requires that firearms be secured at any time when the dealer is not open for business, as specified. (Pen. Code, § 26890.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 1064 would improve public safety and bring increased accountability, transparency, and security to gun sales in California by requiring gun dealers to comply with a set of responsible business practices, and by authorizing DOJ to fine irresponsible dealers who break the law".

2) **Background:** According to the background submitted by the author, "[L]aw enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post report found that, due to limited staffing, ATF could only inspect gun dealers once per decade on average. These limitations, combined with weak state and federal laws related to gun dealers, allow many bad actor gun dealers to evade accountability.

"In two academic studies, undercover researchers found that at least 20% of California gun dealers were willing to conduct an illegal 'straw purchase,' even when the dealer knew the gun would be used by a prohibited person. Though these transactions are a leading source of guns used during crimes, they often appear legal on paper without security cameras to visibly capture the sale. California gun dealers also reported 1,797 firearms 'missing' from their
inventories from 2012-2015. Without security cameras monitoring dealers’ premises and sales counters, law enforcement has few tools to investigate whether these firearms were misplaced, stolen, or illegally trafficked to criminals."

3) **Content of the Bill:** This legislation, as proposed to be amended, basically implements two changes to existing law for the stated purposes of cutting down on straw purchases in California.

   a) **Imposition of Civil Fines for Violations of Rules Related to Grounds for Forfeiture of a License to Sell Firearms:** This bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a $1,000 civil fine for simple violations, and up to $3,000 fines for violations when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance, checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

   b) **Requiring Gun Dealers to Carry Liability Insurance:** According to the sponsor, 32 localities have enacted this provision of law (including San Francisco and Los Angeles). Gun dealers would be required to carry insurance of at least a million dollars to insure them for their liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises. The Federal "Protection of Lawful Commerce in Arms Act" (PLCAA) is a United States law which protects firearms manufacturers and dealers from being held liable when crimes have been committed with their products. However, both manufacturers and dealers can still be held liable for damages resulting from defective products, breach of contract, criminal misconduct, and other actions for which they are directly responsible in much the same manner that any U.S. based manufacturer of consumer products is held responsible. They may also be held liable for negligence when they have reason to know a gun is intended for use in a crime.

4) **Argument in Support:** According to *Brady California United Against Gun Violence* "AB 1064 will bring increased accountability, transparency, and security to gun sales in California to ensure that firearm dealers follow the law and are not a source of crime guns on the black market. This bill will require firearm dealers to comply with a set of responsible business practices and will authorize Cal DOJ to fine dealers who break the law. AB 1064 will:

"Require firearm dealer to install security cameras to monitor sales and premises. Video surveillance by the security cameras is standard practice for most retail businesses and prevents theft. Videotaping of gun sales will deter straw purchasers, those customers who buy guns for individuals who cannot pass a background check – sometimes with the knowledge and cooperation of the gun dealer. A gun sale may appear completely legal on paper, but a security camera can detect and document a straw purchase. Additionally, a security camera would help law enforcement investigate missing guns, which could have stolen or illegally trafficked by a dealer,"
"Prohibit residential firearm dealers to enable better oversight and enforcement. Adequate monitoring of residential or 'kitchen-table' dealers, including spot inspections, is nearly impossible. Law enforcement inspections are infrequent and there may be a chilling effect on thoroughness by enforcement officials, who may feel like they are invading a dealer’s personal space. Firearms stolen from a residential dealer, or the fire and explosion hazard caused by potentially large quantities of stored firearms and ammunition, could endanger the immediate neighborhood. Strangers coming and going as well as law enforcement activity causes concern in many communities.

"Require firearm dealers to carry liabilities insurance. Insurance companies typically create a strong incentive to engage in responsible business practices and correct any violations by premium pricing and, in some cases, by conditions or discounts. Most businesses, or individuals who may potentially cause injury to others, have insurance that can be used to compensate victims if those injuries occur. That is why insurance is required, for example, to drive a motor vehicle. To be clear, having insurance does not create liability, just as a law requiring drivers to carry auto insurance does not create liability for drivers. However, when a gun dealer violates federal or state law, is clearly negligent, and found civilly liable under existing law (such as 'negligent entrustment' exception to PLCAA), liability insurance would enable a victim to actually receive compensation.

"Provide needed enforcement tools by authorizing Cal DOJ to impose civil fines for dealer violations. ATF has been grossly underfunded for years and their dealer inspection regime is a broken system. A Washington Post investigation in 2010 found that, as a result of inadequate staffing, ATF was able to inspect less than 10% of FFL's in 2009 and, on average, dealers are inspected only once a decade. Recent news reports and FOIA requests by Brady indicate that the problem has only gotten worse. An extremely small number of dealers are inspected every year and very few have their license revoked for egregious conduct. In light of this deficiency, Cal DOJ needs more enforcement tools. Under existing law, there is no alternative to revoking a dealer's license through a lengthy procedure. Intermediate steps, such as an escalating fine structure, are needed to provide opportunities for education and correction, as well as appropriate levels of penalty and accountability."

5) **Argument in Opposition:** According to the, *Gun Owners of California*, “AB 1064 will put hundreds of honest, resident based dealers out of business. Many of these individuals provide the only Federal, state and local government authorized locations for people to legally obtain firearms and ammunition in their vicinity. This bill is punitive and will place a devastating and needless economic burden on small business owners, who provide essential services especially in the more rural areas of California. All state authorized dealers are regularly audited by the California Department of Justice for compliance with all state laws, including resident based dealers. If they are out of compliance with federal, state and local laws they are either corrected or the licenses are terminated just as with storefront dealers.”

6) **Prior Legislation.** AB 2459 (McCarty), of the 2015-16 Legislative Session, was substantially similar to this bill, except that the amount of the civil fines which could be imposed by DOJ for breeches in licensing conditions was slightly less. AB 2459 failed passage in the Privacy and Consumer Protection Committee.
REGISTERED SUPPORT / OPPOSITION:

Support

Brady California United Against Gun Violence (Sponsor)
American Academy of Pediatrics, California
Cleveland School Remembers-Brady Campaign to Prevent Gun Violence Chapter
Coalition Against Gun Violence, a Santa Barbara County Coalition
Drain the NRA
Friends Committee on Legislation of California
Giffords Law Center to Prevent Gun Violence
NeverAgainCA
The Violence Prevention Coalition of Orange County

Oppose

American Civil Liberties Union of California
Crossroads of the West Gun Shows
Gun Owners of California, Inc.
National Rifle Association - Institute for Legislative Action
National Shooting Sports Foundation, Inc.

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

SECTION 1. Section 26800 of the Penal Code is amended to read:

26800. (a) A license under this chapter is subject to forfeiture for a breach of any of the prohibitions and requirements of this article, except those stated in the following provisions:

(1) Subdivision (c) of Section 26890.

(2) Subdivision (d) of Section 26890.

(3) Subdivision (b) of Section 26900.

(b) The department may assess a civil fine against a licensee, not to exceed one thousand dollars ($1000), for any breach of a prohibition or requirement of this article that subjects the license to forfeiture under subdivision (a). The department may assess a civil fine not to exceed three thousand dollars ($3,000), for any breach of a prohibition or requirement of this article that subjects the license to forfeiture under subdivision (a), for either of the following:

(1) The licensee has received written notification from the department regarding the breach and subsequently failed to take corrective action in a timely manner.

(2) The licensee is otherwise determined by the department to have knowingly or with gross negligence breached the prohibition or requirement.

(c) The department may adopt regulations setting fine amounts and providing a process for a licensee to appeal a fine assessed pursuant to subdivision (b).

SEC. 2. Section 26805 of the Penal Code is amended to read:

26805. (a) (1) Except as provided in subdivisions (b) and (c), the business of a licensee shall be conducted only in the buildings designated in the license.

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(2) Commencing January 1, 2021, a residence shall not be the designated place of business on any license. For purposes of this section, "residence" means any structure intended or used for human habitation, including, but not limited to, dwellings, condominiums, apartments, rooms, motels, hotels, time-shares, and recreational or other vehicles in which human habitation occurs.

(b) (1) A person licensed pursuant to Sections 26700 and 26705 may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subdivision may conduct business at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license pursuant to Sections 26700 and 26705, provided the person complies with all applicable laws, including, but not limited to, the waiting period specified in subdivision (a) of Section 26815, and all applicable local laws, regulations, and fees, if any.

(2) A person conducting business pursuant to this subdivision shall publicly display the person's license issued pursuant to Sections 26700 and 26705, or a facsimile thereof, at any gun show or event, as specified in this subdivision.

(c) (1) A person licensed pursuant to Sections 26700 and 26705 may engage in the sale and transfer of firearms other than handguns, at events specified in Sections 26955, 27655, 27900, and 27905, subject to the prohibitions and restrictions contained in those sections.

(2) A person licensed pursuant to Sections 26700 and 26705 may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in Section 27900.

(d) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(1) The building designated in the license;

(2) The places specified in subdivision (b) or (c).

(3) The place of residence of the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(e) This section does not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding where the business of the licensee may be conducted.

SEC. 3. Section 26920 is added to the Penal Code, to read:

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26920. (a) A licensee shall ensure that its business premises are monitored by a video surveillance system that meets the requirements of this section.

(b) The video surveillance system shall visually record and archive color footage of all of the following:

(1) Every sale or transfer of a firearm or ammunition, in a manner that includes an audio recording of the transaction;

(2) All places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred, including, but not limited to, counters, safes, vaults, cabinets, shelves, cases, and entryways;

(3) The immediate exterior surroundings of the licensee’s business;

(4) All parking areas owned or leased by the licensee;

(e) The video surveillance system shall operate and record continuously, without interruption, whenever the licensee is open for business. Whenever the licensee is not open for business, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area;

(d) When recording, the video surveillance system shall store color images of the monitored area at a frequency sufficient to produce retrievable and identifiable images and video recordings that are capable of delineating on playback the activity of persons or areas where firearms and ammunition are stored, displayed, carried, handled, sold, or transferred;

(e) The stored images shall be maintained on the business premises of the licensee for a period of not less than five years from the date of recordation. If, within five years of the transfer, a firearm or ammunition acquired in the transaction is the subject of a law enforcement investigation or firearms disposition request, the footage of the transfer shall be preserved for an additional five years;

(f) The video surveillance system shall be maintained in proper working order at all times. If the system becomes inoperable, it shall be repaired or replaced within 15 calendar days. The licensee shall inspect the system at least weekly to ensure that it is operational and images are being recorded and retained as required;

(g) The licensee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height.
(h) A licensee shall, on an annual basis, provide certification to the Department of Justice, in a manner prescribed by the department, that its video-surveillance system is in proper working order.

SEC. 4. Section 26925 is added to the Penal Code, to read:

26925. (a) Commencing January 1, 2021, a licensee shall obtain a policy of commercial insurance that insures the licensee against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises. The limits of liability shall not be less than one million dollars ($1,000,000) for each incident of damage to property or incident of injury or death to a person.

(b) A licensee shall, on an annual basis, provide certification to the Department of Justice that it has obtained a policy of commercial insurance that meets the requirements of this section.

(c) The policy of commercial insurance shall contain an endorsement providing that the policy shall not be canceled until written notice has been given to the Department of Justice at least 30 days prior to the time the cancellation becomes effective.

(d) This section does not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding insurance requirements relating to the conduct of the business of the licensee.
SUMMARY: Prohibits a person who is granted pretrial diversion based on a mental health disorder from owning or possessing a firearm, or other dangerous or deadly weapon for an indefinite period of time. Specifically, this bill:

1) Specifies that a person who has been granted pretrial diversion, as specified when the crime was related to a mental health disorder, shall not purchase, receive, or possession or control of any firearm or any other dangerous or deadly weapon.

2) Requires that a defendant, described above, be advised that, the defendant is prohibited from purchasing or possessing any firearm or other dangerous or deadly weapon.

3) States that upon successful completion of diversion, or upon adjudication of reinstated charges, a person may request a hearing from the superior court of their county of residence for an order that they may own, possess, control, receive, or purchase a firearm or other deadly weapon.

4) Provides that the clerk of the court shall set a hearing date and notify the person, the Department of Justice (DOJ), and the district attorney.

5) States that the people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney.

6) Specifies that upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of the offense.

7) States that within seven days after the request for a hearing DOJ shall file copies of the reports described in this section with the superior court.

8) States that the reports shall be disclosed upon request to the person and to the district attorney.

9) Requires the court to set the hearing within 60 days of receipt of the request for a hearing.

10) States that upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days.
11) Specifies that the district attorney may notify the county behavioral health director of the hearing, who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney.

12) Specifies that the court, upon motion of the person establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public.

13) States that notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under the evidence code, as specified, shall be admissible at the hearing under this section.

14) Specifies that the people bear the burden of showing by a preponderance of the evidence that the person would not be likely to use a firearm or other deadly weapon in a safe and lawful manner.

EXISTING LAW:

1) States that pretrial diversion, related to a mental disorder, may be granted pursuant to this section if all of the following criteria are met:

   a) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant’s mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert.

   b) The court is satisfied that the defendant’s mental disorder was a significant factor in the commission of the charged offense;

   c) In the opinion of a qualified mental health expert, the defendant’s symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;

   d) The defendant consents to diversion and waives his or her right to a speedy trial;

   e) The defendant agrees to comply with treatment as a condition of diversion; and

   f) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, in that that the defendant will commit a new violent felony, as defined. (Pen. Code, § 1001.36, subd. (b)(1)(A)-(F).)

   g) Specifies that a defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses: Murder or voluntary manslaughter; an offense for which a person, if convicted, would be required to register as a sex
offender, except for a violation of public exposure; Rape; Lewd or lascivious act on a child under 14 years of age; Assault with intent to commit rape, sodomy, or oral copulation, as specified; Commission of rape or sexual penetration in concert with another person; Continuous sexual abuse of a child; and, A violation of for possession of a weapon of mass destruction. (Pen. Code, § 1001.36, subd. (b)(1)(A)-(F).)

2) Specifies “pretrial diversion” means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to the following:

a) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant; (Pen. Code, § 1001.36, subd. (c)(1)(A).)

b) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant’s progress in treatment; and, (Pen. Code, § 1001.36, subd. (c)(2).)

c) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. (Pen. Code, § 1001.36, subd. (c)(3).)

3) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant’s criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (Pen. Code, § 1001.36, subd. (e).)

4) Specifies that a person who has been taken into custody on a 72-hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. (Welf. and Inst. Code, 8103, subd (f)(1(A)).)

5) States that a person taken into custody on a 72-hour hold may possess a firearm if the superior court has found that the people of the State of California have not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. and Inst. Code, 8103, subd (f)(1)(C).)

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 1121 updates current law to create consistency with other court diversion programs by prohibiting possession of a firearm as a condition of the mental health diversion program. Upon successful completion of the program an individual may petition the court return of their firearms.

“The Mental Health Diversion Program is an important tool for individuals who suffer from mental illness. The program allows for an individual, with agreement from the prosecution, to voluntarily enter diversion, allowing for the individual to receive support and addressing their mental illness and how that illness played into their arrest – avoiding traditional incarceration practices that do not address the core of their crime.

“Currently, one oversight in the diversion program allows individuals to continue to possess firearms even though they have been diagnosed by a licensed mental health expert to suffer from mental illness. Looking at other court diversion programs, it is a condition of those programs that participants are prohibited from possessing firearms until successful completion.”

2) **Mental Health Diversion:** AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, established mental health diversion. Mental health diversion authorizes a court to postpone prosecution of a misdemeanor or a felony, and place the defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, as specified, that the defendant’s mental disorder played a significant role in the commission of the charged offense, in the opinion of a mental health expert, the defendant’s symptoms of the mental disorder would respond to mental health treatment, and the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, if treated in the community. SB 215 (Beall), Chapter 1005, Statutes of 2018, amended AB 1810 to exclude defendants charged with specified serious offenses from participation in mental health diversion.

If pretrial diversion is granted, the court postpones the prosecution to allow the defendant to undergo mental health treatment in an inpatient or outpatient setting, as directed by the court. The provider of the mental health treatment program in which the defendant has been placed is required to provide reports on the defendant’s progress in treatment. The maximum period of diversion is two years.

If the defendant performs unsatisfactorily on diversion, because the defendant fails to participate in treatment or engages in criminal conduct, the court may reinstate criminal
proceeding. If criminal proceeding are reinstated, the case would be resolved through the
criminal system in the ordinary course of business.

If the defendant has performed satisfactorily on diversion, at the end of the period of
diversion, the court shall dismiss the defendant’s criminal charges that were the subject of the
criminal proceedings at the time of the initial diversion. A court may conclude that the
defendant has performed satisfactorily if the defendant has substantially complied with the
requirements of diversion, has avoided significant new violations of law unrelated to the
defendant’s mental health condition, and has a plan in place for long-term mental health care.

3) The Individuals Affected by This Bill Do Not Necessarily Pose a Danger by Virtue of
Possessing a Firearm or Deadly Weapon: In order to participate in mental health diversion
the court must find that the defendant suffers from a mental disorder as identified in the most
recent edition of the DSM. Attention Deficit Hyperactivity, communication disorder, sleep-
wake disorder, obsessive compulsive disorder, are all mental disorders under the DSM.
However, the fact that a defendant suffers from such a mental disorder does not mean they
are a danger to the public or a danger to themselves. A defendant participating in mental
health diversion can be facing a criminal charge that is unconnected to violence.

This bill would require the court to order a defendant that participates in mental health
diversion be prohibited from owning or possessing firearm or deadly weapon prohibition.
This bill would not require the court to make a finding that the individual would be a danger
to themselves or others is they possessed a firearm or other weapon. The prohibition based
on this order would not have an expiration date. To the extent this bill entitles an individual
to a hearing, no right to request a hearing would exist until the individual had completed
diversion.

This bill would not require any determination that the individual presents a danger if they
were to possess a gun or other weapon and would establish an indefinite prohibition, with no
expiration date. To extent this bill would establish a hearing right, such a hearing is deferred
in time. These issues all raise due process concerns related to a constitutional right.

4) Current Law Allows Law Enforcement to Seek Gun Violence Restraining Orders
(GVROs): The process to obtain an emergency GVRO is designed to address situations
where the danger is current. An application for an emergency GVRO can be made orally and
processed immediately. Current law also allows an immediate family member of a person or
a law enforcement officer to request a court, after notice and a hearing, to issue a gun
violence restraining order enjoining the subject of the petition from having in his or her
custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for
a period of one year. (Pen. Code, § 18170.) If an individual completes mental health
diversion and the case is dismissed, that individual will no longer be subject to court
supervision. A GVROs could currently be pursued against any individual that completed
mental health diversion, or was participating in mental health diversion if that person
presented a danger of owning a firearm.

5) Argument in Support: According to the Alameda District Attorney’s Office, “This bill
would remove tools for self-harm from the defendant while he or she is working through a
mental health crisis. Research and literature show that a person in mental health crisis who
have access to firearms are far more likely to succeed at a suicide attempt than if they do not
have access to a firearm. It is essential that our laws keep weapons out of the hands of people who may be suicidal, violent or working through a mental health crisis.

"AB 1121 helps protect the community in particular from individuals on diversion with pending charges involving violence. Individuals eligible for diversion under Penal Code Section 1001.36 may have pending criminal charges including serious felonies like Assault with Great Bodily Injury and Domestic Violence with Injury. These individuals would not be permitted to own, use or possess dangerous or deadly weapons while in treatment, which helps to reduce the risk of danger to the community.

"The Legislature has already recognized that people at risk of harming themselves or other should not have easy access to weapons. Welfare and Institutions Code Section 8103 already prohibits individuals subject to various types of mental health treatment and supervision, such as Welfare and Institutions Code Section 5150 and those incompetent to stand trial, from owning, using or possessing firearms or other dangerous weapons. AB1121 would add Mental Health Diversion to the already existing prohibition list. Adding a weapons prohibition for those in Mental Health Diversion is consistent with prevailing public policy that individuals in acute mental health crisis should not have access to deadly or dangerous weapons."

6) Argument in Opposition: According to California Public Defenders Association, "Under current law, a Californian accused of numerous non-violent offenses such as disturbing the peace, petty theft, or being under the influence of alcohol in public, may voluntarily accept court-monitored treatment in lieu of prosecution. If the defendant successfully completes treatment, obeys the conditions of diversion, and has a plan in place for long-term care, the court may then dismiss the defendant's case. (Pen. Code § 1001.36.)"

"The goal of the diversion program is to prevent Californians from being unnecessarily and permanently embedded in the criminal system, and to improve public safety by ensuring that the underlying causes of that person's allegedly criminal conduct are addressed.

"Because the requirements of the program are far more onerous than the normal conditions of misdemeanor probation, the success of this program depends entirely on the willingness of Californians accused of minor criminal offenses to participate in an intensive treatment program in lieu of simply accepting a minor conviction and a "time served" offer.

"Unfortunately, AB 1121, as currently written, threatens to dissuade Californians from participating in voluntary mental health treatment by imposing lifetime weapons bans (and the threat of felony prosecution) on those who agree to participate in treatment, even where the defendant fully complies with treatment, and even where the charges against the defendant are ultimately proven false.

"AB 1121's imposition of lifetime consequences for voluntary acceptance of mental health services is troubling for three reasons. First, it is highly likely to discourage Californians from accepting such treatment, particularly those employed in roles (such as a police officer or security guard) which require possession of a firearm or another weapon. Second, the ban proposed by AB 1121 goes far beyond that enacted by current law, which not only restricts the ban to convictions for offenses relating to acts of violence, but also restricts the length of the ban to ten years. (Pen. Code § 29805.) Finally, AB 1121 does not restrict its ban to
‘firearms’ but attempts to impose a lifetime ban on ‘all’ weapons—meaning that for the remainder of a defendants life, he or she may face arrest and imprisonment for such prosaic acts as owning a kitchen knife.

“In short, AB 1121 proposes to treat Californians who voluntarily accept mental health services and are not convicted of a crime worse than Californians who refuse to accept services and are subsequently convicted. In so doing, AB 1121 threatens to negatively impact the use of diversion under section 1001.36, and therefore endangers one of the most substantial steps towards criminal justice and mental health reform made in the past decade.”

7) **Related Legislation:**

a) **AB 61 (Ting),** would authorize an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last six months to file a petition for an ex parte, one-year, or renewed GVRO. AB 61 failed passage in the Assembly Public Safety Committee and is pending hearing for reconsideration.

b) **AB 165 (Gabriel),** would require the Commission on Peace Officer Standards and Training (POST) to develop and implement a course of training regarding GVROs for peace officers and incorporate it into the course of basic training. AB 165 is pending hearing in the Assembly Appropriations Committee.

c) **AB 339 (Irwin),** would require each municipal police department, county sheriff’s department, the Department of California Highway Patrol, and the University of California and California State University Police Departments to develop and adopt written policies and standards regarding the use of gun violence restraining orders (GVRO) on or before January 1, 2021. AB 339 is awaiting hearing in the Assembly Appropriations Committee.

d) **AB 997 (Low),** would have made it a crime for a person to possess a firearm pending a hearing regarding a firearm seized under specified circumstances, and would prohibit the person from possessing a firearm for a period of five years if the court determines that the return of the firearm would likely endanger the person or others. AB 997 failed passage in the Assembly Public Safety Committee.

8) **Prior Legislation:**

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

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

c) **AB 1968 (Low),** Chapter 861, Statutes of 2018, requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within
a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings.

d) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have prohibited a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. SB 755 was vetoed by the Governor.

e) AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a gun violence restraining order, as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified.

f) AB 1131 (Skinner), Chapter 747, Statutes of 2013, increased the period of time that a person is prohibited from possessing a firearm based on a mental illness or mental disorder or a serious threat of violence communicated to a licensed psychotherapist.

REGISTERED SUPPORT / OPPOSITION:

Support
Alameda County District Attorney’s Office (Sponsor)
California District Attorneys Association
Riverside Sheriffs’ Association

Oppose
California Public Defenders Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST), on or before January 1, 2021 in consultation with the State Department of Developmental Services, and the State Council on Developmental Disabilities, and representatives of community, incorporate in-person training provided by individuals with intellectual and developmental disabilities into POST’s training program on peace officer interactions with disabilities.

EXISTING LAW:

1) Requires all peace officers to complete an introductory course of training prescribed by the Commission on Peace Officers Standards and Training (POST), demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

2) States that satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of a peace officer whose employing agency prohibits the use of firearms. (Pen. Code, § 832, subd. (a).)

3) Specifies that a peace officer, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the training course. (Pen. Code, § 832, subd. (b).)

4) A person completing the training course who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of the powers of a peace officer, except as specified. (Pen. Code, § 832, subd. (c).)

5) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)

6) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503.)

7) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)
8) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)

9) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code, § 13510.1, subd. (a).)

10) Specifies that every peace officer, except as specified, shall complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers. (Cal. Code Regs., § 1005, subd. (a)(1).)

11) States that POST will grant an extension of time limit for completion of the basic training course upon presentation of satisfactory evidence by a department that a trainee is unable to complete the required course within the time limit because of illness, injury, military service, or special duty assignment required and made in the public interest of the concerned jurisdiction, or upon presentation of evidence by a department that a trainee is unable to complete the required course within the time prescribed. (Cal. Code Regs, § 1006. subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “Training for developmental disability is usually conflated under mental illness, which is itself a separate entity with potential intersections. Although both populations should be acknowledged and assisted as much as possible, it does a disservice to the I/DD community when they are shadowed by mental illness and not given specific accommodations and programs that may differ from other disabilities.

“Community involvement and hands-on training go along away to ensure trust around the community. More and more people are being dually diagnosed with an intellectual disability and involving an individual with I/DD puts a face to the name.”

2) Background: In 2016, POST released its “Police Response to People with Mental Illness, Intellectual Disabilities, and Substance Use Disorders” training materials. According to PSOT, the curriculum is an advanced officer course designed to provide law enforcement with information, techniques, and skills necessary to effectively respond to persons with mental illness, intellectual disability, and substance use disorder. This course was established in response to Penal Code section 13515.27, subd. (a), which was added to law with Senate Bill 11 (Beall), Statutes of 2016, and which mandated that POST establish and keep updated a continuing education classroom training course relating to law enforcement interaction with persons who have mental illness, intellectual disability, or substance use disorder.

According to POST, it met with subject matter experts on mental illness, intellectual disabilities, and substance use disorders to develop course content. The resulting Expanded Course Outline, Hourly Distribution, Learning Activities, and Instructor Guidelines are available from the POST website for agencies to download and certify through their POST Regional Consultant. However, none of the requirements under SB 11 or any other provision of current law require that POST training
3) **POST Training Requirements:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a.) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code, § 13510, subd. (a.) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a.)

According to the POST Web site, the Regular Basic Course Training includes 43 separate topics, ranging from juvenile law and procedure to search and seizure. (POST, Regular Basic Course Training Specifications; http://post.ca.gov/regular-basic-course-training-specifications.aspx.) These topics are taught during a minimum of 664 hours of training. [POST, Regular Basic Course, Course Formats, available at: (http://post.ca.gov/regular-basic-course.aspx.) Over the course of the training, individuals are trained not only on policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes.

4) **Current Mandatory POST Instruction Related to People with Disabilities:** POST introductory training includes a section called, People with Disabilities. It is the segment of academy training focused on police officers’ interactions with people with disabilities. This instruction (less than ten percent of academy training hours) covers a wide spectrum of disability-related topics, including understanding and identifying various types of disabilities (developmental, physical, and psychiatric) and reviewing state and federal disability laws and individuals rights protections. Also included in the instruction is training on interacting with people with mental health disabilities and the involuntary commitment process. However, nothing in current law dictates the source of training come from a person who has a mental or physical disability.

5) **Frequency of Law Enforcement Contacts Involving Mental Health Issues:** Law enforcement officers are often the first responders to mental health crisis calls; they respond to 911 calls ranging from suicide attempts to individuals potentially endangering themselves or others. Studies confirm that the volume of calls to law enforcement involving crisis mental health concerns have been increasing in the past decade. Mental health crisis calls also take more officer time to resolve. More than 80% of the agencies that Disability Rights California surveyed report that officers spend more time on these calls. Nearly four out of 10 agencies estimated that officers spend two hours or more on mental health calls. This means that on a typical day, officers can spend 1/3 of their time in interactions which would necessitate skills in crisis intervention and de-escalation. Beyond crisis calls, officers routinely respond to calls where they are required to determine whether a person meets the criteria for involuntary detention for psychiatric assessment and treatment (otherwise known as 5150). Even standard crime scene calls require officers to use skills to de-escalate potentially volatile situations when interacting with members of the public. (An Ounce of Prevention: Law Enforcement Training Mental Health Crisis Intervention, (2014) Disability Rights California, p. 37.)

Recognizing the inadequacy of academy training requirements, many law enforcement agencies throughout the state have augmented their training programs to provide officers with additional training after the academy in responding to people with mental health disabilities in crisis. Augmented training varies widely but generally includes information on recognizing the symptoms of a psychiatric disability and methods for how to interact with an
individual in crisis, including specific de-escalation techniques. Topics covered in a typical Crisis Intervention Training (CIT) training program are not otherwise mandated in California or required at any level of officer training. Police chiefs and senior officers consistently report that their personnel are better equipped at handling mental health crisis calls after participating in CIT training. Furthermore, jurisdictions in which officers receive CIT training report fewer injuries, fewer incidents requiring use of force, and better outcomes for their officers and community members. (An Ounce of Prevention: Law Enforcement Training Mental Health Crisis Intervention, (2014) Disability Rights California, p. 38-39.)

6) **Arguments in Support:** According to Disability Rights California: “Increased behavioral health training reduces the negative interactions between police officers and people who have mental health, intellectual or developmental disabilities. DRC has long supported preparing law enforcement officers to recognize, de-escalate, and appropriately respond to persons with mental health, intellectual and developmental disabilities, or substance use disorders. We have served as subject matter experts for the Commission on Peace Officer Standards and Training (POST), on several officer-training courses, including an expanded 8-hour course on interacting with individuals with mental health disabilities in crisis. DRC has worked with other statewide experts, mental health advocates, practitioners, and law enforcement officers, to identify key issues that field training officers need to address and master. DRC staff also served on an expert panel to develop a tool kit that includes best practices and a how-to guide for implementing successful Crisis Intervention Team (CIT) trainings and programs. We have also provided assistance in POST courses on hate crimes and interviewing victims with disabilities.

“AB 1170 continues the important work of ensuring that POST training will prepare law enforcement officers with the best tools for reducing negative interactions between law enforcement and persons with disabilities. Specifically, this bill would require POST, on or before January 1, 2021, and in consultation with the State Department of Developmental Services, the State Council on Developmental Disabilities, and representatives of community colleges, to incorporate in-person training provided by individuals with intellectual and developmental disabilities into that training course.”

7) **Related Legislation:** AB 640 (Frazier), would require additional training for district attorneys involved in the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases to also cover the investigation and prosecution of sexual abuse cases involving victims with developmental disabilities.

8) **Prior Legislation:** SB 11 (Beall), Chapter 463, Statutes of 2016, requires POST to establish a training course, that is at least 15 hours on law enforcement interaction with persons with mental illness, as part of its basic training course; and, have a three-hour continuing education course on the same subject matter.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Public Defenders Association
Disability Rights California
The Arc and United Cerebral Palsy California Collaboration
Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Prohibits an officer, employee, contractor, or employee of a contractor of the California Department of Corrections and Rehabilitation from facilitating, allowing entry to the department’s premises, or otherwise authorizing an employee or contractor of a private security company to arrest, detain, or take into custody, an individual in the department’s custody for immigration enforcement purposes. Specifically, this bill:

1) Prohibits an officer, employee, contractor, or employee of a contractor of the California Department of Corrections and Rehabilitation (CDCR) from not facilitating, allowing entry to the department’s premises, or otherwise authorizing an employee or contractor of a private security company to arrest, detain, or take into custody, an individual in the department’s custody for immigration enforcement purposes.

2) Defines the following terms for purposes of these provisions:

   a) “Arrest” means “taking a person into custody in a manner authorized by law;”

   b) “Immigration enforcement purposes” includes “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry or reentry into, or employment in, the United States;” and,

   c) “Private security company” means “a privately owned business that provides armed or unarmed security services, including providing transportation, guard, and patrol services.”

3) Makes legislative findings and declarations.

EXISTING LAW:

1) Requires CDCR to cooperate with the United States Immigration and Naturalization Service by providing the use of prison facilities, transportation, and general support, as needed, for the purposes of conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented aliens who are incarcerated in state prison. (Pen. Code, § 5026.)

2) Requires CDCR to refer to the United States Immigration and Naturalization Service the name and location of any inmate or ward who may be an undocumented alien and who may be subject to deportation for a determination of whether the inmate or ward is undocumented
and subject to deportation. (Pen. Code, § 5025.)

3) Requires CDCR, in advance of any interview between United States Immigration and Customs Enforcement (ICE) and an individual in department custody regarding civil immigration violations, provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. (Gov. Code, § 7284.10, subd. (a)(1).)

4) Requires CDCR, upon receiving any ICE hold, notification, or transfer request, provide a copy of the request to the individual and inform him or her whether the department intends to comply with the request. (Gov. Code, § 7284.10, subd. (a)(2).)

5) Prohibits CDCR from restricting access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether the person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual. (Gov. Code, § 7284.10, subd. (b)(1).)

6) Prohibits CDCR from considering citizenship and immigration status as a factor in determining a person’s custodial classification level, including, but not limited to, whether the person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against the individual. (Gov. Code, § 7284.10, subd. (b)(1).)

EXISTING FEDERAL LAW:

1) Grants an officer or employee of the Immigration and Naturalization Service of the Department of Justice the authority of an immigration officer: to interrogate, arrest, and conduct warrantless searches, as specified, of a person believed to be an alien of the United States. (8 U.S.C. § 1357(a)-(c).)

2) Permits the Attorney General of the United States to enter into a written agreement with a state, in which an officer or employee of the state is permitted to perform the functions of an immigration officer. (8 U.S.C. § 1357(g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author’s Statement:** According to the author, “The federal administration’s executive orders and memorandums have outlined a mass detention and deportation strategy, which rely heavily on questionable and abusive tactics that are in conflict with federal and state law, and in contradiction of basic and fundamental human and constitutional rights. As part of this strategy, the federal government has sought to not only leverage and compel state and local law enforcement to enforce federal immigration law, it also has worked to utilize private security companies in this effort. This is in direct contravention of established federal and state law as well as well-established legal precedent.
"As a result of these actions, the federal Immigration and Customs Enforcement (ICE) Agency has begun to rely heavily on the use of private security guards to enforce federal immigration law, which includes the unlawful authorization of private security guards to take into custody, detain and arrest immigrants who have secured their right to release from California state prisons. Federal law is clear, under the federal Immigration and Nationality Act (INA) and its implementing regulations private contractors are not authorized to enforce immigration law.

“This measure takes the important step of ensuring that CDCR complies with federal law by prohibiting private security contractors access to California prisons for the purposes of detaining, taking into custody or arresting individuals for immigration enforcement purposes.”

2) **ICE use of Private Security Contractors:** Immigrations and Customs Enforcement (ICE) as created in 2003 through a merger of the investigative and interior enforcement elements of the former U.S. Customs Service and the Immigration and Naturalization Service. ICE now has more than 20,000 law enforcement and support personnel in more than 400 offices in the United States and around the world. The agency has an annual budget of approximately $6 billion. ([https://www.ice.gov/about](https://www.ice.gov/about).) One of ICE’s primary directives is to conduct “enforcement and removal operations.” That includes identifying and arresting undocumented immigrants in the custody of CDCR, and then transporting them to detention centers to await deportation proceedings.

G4S Wackenhut or G4S Security Solutions is a private security company based in the United States. The services they offer include “risk consulting” and “security personnel.” They specifically offer “transportation officers” for hire. It is not entirely clear what sort of training that G4S officers have, nor if they are held to any professional standards. According to “officer.com” they have also built armored 15-passenger vans as part of a contract with ICE in order to transport removable aliens. According to the online article, “[b]y driving aliens in custody to processing centers, or any other number of locations such as court appearances, hospitals, or prisons, G4S officers and these vans help ICE free up time and resources that can be put to better use, for example in tracking and apprehension.” ([https://www.officer.com/on-the-street/vehicles-equipment/product/10162736/g4s-us-immigration-and-customs-enforcement-ice-van.](https://www.officer.com/on-the-street/vehicles-equipment/product/10162736/g4s-us-immigration-and-customs-enforcement-ice-van.)

The relationship between ICE and G4S has come under scrutiny from civil liberty groups such as the ACLU. According to a press release from July 2018, G4S caused nine women to spend more than 24 hours being moved from the West County Detention Facility in Richmond to the Mesa Verde Detention Facility in Bakersfield, even though the two cities are less than five hours apart. ([ACLU, ACLU Files Abuse Claims, Seeks Information on ICE Transport Contracts, Jul. 10, 2018, available at:](https://www.aclu.org/news/aclu-files-abuse-claims-seeks-information-ice-transport-contracts, [as of Apr. 3, 2019].) According to that report, the women’s feet, waists, and hands were shackled for much of the journey and they were denied adequate food and water. During one segment of the trip the women were shoved in the back of a windowless van with no air, which resulted in several of the women not being able to breathe, some vomited and fainted. (Id.)

This bill would prohibit CDCR from allowing private security company personnel to enter a facility for the purposes of conducting immigration enforcement. The sponsor of the bill
cites to Federal laws which specify what duties immigration officers have, and to whom they can delegate those duties. It does not appear that Federal law contemplates or allows for the use of private security companies, such as G4S, to conduct immigration enforcement.

3) **Argument in Support:** According to the *Riverside Sheriffs’ Association*: “The Riverside Sheriffs’ Association represents over 4,000 law enforcement professionals and we strongly support AB 1282 that seeks to curtail the use of incompetent and inhuman private prisoner transport services.

“Like private prisons, these inmate/detainee transport companies have a terribly tarnished history when it comes to providing safe and secure transport, endangering the lives of those in their custody as well as the public at large. It has been frequently documented that these companies will keep individuals in custody in their transport vans for weeks- even months at a time in order to maximize their profits.

“When inmates in private facilities are transported to court, medical treatment or being transferred to another facility, we have no idea who is transporting these prisoners, how they are being transported and their conditions during the trip. There are more laws regulating the transportation of livestock than the transportation of inmates.

“Are the Officers armed, are they trained in the use of deadly force, are they authorized to use it, who and where is their back-up, have they notified law enforcement agencies in the jurisdictions they are traveling through of their presence, and is their equipment appropriate? The list of questions grows with each incident that occurs on the road.

“These transport vans have burst into flames, killing all inmates chained inside. Female detainees have successfully alleged that they have been repeatedly sexually assaulted by the private security guards driving these vans. Additionally, escapes by inmates from these vans has been extremely common and have resulted in multiple kidnappings, assaults and homicides committed by the escapees. These instances have played out across the country and throughout California.

“Numerous class action lawsuits have been filed as a result of the horrific treatment provided. The inmates who are most often subjected to these transports are pretrial detainees who are presumed innocent.”

4) **Related Legislation:** AB 32 (Bonta) would prohibit CDCR from entering into, or renewing contracts with for-profit private prisons after January 1, 2020, and eliminates their use by January 1, 2028. AB 32 is pending in the Assembly Appropriations Committee.

5) **Prior Legislation:**

a) AB 1320 (Bonta), would have prohibited the California Department of Corrections and Rehabilitation (CDCR) from entering into, or renewing contracts with private prisons after January 1, 2018, and eliminated their use by January 1, 2028. AB 1320 was vetoed by Governor Brown.
b) AB 1440 (Kalra), Chapter 116, Statutes of 2017, clarified that United States Immigration and Customs Enforcement (ICE) officers are not California peace officers.

c) SB 54 (De Leon), Chapter 495, Statutes of 2017, limited the involvement of state and local law enforcement agencies in federal immigration enforcement, but excluded CDCR from this requirement.

d) SB 29 (Lara), Chapter 494, Statutes of 2017, prohibited local governments and law enforcement from contracting with companies that operate for-profit immigration detention facilities, and required those facilities to uphold national standards for humane treatment of detainees.

e) AB 2792 (Bonta), Chapter 768, Statutes of 2016, required local law enforcement agencies, prior to an interview between the United States Immigration and Customs Enforcement (ICE) and an individual in custody, to provide the individual a written consent form, as specified, that would include information describing the purpose of the interview, that it is voluntary, and that the individual may decline to be interviewed.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice - California (Co-Sponsor)  
Freedom for Immigrants (Co-Sponsor)  
Legal Services for Prisoners with Children (Co-Sponsor)  
A New Way of Life Re-Entry Project  
Asian Refugees United  
California Immigrant Policy Center  
California Public Defenders Association  
California Rural Legal Assistance Foundation, Inc.  
Coalition for Humane Immigrant Rights  
Courage Campaign  
Food Empowerment Project  
Long Beach Immigrant Rights Coalition  
Re:Store Justice  
Reuniting Families Contra Costa  
Riverside Sheriffs' Association  
Root and Rebound Reentry Advocates  
San Francisco Peninsula People Power  
South Bay People Power  
Southeast Asia Resource Action Center

Opposition

None

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 1294 (Salas) – As Amended March 18, 2019

SUMMARY: Expands the list of specified crimes that fall within the definition of gambling for purposes of providing a procedure for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity. Specifically, this bill: adds numerous gambling crimes to the crimes included in “criminal profiteering activity,” including crimes connected to operating a lottery or any slot or card machine, contrivance, appliance or mechanical device.

EXISTING LAW:


2) Declares that the Legislature finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that the “California Control of Profits of Organized Crime Act” be used by prosecutors to punish and deter only such activities. (Pen. Code, § 186.1.)

3) Defines “criminal profiteering activity” as “any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime for gambling, among other offenses.” (Pen. Code, § 186.2, subd. (a.).)

4) Defines “pattern of criminal profiteering activity” to mean engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements: (Pen. Code, § 186.2, subd. (b)(1).)

   a) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;

   b) Are not isolated events; and/or

   c) Were committed as a criminal activity of organized crime.

5) Defines “organized crime” as “a crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as gambling, among other offenses, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors.”

   “Organized crime” also means “a crime committed by a criminal street gang,” as defined.

   “Organized crime” also means “false or fraudulent activities, schemes, or artifices, as
defined, and the theft of personal identifying information,” as defined. (Pen. Code, § 186.2, subd. (d.).)

6) States that the following assets of any person who is convicted a specified underlying offense and of engaging in a pattern of criminal profiteering activity are subject to forfeiture (Pen. Code, § 186.3):

a) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity; and,

b) All proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.

7) States that, notwithstanding that no response or claim has been filed, in all cases where property is forfeited, as specified, and, if necessary, sold by the Department of General Services (DGS) or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows (Pen. Code, § 186.8):

a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed;

b) To DGS or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified; and,

c) To the State's General Fund or local governmental entity, whichever prosecutes.

8) Defines a “lottery” as any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. (Pen. Code, § 319.)

9) Makes it a misdemeanor for a person to contrive, prepare, set up, propose, or draw any lottery. (Pen. Code, § 320.)

10) Makes it a misdemeanor for a person to sell, give, or in any manner whatever, furnish or transfer to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery. (Pen. Code, § 321.)

11) Makes it a misdemeanor for a person to aid or assist in, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in
sitting or disposing of any ticket, chance, or share therein. (Pen. Code, § 322.)

12) Makes it a misdemeanor for a person to open, set up, or keep, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertise or publish the setting up, opening, or using of any such office. (Pen. Code, § 323.)

13) Makes it a misdemeanor for a person to let, or permit to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets. (Pen. Code, § 326.)

14) Makes it a misdemeanor for a person who has in his or her possession as specified any slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing is staked or hazarded, and which is operated, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in or exchangeable for money or any other thing of value, is won or lost, or taken from or obtained from the machine, when the result of action or operation of the machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance. (Pen. Code, § 330a.)

15) Makes it a misdemeanor for a person to maintain under his or her management or control, any card dice, or any dice having more than six faces or bases each, upon the result of action of which any money or other valuable thing is staked or hazarded, or as a result of the operation of which any merchandise, money, representative or article of value, check or token, redeemable in or exchangeable for money or any other thing of value, is won or lost or taken, when the result of action or operation of the dice is dependent upon hazard or chance. (Pen. Code, § 330a.)

16) Makes it a misdemeanor for a person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined. (Pen. Code, § 330b.)

17) Makes it a misdemeanor for a person for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value. (Pen. Code, § 330b.)

18) Defines a "punchboard" to be "a slot machine or device subject to misdemeanor liability for possessing or otherwise controlling a slot machine." Defines punchboard to mean "any card, board or other device which may be played or operated by pulling, pressing, punching out or otherwise removing any slip, tab, paper or other substance therefrom to disclose any
concealed number, name or symbol.” (Pen. Code, § 330c.)

19) Makes it a misdemeanor for a person to control, as specified, any slot machine or device, and every person who makes or permits to be made with any person any agreement with reference to any slot machine or device, pursuant to which agreement the user thereof, as a result of any element of hazard or chance, may become entitled to receive anything of value or additional chance or right to use that slot machine or device, or to receive any check, slug, token, or memorandum, whether of value or otherwise, entitling the holder to receive anything of value. (Pen. Code, § 330.1.)

20) Declares that the mere possession or control, either as owner, lessee, agent, employee, mortgagor, or otherwise of any slot machine or device is prohibited and penalized as a misdemeanor. Declares that every person who permits to be placed, maintained or kept in any room, space, enclosure, or building owned, leased or occupied by him, or under his management or control, whether for use or operation or for storage, bailment, safekeeping or deposit only, any slot machine or device is guilty of a misdemeanor. Further declares that any slot machine or device as defined is subject to confiscation. (Pen. Code, § 330.4.)

21) Provides that if a gambling enterprise conducts play of a controlled game that has been approved by the Department of Justice, and the controlled game is subsequently found to be unlawful, so long as the game was played in the manner approved, the approval by the department shall be an absolute defense to any criminal, administrative, or civil action that may be brought, provided that the game is played during the time for which it was approved by the department and the gambling enterprise ceases play upon notice that the game has been found unlawful. In any enforcement action, the gambling enterprise shall have the burden of proving the department approved the controlled game and that the game was played in the manner approved. (Bus. & Prof. Code, § 19943.5.)

22) Prohibits any person from using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value, except as specified. (Bus. & Prof. Code, § 17539.1, subd. (a)(12).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “Like many criminal enterprises, gambling has evolved in recent years as technology progresses. In some of our most vulnerable communities, law enforcement is facing an illegal gambling epidemic with enterprises opening up faster than the police can shut them down. Many of these gambling operations include sweepstakes cafes and arcade-style gambling machines. Police have noted that these gambling businesses have been linked to drugs, property crimes, robberies, and even shootings. In addition, these gambling enterprises are known to have strong connections to organized crime. Currently, law enforcement does not possess the tools to effectively shutter
enough gambling locations. Convicted operators are usually fined a few thousand dollars and continue to open up new illicit businesses.

“AB 1294 would expand the definition of ‘criminal profiteering activity’ in Penal Code section 186.2, subdivision (a)(8) to include various gambling device statutes. This would allow law enforcement to more effectively impact the industry of illicit gambling. Instead of relying on small fines and equipment seizures, this bill would enable law enforcement to target the bank accounts that contain the illicit profits of operators who are running illegal gambling enterprises operating sweepstake cafes and arcade-style gambling machines, some of which may be linked to organized crime.”

2) **Need for this Bill**: According to the author, existing asset forfeiture law relating to gambling is outdated and primarily applies to bookmaking crimes, and does not extend to illegal slot machines or newer forms of gambling devices such as electronic games. “While these forms of gambling are illegal under current law, most offenses are only classified as misdemeanors. Consequently, law enforcement are unable to properly shutter gambling locations with operators continuing to reap massive profits and open up new enterprises throughout the state.” By expanding the definition of “criminal profiteering activity” to include various gambling devices and statutes, the author says this bill would allow law enforcement to “more effectively impact the industry of illicit gambling by enabling officers to target the bank accounts of operators that contain the illicit profits of operators who are running illegal gambling enterprises, many which may be tied to organized crime.”

There are reports of illegal gambling operations from Westminster and Santa Ana, and more recently Bakersfield. These “gambling dens” offer casino machine and arcade entertainment devices that appear to be games but are functionally slot machines—no skill is involved. The subsequent exchange for money based on the games is what makes the games illegal. (See Rath, Robert, “Why Cops Are Raiding Arcades Over a Fishing Game,” Waypoint, July 22, 2015, Available at: https://waypoint.vice.com/en_us/article/znm8zx/why-cops-are-raid-arcade-over-a-fishing-game.)

3) **Criminal Profiteering Asset Forfeiture Generally**: Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Criminal profiteering activity means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime [under various criminal statutes]. Gambling has long been included as a qualifying offense for asset forfeiture. Despite the Legislature’s work to update the law relating to the crimes of gambling through different technology, the asset forfeiture provision regarding gambling has remained static. This bill “modernizes” the law by adding the new, similar gambling misdemeanor crimes to the list of gambling crimes that already permit asset forfeiture.

Current law requires a criminal conviction in most forfeiture cases, to protect the rights of the innocent without jeopardizing public safety. This bill does not touch this issue, but deals with asset forfeiture in an ongoing criminal case—the section of law being amended by this bill would only permit the forfeiture of assets when there is a conviction for the underlying crime. Asset forfeiture in this context is distinct from state civil asset forfeiture generally, which was largely eliminated by the Legislature in 2016 when it passed SB 443 (Mitchell) which provides individuals with stronger property rights protections by requiring a conviction in most state civil asset forfeiture cases.
A proceeding to determine whether assets should be forfeited is often reviewed by the same jury that heard the underlying criminal charges against a defendant, which is in the position to determine whether the assets were the product of ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime. Under Penal Code Section 186.2, asset forfeiture for is still allowed upon conviction of more than thirty crimes—including gambling—under specified circumstances.

4) **Criminal Profiteering Proceeds:** Under Penal Code section 186.8, forfeited assets are distributed as follows:

a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declares the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified.

c) To the State’s General Fund or local governmental entity, whichever prosecutes.

Under existing law, the forfeited proceeds of criminal profiteering are placed in the county general fund with no directions for use. There is an exception for forfeiture in child pornography cases. In such cases, the money is deposited in the county or State Children’s Trust Fund for child abuse and neglect prevention and intervention. (Pen. Code, § 186.8 and Welf. & Inst. Code, § 18966 and 18969.) In California drug asset forfeiture, law enforcement receives 65% of forfeiture proceeds. (Health and Safety Code Sections 11469 et seq.) Of this amount, 15% must be placed in a special county or city fund used “to combat drug abuse and divert gang activity.” Under federal forfeiture law allowing “adoption” of state seizures of drug proceeds, the agency seizing that property may receive as much as 80% of these proceeds. This money must be used according to guidelines set by the United States Department of Justice and require that the money be used largely for law enforcement.

It is possible that asset forfeiture under the criminal profiteering law may still be problematic, in light of the defendant’s ability to pay and the proportion of the forfeiture to the crime. For example, *Timbs* was a case dealing with asset forfeiture, not specifically fines. (*Timbs v. Indiana* (2019) 586 U.S. ___ [203 L.Ed.2d 111].) *Timbs* was charged with three felonies stemming from the transportation of heroin. He pleaded guilty to two of the charges. The court sentenced *Timbs* to six years and ordered him pay fees and costs totaling approximately $1,200. Additionally, the prosecutor sought to forfeit *Timbs*’ Land Rover, which was purchased for $42,000. *Timbs* argued that the seizure was an excessive fine, because it was more than four times the $10,000 maximum fine which could be imposed for his conviction under state law. (*Timbs*, supra, 230 L.Ed.2d at p. 15.) The Supreme Court agreed and unanimously ruled that the Eighth Amendment’s prohibition against excessive fines applies to the states under the Due Process clause of the Fourteenth Amendment. (Id. at p. 17.) The Court noted that the Excessive Fines clause, which “limits the government’s power to extract
payments, whether in cash or in kind, as punishment for some offense” is “deeply rooted in this Nation’s history and tradition.” (Id. at pp. 17, 19, citations omitted.) The opinion also recognized that “fines may be employed ‘in a measure out of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State money.’” (Id. at p. 18, quoting Harmelin v. Michigan (1991) 501 U.S. 957, 979, fn. 9.)

This bill is consistent with these constitutional protections; the money seized under this bill is directly tied to the collection of ill-gotten gains from a defendant convicted of a specified crime.

5) **Elements of the Offense:** Proceeds can be forfeited if the proceeds were gained through a pattern of criminal activity and were gained through involvement in organized crime. “Pattern of criminal profiteering activity” means engaging in at least two incidents of criminal profiteering (listed above), that meet the following requirements

a) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;

b) Are not isolated events; and/or

c) Were committed as a criminal activity of organized crime. (Penal Code, § 186.2(b).)

6) **Argument in Support:** According to the Kern County District Attorney’s Office, “This would allow law enforcement to more effectively deal with the industry of illicit gambling. Instead of relying on small fines and equipment seizures, this bill would enable law enforcement to target bank accounts containing the illicit profits of operators who are running illegal gambling enterprises, operating sweepstakes cafes and arcade-style gambling machines, some of which may be linked to organized crime.

“AB 1294 will go a long way in helping law enforcement shut down these illegal operations. Operators of these gambling locations are not licensed, regulated, or subject to criminal background checks. Currently, law enforcement does not possess the tools to effectively close enough of these nefarious locations. Most offenses are simple misdemeanors and convicted operators continue to open new illicit businesses.”

7) **Prior Legislation:**

a) AB 443 (Alejo), of the 2015-2016 Legislative Session, would have permitted prosecutors to seize assets and property of individuals associated with transnational criminal organizations up to 60 days prior to the filing of criminal charges pursuant to criminal profiteering forfeiture proceedings. AB 443 was held on the Senate Appropriations Suspense File.

b) AB 160 (Dababneh), Chapter 427, Statutes of 2015, added piracy of musical or audiovisual works, and unemployment insurance fraud to the list of crimes for which criminal asset forfeiture is authorized.
c) AB 1395 (Salas), of the 2015-2016 Legislative Session, would have expanded the definition of criminal activity for purposes of money laundering to include various misdemeanors that are related to illegal lotteries and gaming. AB 1395 was held on the Senate Appropriations Suspense File.

d) SB 298 (Block), of the 2015-2016 Legislative Session, would have added to the list of crimes for which a wiretap may be sought for money laundering for the benefit of or in association with an ongoing organization that has engaged in criminal profiteering and if the values of the transactions exceed $50,000. SB 298 was held on the Senate Appropriations Suspense File.

e) AB 1439 (Salas), Chapter 592, Statutes of 2014, prohibited any person, when conducting a contest or sweepstakes, from using an electronic video monitor to simulate gambling or play gambling-themed games that offers the opportunity to win sweepstakes cash, cash equivalent prizes, or other prizes of value.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General of California
Avenal Police Department
California District Attorneys Association
California State Sheriffs' Association
Corcoran Police Department
Kings County Sheriff's Office
Lemoore Police Department
Selma Police Department

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Requires the custodian of a juvenile facility to report specific information regarding the use of chemical agents to the Board of State and Community Corrections (BSCC), and requires the Legislative Analyst’s Office (LAO) to analyze the data collected and report to the Legislature. Specifically, this bill:

1) States legislative intent to collect information about the use of chemical agents in juvenile facilities in order to reduce, and eventually eliminate, their use.

2) Requires the custodian of each juvenile facility report, on a quarterly basis, to the BSCC the number of instances in which chemical agents were used in the facility and the number of minors affected by the use of the chemical agents, and including, for each instance of use of a chemical agent, all of the following:

   a) Demographic information, including age, gender, and race, of minors affected, whether the minors affected were predisposition or post disposition, and whether the minors affected have a documented disability;

   b) The date, time, and location within each facility of each use of chemical agents;

   c) The efforts made to deescalate prior to the use of chemical agents;

   d) The stated reasons for the use of chemical agents;

   e) Other physical force techniques used in conjunction with, or after, the use of chemical agents, and the techniques that were used;

   f) Decontamination procedures employed after the use of chemical agents;

   g) Injuries to minors resulting from the use of chemical agents, and of those, the number of injuries resulting in hospitalization;

   h) Injuries to staff caused by the use of chemical agents; and,

   i) The number of instances in which minors not involved in a precipitating incident were affected by chemical agents and the number of minors affected.

3) Requires the custodian of each juvenile facility to report to BSCC the facility’s policy on each of the following:
a) Use of force and the use of chemical agents;

b) Identifying minors for whom the use of chemical agents is contraindicated;

c) Deescalation prior to the use of force, including the use of chemical agents; and,

d) Decontamination following the use of chemical agents.

4) Requires, commencing January 1, 2021, and on an annual basis thereafter, the BSCC to conduct inspections of the juvenile facilities in the top quartile of use of chemical agents per capita based on average daily population over the previous year and to provide training and technical assistance regarding deescalation techniques and alternatives to the use of chemical agents.

5) Requires the LAO to conduct a study on the use of chemical agents in juvenile facilities, which shall include each of the following:

a) An analysis of the data provided to the BSCC by the custodians of the juvenile facilities;

b) A study of the policies and practices of juvenile facilities that do not employ chemical agents;

c) A study of the policies and practices of juvenile facilities in the top quartile of use of chemical agents per capita based on average daily population over the previous year;

d) Consultation with stakeholders, including individuals currently or formerly detained in juvenile facilities;

e) Consideration of the best practices of other states that have eliminated the use of chemical agents in juvenile facilities; and,

f) Recommendations for the reduction or elimination of the use of chemical agents in juvenile facilities.

6) Requires the LAO to submit its report to the Legislature on or before January 1, 2021.

EXISTING LAW:

1) Provides that the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment. (Welf. & Inst. Code, § 851.)

2) Provides that in order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that those wards may be kept under direct supervision of the court, and in order to more advantageously apply the salutary effect of a safe and supportive home and family environment upon them, and also in order to secure a better classification and segregation of those wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self-discipline in those wards, juvenile ranches
or camps may be established, as provided in this article. (Welf. & Inst. Code, § 880.)

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

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, “AB 1321 seeks to improve our understanding of the role of chemical agents in juvenile facilities by conducting a study on the use of these agents and other alternatives to ensure that rehabilitation is of the utmost importance. Excessive use of chemical agents on youth in juvenile detention facilities not only produces physical and mental health effects, but also interferes with rehabilitation by damaging relationships between youth and staff. My goal is to gather data so that LAO can give recommendations on addressing this issue. Currently, detention facilities are required to document each time a correctional officer uses force, including the use of chemical agents. This bill seeks to take this existing data and require it to be reported to the Board of State Corrections.”

2) **Pepper Spray**: Pepper spray, or oleoresin capsicum (OC) spray, is a type of chemical restraint that contains capsaicinoids extracted from the resin of hot peppers. According to a report published by the National Institute of Justice, pepper spray, “incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes...and temporarily restricting breathing to short, shallow breaths. [http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf](http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf)
In *U.S. v. Neill* (1999) 166 F.3rd 943, the 9th Circuit Court of Appeal held that, "Pepper spray qualifies as a 'dangerous weapon' because it may cause 'serious injury,' namely 'extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty'...."

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

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

4) **Argument in Support:** According to the *Youth Law Center*, the Sponsor of this bill, "We are sponsoring AB 1321 because we believe that the use of chemical agents on detained young people is harmful, contrary to the rehabilitative purpose of the juvenile justice system, and out of step with national best practices. Despite this, little is known about how chemical agents are used in California juvenile facilities, impeding our ability to develop a realistic plan for reduction or elimination of this harmful practice. AB 1321 will create the transparency necessary to better understand how chemical agents are used in California’s juvenile detention facilities and to explore strategies that have proven to be effective in safely reducing the use of chemical agents. AB 1321 is an important first step to bring California in line with national practice on this issue...."

"The use of chemical agents should be restricted in juvenile detention facilities, as their use is physically and psychologically harmful to young people. The most commonly used chemical
agent – oleoresin capsicum ("OC") spray – poses significant health risks to everyone exposed to it. These risks may be exacerbated by medical contraindications, mental illness, insufficient air circulation, and repeated exposure – all conditions that exist in juvenile facilities. A 2009 literature review indicated that the effects of OC spray are exacerbated in confined areas and areas with poor ventilation, two characteristics of many juvenile facilities.

"Beyond the physical and mental health effects of chemical agents discussed above, the use of OC spray can have serious effects on the relationship between youth and staff – a relationship that is crucial to rehabilitation. Young people thrive when they are in healthy, trusting relationships with committed, caring adults. In the absence of these relationships, efforts at rehabilitation and supportive programming suffer. As the Office of Juvenile Justice and Delinquency Prevention has observed, ‘youth distrust of facility staff and conflict with them can undermine program efforts to alter delinquent career paths and elevate discipline, control, and safety issues.’"

"When facility staff are equipped with OC spray, it is difficult to build trust with young people, who can see that staff are so equipped. And when OC spray used against young people, that trust is further degraded. Instead of relying on OC spray to control youth’s behavior, staff in juvenile facilities should employ non-punitive approaches, such as Positive Behavior Interventions and Supports, which both ensure safety in facilities and contribute to youth’s rehabilitation. AB 1321 will move California’s juvenile facilities toward these approaches by providing training and technical assistance on safe de-escalation and alternatives to OC spray for juvenile facilities that use OC spray at a higher rate than average. In addition, AB 1321 will require the Legislative Analyst’s Office to study the practices of juvenile facilities both inside and outside of California that have already successfully eliminated chemical agents, with a goal of developing realistic recommendations for the reduction or elimination of OC spray. These measures will support facilities across the state in the creation of trusting, supportive relationships between youth and staff and ultimately improve safety in California’s juvenile facilities.

"It is clear that California should reduce and eventually eliminate its reliance on the use of chemical agents in juvenile facilities. However, a lack of information on how chemical agents are currently used and on the practices that are succeeding in counties where chemical agents are not used has been a barrier to the development of a statewide strategy to advance towards this goal.

"AB 1321 will remove this barrier."

5) **Argument in Opposition**: According to the *Chief Probation Officers of California*, “CPOC recognizes the importance of discussions regarding the use of chemical agents in county juvenile facilities. As you know, currently in California, chemical agents are used in some jurisdictions while not used in others, decided as a matter of local policy and practice.

“To this end, CPOC is sponsoring AB 696 (Lackey), which would establish a comprehensive study to be done by an independent, third party research entity to look at the impacts of chemical agents on youth and staff, best practices, training, and an analysis of law and outcomes in other states.
“Although AB 1321 sets forth requirements for a study, there are several provisions in the bill that reference and reflect the goal of elimination of chemical spray. This bill is structured in a way that seems to have already asked and answered the policy question from the vantage point that chemical spray should be eliminated. We believe that an independent, unbiased study must first be completed in order to inform policy makers of the information and context necessary to determine policies on the use of chemical spray in county juvenile facilities.

“As a profession that relies on research to guide policy, we are open to take an honest look at the use of chemical spray, through validated research, and then discuss the efficacy of its use based on what that research finds.”

6) **Related Legislation:** AB 696 (Lackey), would require the board to contract with a research entity to conduct a study on the efficacy and impacts of the use of pepper spray in juvenile halls and juvenile ranches, camps, and forestry camps. AB 696 is pending in this committee.

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Youth Law Center (Sponsor)
American Civil Liberties Union of California
Bend the Arc: Jewish Action
California Public Defenders Association
Center on Juvenile and Criminal Justice
Children Now
Children's Defense Fund-California
Disability Rights California
Ella Baker Center for Human Rights
Juvenile Justice Commission of Santa Clara County
Lawyers' Committee for Civil Rights
Legal Services for Children
Motivating Individual Leadership for Public Advancement
National Center for Lesbian Rights
Pacific Juvenile Defender Center
The W. Haywood Burns Institute
Youth Justice Coalition

**Oppose**

Chief Probation Officers of California
Riverside Sheriffs' Association

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Repeals the 20% state surcharge that is levied on all criminal fines, except the restitution fine.

EXISTING LAW:

1) Requires that a state surcharge of 20% be levied on base fines imposed for criminal offenses. (Pen. Code, § 1465.7, subd. (a).)

2) Provides that monies collected from the state surcharge are to be transmitted to the General Fund. (Pen. Code, § 1465.7, subd. (c).)

3) States that the surcharge shall be in addition to the state penalty of $10 for every $10 of an imposed fine, except parking fines, which monies are deposited in the State Penalty Fund. (Pen. Code, § 1465.7, subd. (b).)

4) Excludes the restitution fine from the state surcharge. (Pen. Code, § 1202.4, subd. (e).)

5) Prohibits the imposition of excessive fines. (Cal. Const., art. 1, § 17.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “In an effort to generate revenue for certain programs, the Legislature has added various financial penalties and fees to the base fines associated with traffic violations and misdemeanor offenses. In 2002, the Legislature added a flat, 20% state surcharge to all base fines, the proceeds of which are deposited into the state General Fund and are not tied to the administration of a particular state or local program. While it is important that California appropriately deters individuals from violating traffic safety laws, the state must ensure that it is not administering unequal justice or trapping individuals of low socio-economic status in an endless cycle of debt. While the 20% surcharge in question may mean only an additional $7 on a base fine of $35, it means an additional $20 on a base fine of $100 and an additional $200 on a base fine of $1000.

“California’s General Fund revenues exceeded $130 billion during FY 2017-18 and $137 billion during FY 2018-19, and they are anticipated to be $145 billion during FY 2019-20. The LAO has predicted an ‘extraordinary’ surplus of $20 billion in FY 2019-20, and Governor Newsom has proposed setting aside $18 billion in reserves. With revenue and surplus predictions of this magnitude, the imposition of a 20% surcharge on costly traffic
violations, the proceeds of which pad the General Fund while driving the most vulnerable and impoverished Californians into debt, is unjustifiable."

2) **State Surcharge**: In 2002, the Legislature added a flat, 20% state surcharge to all base fines, the proceeds of which are deposited into the state General Fund and are not tied to the administration of a particular state or local program (AB 3000, Budget Committee, Chapter 1124 of 2002). The surcharge was set to sunset on January 1, 2008, but the Legislature chose to make permanent the surcharge in 2007, due to the recession (SB 82, Budget Committee, Chapter 176 of 2007).

“The surcharge mandated by Penal Code section 1465.7, like its companion penalty assessment set forth in section 1464, is a ‘garden variety’ fine calculated on the size and severity of the base fine imposed. It does not purport to reimburse government for an expense incurred. Rather, the revenue collected is deposited in the State General Fund.” (*People v. High* (2004) 119 Cal.App.4th 1192, 1197.)

Imposition of the surcharge is mandatory; failure to impose it is a jurisdictional error which may be corrected on appeal. (See e.g. *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1530.)

3) **Decreasing Revenues from State Surcharge**: The Legislative Analyst’s Office (LAO) has provided this Committee the following information regarding approximate amounts distributed related to the state surcharge which is deposited into the State General Fund¹:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Distributed (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>$63.7</td>
</tr>
<tr>
<td>2010-11</td>
<td>$60.4</td>
</tr>
<tr>
<td>2011-12</td>
<td>$55.1</td>
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<tr>
<td>2012-13</td>
<td>$51.3</td>
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<tr>
<td>2013-14</td>
<td>$49.0</td>
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<tr>
<td>2014-15</td>
<td>$46.7</td>
</tr>
<tr>
<td>2015-16</td>
<td>$41.7</td>
</tr>
</tbody>
</table>

The figures provided by the LAO show that the revenue collected and distributed from the state surcharge is decreasing.

¹ The LAO informed this Committee that there was a lack of complete and accurate data which could mean that amounts could be higher or lower than provided.
4) **Financial Implications for Criminal Defendants:** "As legislative and other policy makers are becoming increasingly aware, the growing use of ... fees and similar forms of criminal justice debt creates a significant barrier for individuals seeking to rebuild their lives after a criminal conviction. Criminal justice debt and associated collection practices can damage credit, interfere with a defendant's commitments, such as child support obligations, restrict employment opportunities and otherwise impede reentry and rehabilitation. "What at first glance appears to be easy money for the state can carry significant hidden costs—both human and financial—for individuals, for the government, and for the community at large. ... Debt-related mandatory court appearances and probation and parole conditions leave debtors vulnerable for violations that result in a new form of debtor's prison. ... Aggressive collection tactics can disrupt employment, make it difficult to meet other obligations such as child support, and lead to financial insecurity—all of which can lead to recidivism." (Citation omitted.) These additional, potentially devastating consequences suffered only by indigent persons in effect transform a funding mechanism for the courts into additional punishment for a criminal conviction for those unable to pay." (People v. Duenas (2019) 30 Cal.App.5th 1157, 1168, quoting People v. Neal (2018) 29 Cal.App.5th 820, 827.)

5) **Growth of Uncollected Debt:** While criminal fines, fees, and penalties have climbed steadily, government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts. A San Francisco Daily Journal article from several years ago noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, 1/5/2015 by Paul Jones and Saul Sugarman.)

Simply put, criminal defendants can generally not produce a substantial flow of money for fines. That well will quickly run dry. In the same Daily Journal article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (Daily Journal, supra.) The article noted in particular that "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (Ibid.)

In March of 2017, when the Legislative Analyst’s Office (LAO) analyzed the Governor’s criminal fines and fees proposal for the 2017-2018 budget, it noted, “Based on available data in Judicial Council reports, the total amount of criminal fines and fees collected has declined annually since 2013-14. ... [T]otal collections decreased by nearly $200 million—from $1.8 billion in 2013-14 to $1.6 billion in 2015-16. The $1.6 billion consists of about $905 million (56 percent) in debt that was not delinquent and $720 million (44 percent) in delinquent debt." (See 2017-2018 Budget: Governor’s Criminal Fines and Fees Proposal, pp. 7-8, http://www.lao.ca.gov/reports/2017/3600/Criminal-Fine-Fee-030317.pdf)

As to the balance of outstanding debt, the LAO commented, “Every year, the courts estimate the total outstanding balance of debt owed by individuals. This balance may decrease when individuals make payments or debt is resolve in an alternative manner, such as when a portion of debt is dismissed because the individual performs community service in lieu of payment. However, this amount generally grows each year as some amount of newly imposed fines and fees goes unpaid and is added to the amount of unresolved debt from prior years. ... [A]n estimated $12.3 billion in fines and fees remained outstanding at the end of
2015-16. We would note, however, that a large portion of this balance may not be collectable as the costs of collection could outweigh the amount that would actually be collected.” (Id. at p. 8.)

6) **Argument in Support:** According to the *California Public Defenders Association*, “Under existing law, Californians convicted of a variety of minor offenses are required to pay fines and court fees far in excess of what they can afford. A low-grade misdemeanor, for example, may carry costs ranging into the thousands of dollars. For indigent, often homeless defendants, such fines are simply unpayable, and actively discourage attempts at self-rehabilitation.

“One of the biggest reasons fines and court costs have ballooned beyond the ability of the average person to pay is Penal Code section 1465.7, which requires courts to impose a 20% tax on any fine imposed by the court. Thus, under current law, whenever the court orders a fine, the court is required to increase the amount of the fine by 20%.

“AB 1348 addresses this issue by deleting the requirement that the court impose a 20% tax on fines, thereby moving away from a system in which the state seeks to make money at the expense of its poorest citizens.”

7) **Related Legislation:**

a) AB 227 (Jones-Sawyer), would authorize a court to waive imposition of a criminal conviction assessment fee, court operations assessment fee or restitution fine based on the court’s determination of the defendant’s ability to pay. AB 227 is pending in the Assembly Appropriations Committee.

b) AB 927 (Jones-Sawyer), would prohibit the court in criminal or juvenile proceeding or conviction involving a misdemeanor or felony from imposing fines, fees, and assessments without making a finding that the defendant has the ability to pay. AB 927 is pending hearing in the Assembly Appropriations Committee.

c) SB 144 (Mitchell), would eliminate various administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, and discharges outstanding debt incurred as a result of the administrative fees. SB 144 is pending referral by the Senate Rules Committee.

8) **Prior Legislation:**

a) SB 82 (Committee on Budget), Chapter 176, Statutes of 2007, removed the sunset date for the 20% state surcharged on criminal fines.

b) AB 3000 (Committee on Budget), Chapter 1124, Statutes of 2002, enacted a 20% surcharge on criminal fines which was to become inoperative on July 1, 2007.

**REGISTERED SUPPORT / OPPOSITION:**
Support

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
National Association of Social Workers, California Chapter
Peace Officers Research Association of California
Re:Store Justice

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Expands the youth deferred entry of judgment pilot program to defendants who are 21 years of age or older, but under 25 years of age at the time of the offense with approval of the multidisciplinary team.

EXISTING LAW:

1) Provides that the counties of Alameda, Butte, Napa, Nevada, and Santa Clara may establish a pilot program to operate a deferred entry of judgment pilot program for certain eligible defendants. (Pen. Code, § 1000.7, subd. (a).)

2) Provides that a defendant may participate in a deferred entry of judgment pilot program within the county’s juvenile hall if that person is charged with committing a felony offense, except as specified, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

   a) Is 18 years of age or older, but under 21 years of age on the date the offense was committed;

   b) Is suitable for the program after evaluation using a risk assessment tool, as specified;

   c) Shows the ability to benefit from services generally reserved for delinquents, including but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;

   d) Meets the rules of the juvenile hall developed in accordance with the applicable regulations;

   e) Does not have a prior or current conviction for committing certain specified offenses; and,

   f) Is not required to register as a sex offender, as specified. (Pen. Code, § 1000.7, subd. (b).)

3) Provides that the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, must develop an evaluation process using a risk assessment tool to determine eligibility for the program. (Pen. Code, § 1000.7, subd. (c).)
4) Provides that if the defendant is required to register as a sex offender, as specified, or if he or she has been convicted of one or more of the following offenses, he or she is not eligible for the program:

a) A “serious” felony, as that term is defined by law;

b) A “violent” felony, as that term is defined by law; or,

c) A serious or violent crime as that term is defined by juvenile law. (Pen. Code, § 1000.7, subd. (d).)

5) Provides that the court must grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment. (Pen. Code, § 1000.7, subd. (e).)

6) Provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment pilot program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case. (Pen. Code, § 1000.7, subd. (f)(1).)

7) Provides that if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court is required to hold a hearing to determine whether judgment should be entered. (Pen. Code, § 1000.7, subd. (f)(2).)

8) Provides that if the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court is required to render a finding of guilt to the charge or charges pleaded, enter judgment, and schedule a sentencing hearing, and the probation department, in consultation with the county sheriff, is required to remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local multidisciplinary team, as specified. (Id.)

9) Provides that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court is required to dismiss the criminal charge or charges. (Pen. Code, § 1000.7, subd. (f)(3).)

10) Prohibits a defendant participating in this program from serving longer than one year in juvenile hall. (Pen. Code, § 1000.7, subd. (g).)

11) Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. (Pen. Code, § 1000.7, subd. (h).)
12) Requires the probation department to submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county. (Pen. Code, § 1000.7, subd. (i).)

13) Prohibits a defendant participating in the program pursuant to this section from coming into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education. (Pen. Code, § 1000.7, subd. (j).)

14) Provides that prior to establishing a pilot program pursuant to this section, the county is required to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The BSCC is required to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the BSCC is required to take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court. (Pen. Code, § 1000.7, subd. (k).)

15) Requires the BSCC to review a county’s pilot program to ensure compliance with requirements of the federal law, relating to “sight and sound” separation between juveniles and adult inmates. (Pen. Code, § 1000.7, subd. (l).)

16) Provides that the statutes related to this pilot program apply to a defendant who would otherwise serve time in custody in a county jail. Participation in this pilot program is prohibited as an alternative to a sentence involving community supervision. (Pen. Code, § 1000.7, subd. (m)(1).)

17) Requires that each county establish a multidisciplinary team that shall meet periodically to review and discuss the implementation, practices, and impact of the program. The team shall include representatives from the following entities:

   a) Probation Department;
   b) The district attorney’s office;
   c) The public defender’s office;
   d) The sheriff’s department;
   e) Courts located in the county;
   f) The county board of supervisors;
   g) The county health and human services department;
   h) A youth advocacy group. (Pen. Code, § 1000.7, subd. (m)(2).)
18) Requires a county that establishes a pilot program pursuant to this section to submit data regarding the pilot program to the BSCC. (Pen. Code, § 1000.7, subd. (n)(1).)

19) Requires the BSCC to conduct an evaluation of the pilot program’s impact and effectiveness. The evaluation is required to include, but not limited to, evaluating each pilot program’s impact on sentencing and impact on opportunities for community supervision, monitoring the program’s effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes. (Pen. Code, § 1000.7, subd. (n)(2).)

20) Requires each evaluation to be combined into a comprehensive report and submitted to the Assembly and Senate Committees on Public Safety. (Pen. Code, § 1000.7, subd. (n)(3).)

21) Provides that the BSCC may contract with an independent entity, including, but not limited to, the Regents of the University of California, for the purposes of carrying out the duties of the board pursuant to this subdivision. (Pen. Code, § 1000.7, subd. (n)(4).)

22) Provides that this program shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date. (Pen. Code, § 1000.7, subd. (o).)

23) Allows the juvenile court to retain jurisdiction over specified persons until that person attains 25 years of age if the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “AB 1390 makes a minor expansion to the existing Transitional Youth pilot program to include youth aged up to 25 years old. The existing program allows Alameda, Butte, Napa, Nevada, Santa Clara or Ventura counties to create a deferred entry of judgement program that allows youth aged between 18-21 years old voluntarily housed in a juvenile detention facility, rather than a county jail.

“This program recognizes that although these youth are legally adults, science demonstrates that those between 18-25 years of age still undergoing significant brain development. AB 1390 expands the program to age 25, bringing the program more in line with the most recent brain development studies. This bill will ensure that transitional youth have the best opportunity to receive age appropriate intensive services.”

2) Transitional Age Youth Pilot Program: SB 1004 (Hill) Chapter 865, Statutes of 2016, authorized five counties -- Alameda, Butte, Napa, Nevada, and Santa Clara -- to operate a three-year pilot program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The bill recognized that although 18 to 21 year olds are legally adults, “young offenders...are still undergoing significant brain development and...may be better served by the juvenile justice system with corresponding age appropriate intensive services.” (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1004 (2015-2016 Reg. Sess.) as amended on Mar. 28, 2016.)
The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program then the criminal charges are dismissed. To be eligible, the defendant must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex offense. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall.

Last year, SB 1106 (Hill) extended the sunset date on the pilot program. At the time, the program was criticized by the Center on Juvenile and Criminal Justice (CJCJ). According to that organization, felony arrests of juveniles have fallen 73 percent since 1999, but the population in California’s juvenile halls has remained relatively flat. CJCJ is concerned that placing young adults in juvenile halls is counter-productive if those young adults are better served by being out in the community. Proponents of the pilot program point out that it is voluntary, and potential participants can choose to opt out.

This bill would expand the program in order to make defendants who are between the ages of 21 and 24 eligible, provided that they obtain the approval of the multidisciplinary team in their jurisdiction. One group that initially opposed the original enactment of the pilot program, the Pacific Juvenile Defender Center, now supports this legislation, citing a lack of available programming for young adults.

3) **Argument in Support:** According to the Pacific Juvenile Defender Center: “Our organization opposed the original legislation establishing the pilot program for young adults to be housed in juvenile halls. (Stats. 2016, S.B. 1004 (Hill).) We did not like the fact that participation is conditioned on admitting guilt at the outset, and we believed counties should be focusing more on community programs than on custodial programs. We were also concerned about the impact on young youth in juvenile halls of having adults present. We still have those concerns, but in the intervening years, we have come to recognize that there is a dearth of local programs of any kind for relatively low-level young adults.

“A.B. 1390 will raise the eligibility age for participation in the juvenile hall pilot program from 21 to 25 upon approval of the county multi-disciplinary team. Despite our general trepidations about the program, we support the age expansion. There is little for these young people in county jails. In juvenile halls, they will have much greater access to educational, rehabilitative, and re-entry services, and the multi-disciplinary team is required to oversee the effectiveness of the program. Also, we know from talking to the Chief Probation Officer in one of the pilot counties, that at least some youth are being released fairly quickly from custody to be supervised in the community.

“We support this modest expansion of the pilot program because it is consistent with our belief that young people are not fully mature until their mid-twenties. It is the time in their lives when their brain circuitry is most “plastic,” and they need to be exposed to the kinds of learning and activities that will help them to develop to healthy adulthood. (Arain, et al., *Maturation of the Adolescent Brain*, 9 Journal of Neuropsychiatric Disorders and Treatment (2013), 449–461.) As Dr. Laurence Steinberg has put it: “…[A]dolescence is probably the
last real opportunity we have to put individuals on a healthy pathway and to expect our interventions to have substantial and enduring effects.” (Steinberg, Age of Opportunity: Lessons from the New Science of Adolescence (2014), at p. 17.)

4) Prior Legislation:

   a) SB 1106 (Hill) Chapter 1007, Statutes of 2018, extended the sunset date on the Transitional Age Youth pilot program and expanded the program to Ventura County.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
Chief Probation Officers of California
Commonweal
Pacific Juvenile Defender Center

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to contract for and fund permanent housing for parolees at risk of homelessness. Specifically, this bill:

1) Requires CDCR, upon appropriation by the Legislature, to enter into contracts with contractors who provide short-term housing to parolees through an adult day reporting center or through the department’s Specialized Treatment for Optimized Programming (STOP) to provide permanent housing for individuals exiting prison who are at risk of homelessness and to parolees experiencing homelessness.

2) Defines “at risk of homelessness” to mean an individual who has a history of homelessness and satisfies either of the following criteria:

a) The individual has not identified a fixed, regular, and adequate nighttime residence to reside at upon release from prison or upon exit from short-term housing funded by the department; or

b) The individual’s only identified nighttime residence upon release from prison or upon exit from short-term housing funded by the department includes a supervised publicly or privately operated shelter designed to provide temporary living accommodations, or a publicly or privately owned space that is not designed for, or is not ordinarily used as, a regular sleeping accommodation for a human being.

3) Requires CDCR to coordinate with the Department of Housing and Community Development to draft and establish guidelines, requests for proposals, and amended or new scopes of work for contractors offering the permanent housing.

4) Requires CDCR to coordinate with the Department of Housing and Community Development to design and implement an independent evaluation of all programs providing short-term or long-term housing to parolees, as specified.

5) Requires that any subcontractor or contractor shall establish relationships with affordable housing providers, supportive housing providers, and local homeless continuums of care in the community in which participants are living, and provide or subcontract to provide housing navigation services to participants to obtain permanent housing.

6) States that services and housing offered to a participant under this bill shall be offered voluntarily and follow the core components of Housing First.
7) Requires CDCR to coordinate with the Department of Housing and Community Development to design and implement an independent evaluation of all programs providing short-term or permanent housing to individuals exiting prison who are at risk of homelessness or parolees experiencing homelessness. The evaluation shall include, but is not limited to, all of the following information:

a) The total number of parolees receiving short-term housing assistance and their housing status 12 and 24 months after program entry, to the extent that data is available, in each program identified;

b) The total number of parolees receiving housing navigation or permanent housing assistance and their housing status 12 and 24 months after program entry, to the extent that data is available, in each program identified; and,

c) Rates of recidivism to prison or jail among parolees at 12 and 24 months after program entry, including the number of arrests and days incarcerated, to the extent that data is available.

8) Requires the evaluation to be submitted to the chairs of specified legislative committees of the Senate and Assembly on or before January 1, 2023.

9) Appropriates $5,000,000 from the General Fund to the CDCR for purposes of providing the permanent housing for parolees.

10) Includes legislative findings that evidence shows that “permanent housing,” or housing that does not limit length of stay and provides rights and responsibilities of tenancy, is the only evidence-based intervention that allows individuals experiencing homelessness to exit it.

11) Includes legislative findings that a disproportionate number of individuals on parole experience homelessness and housing instability, and that formerly incarcerated individuals are almost 10 times more likely to experience homelessness than other individuals. At the same time, individuals on parole who are experiencing homelessness are seven times more likely to recidivate than individuals on parole who are living in permanent housing.

12) States that it is the intent of the Legislature to strengthen corrections programs to ensure that CDCR promotes evidence-based housing and services interventions for individuals on parole who are experiencing homelessness or who are at risk of homelessness. These evidence-based practices would allow individuals to obtain and maintain housing stability during and after the term of parole, thereby reducing recidivism.

EXISTING LAW:

1) Defines “supportive housing” as housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Further specifies that supportive housing is decent, safe, and affordable. (Pen. Code, § 2985.1.)
2) Provides that a person is “likely to become homeless upon release” if he or she has a history of “homelessness,” as defined under federal law, and if both of the following are true:

   a) He or she has not identified a fixed, regular, and adequate nighttime residence for release; and

   b) His or her only identified nighttime residence for release includes a supervised publicly or privately operated shelter designed to provide temporary living accommodations, or a public or private place not designed for, or is not ordinarily used as, a regular sleeping accommodation for human beings. (Pen. Code, § 2985.2, subd. (c)(3).)

3) Requires all of the following in order for an inmate to be eligible for the supportive housing program:

   a) He or she has a serious mental disorder, as defined by law, and as identified by CDCR, and he or she has a history of mental health treatment in the prison’s mental health services delivery system or in a parole outpatient clinic;

   b) The inmate or parolee voluntarily chooses to participate; and

   c) He or she has either been assigned a date of release within 60 to 180 days and is likely to become homeless upon release, or he or she is currently a homeless parolee. (Pen. Code, § 2985.2, subd. (c).)

4) Requires each provider to offer services, as specified, to obtain and maintain health and housing stability while participants are on parole, to enable the parolee to comply with the terms of parole, and to augment mental health treatment provided to other parolees. The services shall be offered to participants in their home, or be made as easily accessible to participants as possible and shall include specified services including housing location services, and, if needed, move-in cost assistance. (Pen. Code, § 2985.3.)

5) Requires the service provider to do the following to facilitate the parolee’s transition into the community to among other things, assess a participant’s needs and include in the assessment a plan for permanent housing after parole and help transition participants from CDCR rental assistance into mainstream rental assistance, such as specified federal programs, if necessary for the parolee to remain in stable housing. (Pen. Code, § 2985.3, subd. (c).)

6) Requires providers to identify and locate supportive housing and transitional housing for participants before release or as soon as possible upon release. (Pen. Code § 2985.4, subd. (a).)

7) Specifies that the “core components of Housing First” means all of the following (Welf. & Inst. Code, § 8255.):

   a) Tenant screening and selection practices that promote accepting applicants regardless of their sobriety or use of substances, completion of treatment, or participation in services;
b) Applicants are not rejected on the basis of poor credit or financial history, poor or lack of rental history, criminal convictions unrelated to tenancy, or behaviors that indicate a lack of “housing readiness;”

c) Acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response systems frequented by vulnerable people experiencing homelessness;

d) Supportive services that emphasize engagement and problem solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals;

e) Participation in services or program compliance is not a condition of permanent housing tenancy;

f) Tenants have a lease and all the rights and responsibilities of tenancy, as outlined in California’s Civil, Health and Safety, and Government codes;

g) The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction;

h) In communities with coordinated assessment and entry systems, incentives for funding promote tenant selection plans for supportive housing that prioritize eligible tenants based on criteria other than “first-come-first-serve,” including, but not limited to, the duration or chronicity of homelessness, vulnerability to early mortality, or high utilization of crisis services. Prioritization may include triage tools, developed through local data, to identify high-cost, high-need homeless residents;

i) Case managers and service coordinators who are trained in and actively employ evidence-based practices for client engagement, including, but not limited to, motivational interviewing and client-centered counseling;

j) Services are informed by a harm-reduction philosophy that recognizes drug and alcohol use and addiction as a part of tenants’ lives, where tenants are engaged in nonjudgmental communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well as connected to evidence-based treatment if the tenant so chooses; and,

k) The project and specific apartment may include special physical features that accommodate disabilities, reduce harm, and promote health and community and independence among tenants.

EXISTING FEDERAL LAW:

l) Defines “homeless” as follows: an individual or family who lacks a fixed, regular, and adequate nighttime residence, as specified; an individual or family who will imminently lose their primary nighttime residence, as specified; an unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, as specified; and any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-
threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence, has no other residence, and, lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing. (Housing and Urban Development, 24 C.F.R. § 91.5.):

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “Formerly incarcerated people face barriers to employment and housing upon exiting correctional facilities. Research shows that individuals on parole are ten times more likely to experience homelessness than the general population. According to the Prison Policy Initiative, individuals on parole are seven times more likely to recidivate than individuals on parole who are living in permanent housing. Undoubtedly, stable housing is the foundation of successful reentry from prison. This bill conforms existing law with evidence-based, best practices for decreasing homelessness and recidivism by requiring CDCR to prioritize providing permanent supportive housing for individuals exiting prison who are at risk of homelessness and to parolees experiencing homelessness.”

2) **Need for this Bill:** Having secure housing is essential to any person reintegrating into society after leaving prison. Yet the transition from prison is difficult. The Prison Policy Initiative, a research and advocacy group, looked at homelessness rates among the five million formerly incarcerated people living in the United States. (See Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, Prison Policy Initiative, August 2018, Available at https://www.prisonpolicy.org/reports/housing.html.) It found that formerly incarcerated people are close to 10 times more likely to be homeless than the general public. (*Id.*) Put another way, “National research suggests that up to 15% of incarcerated people experience homelessness in the year before admission to prison.” (*Id.*) And a lack of access to housing can create a “revolving door” for formerly incarcerated persons to end up back in custody, for offenses like sleeping in public spaces, panhandling, and public urination. (*Id.*)

According to the author, CDCR currently funds programs that provide services for Californians exiting prison who are at risk of recidivating. However, contractors of these programs cannot use funds to provide permanent supportive housing and are limited—only to short-term housing. The provision of transitional housing, or short term housing, under CDCR is limited to 180 days (with the potential for an extension) and does not currently follow the core components of California’s “Housing First” model. Housing First is the evidence-based model that uses housing as a tool, rather than a reward, for recovery. It connects homeless people to housing as quickly as possible and does not make housing contingent on participation in services. Housing First includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient in accessing permanent housing and in securing longer-term rental assistance, income assistance, or employment.

Specialized Treatment for Optimized Programming (STOP) is one of two programs that provide transitional housing for parolees in their first year of release. STOP has a six to 12
month time restriction on stays in transitional housing. Current law does not require STOP centers to offer housing navigation services prior, during, or after the 180 days. Additionally, CDCR has little data on the effectiveness of programs funding transitional housing.

CDCR’s Division of Rehabilitative Programs states that it provides “comprehensive post-release rehabilitative programs and services located in communities throughout the State of California. These programs are delivered through residential, outpatient, and drop-in centers.” The Department lists its reentry services at https://www.cdcr.ca.gov/Adult_Operations/FOPS/reentry-services.html. CDCR states that its long term Transitional Housing Program (THP) provides services for up to 180 days with the possibility of an additional 185 days, based on assessed need. THP only serves four counties in the state: Alameda, Los Angeles (four locations), San Diego, and San Francisco.

3) **Integrated Services for Homeless and Mentally Ill Parolees**: The Legislature passed, and the Governor signed, Senate Bill 1021 in 2012, which included direction to CDCR to provide a supportive housing program for people on parole experiencing mental illness and homelessness. The program was intended to use funds budgeted for the Integrated Services for Mentally Ill Parolees (ISMIP) program to provide supportive housing, in accordance with Senate Bill 1021, Statutes of 2011-2012. However, these funds apparently have not been used for their legislatively intended purposes to create supportive housing for people experiencing homelessness while on parole. (See Legislative Findings, SB 282 (Beall) of the 2018-2019 Legislative Session.) In 2017, the University of California, Los Angeles, completed an evaluation of the ISMIP program and found that there were not significant reductions in recidivism among ISMIP participants, as compared to other persons who did not participate in the ISMIP program. (Id.) This bill intends to ensure that funding for permanent housing for parolees is a priority for CDCR, and requires the use of evidence-based housing solutions that will be more effective than current programs.

4) **Appropriation of $5 Million in Funding**: This bill seeks $5 million in appropriated funds to allow CDCR to provide long term housing to parolees. This bill would require CDCR to reimburse the Department of Housing and Community Development for the reasonable costs of coordinating with the department to design and establish guidelines, requests for proposals, and scopes of work as specified, and for coordinating with the department to design and implement the evaluation required. Should such a request be addressed through the budget process?

5) **Argument in Support**: According to the *Housing California and the Corporation for Supportive Housing*, “Stable housing is the foundation for successful reentry. We can and should do better for Californians being released from prison, as their stability reduces recidivism, strengthens our communities, and promotes equity.

“Homelessness and incarceration are linked:

- Up to one-half of parolees have experienced homelessness in San Francisco and Los Angeles;
- Parolees who are homeless are seven times more likely to recidivate than those who are housed;
- Formerly incarcerated people are almost 10 times more likely to experience homelessness than the general public; and
- About half of people experiencing homelessness report a history of incarceration.
“The California Department of Corrections and Rehabilitation (CDCR) currently funds programs providing services for Californians exiting prison at risk of recidivating. Contractors cannot use these funds to provide permanent housing—housing that does not limit length of stay, allows people to live independently, and requires a lease. Two existing programs offer only short-term housing: Day Reporting Centers ($15.323 million per year) and Specialized Treatment for Optimized Programming ($68.179 million per year), which both allow contractors to use funding for transitional housing for 180 days, with one 185-day extension based on need.

“People who have experienced homelessness often return to the streets once short-term housing programs end, unless they are connected to permanent housing upon exit. Data indicate that almost 40% of people exiting short-term housing become homeless within six months. For parolees, return homelessness increases risk of recidivism and high costs to public systems.

“Existing CDCR programs funding any kind of housing options for parolees at risk of or experiencing homelessness should be allowed to provide permanent housing, rather than adhering to arbitrary six- to 12-month time restrictions. Though transitional housing is not an evidence-based solution to ending homelessness, interim and transitional housing can provide a safe place for participants to access reentry services while seeking a permanent, affordable place to live, so long as the housing is coupled with services and options for parolees to exit to permanent housing.

“AB 1405 will allocate a small amount of additional funds to existing contractors to provide voluntary housing navigation services to help people transition into permanent housing as quickly as feasible. Augmented funding will also help contractors establish relationships with county and community-based housing programs to enable them to begin the work of connecting participants to permanent housing options as soon as their program participation begins. To foster inter-agency collaboration and ensure State funds are promoting consistent, evidence-based policies that move people to housing stability, CDCR would work with the Department of Housing and Community Development.

“AB 1405 would bring existing CDCR programs into compliance with the Housing First approach the state has adopted, along with evidence-based housing interventions known to solve homelessness and housing instability among people on parole.”

6) **Related Legislation:** SB 282 (Beall), would repeal the “Integrated Services for Mentally Ill Parolees Program” (ISMIP) and would instead enact the Supportive Housing Program for Persons on Parole to be administered by the Department of Housing and Community Development. SB 282 is pending in the Senate Health Committee.

7) **Prior Legislation:**

a) SB 1021 (Comm. on Budget) 2012, Chapter 41, Statutes of 2012, established the ISMIP program, a supportive housing program for people on parole experiencing mental illness and homelessness.
b) SB 1013 (Beall), of the 2015-2016 Legislative Session, would have required service providers in the ISMIP program to provide parolee participants with adequate housing and related assistance, including a path to permanent housing and independent living, as part of the Supportive Housing Program for Mentally Ill Prisoners. SB 1013 was held in the Senate Appropriations Committee Suspense file.

c) SB 1010 (Beall, 2018), of the 2017-2018 Legislative Session, would have established a supportive housing pilot program for mentally ill parolees who are homeless or at risk of homelessness, using existing funding. SB 1010 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Corporation for Supportive Housing
Housing California

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Allows a criminal court to transfer a case back to juvenile court for further proceedings under certain circumstances. Specifically, this bill:

1) Creates a “reverse transfer” procedure enabling minors whose cases have been transferred from juvenile court to adult court for prosecution to make a motion to have their cases returned to the juvenile court.

2) Provides that a motion to transfer a case back to the juvenile court may be made under the following circumstances:
   a) If the charges in criminal court resulted only in misdemeanor convictions, the case must be transferred back to the juvenile court upon request by the defense;
   b) If the charges involved an offense listed in Welfare and Institutions Code section 707, subdivision (b), but the minor was convicted at trial only of felony offenses not listed therein, or a combination of such felony offenses and misdemeanors, the court has discretion to return the case to the juvenile court; or,
   c) If the charges involved an offense listed in Welfare and Institutions Code section 707, subdivision (b), but the minor entered a plea to felony offenses not listed therein, or a combination of such felony offenses and misdemeanors, the court has discretion to return the case to the juvenile court, but only with agreement of the prosecutor.

3) States that in determining whether to transfer a case back to the juvenile court, the court must find by a preponderance of the evidence that a juvenile disposition is in the interests of both the welfare of the minor and of justice.

4) Allows the court to consider the following in making a determination to transfer the case back to the juvenile court:
   a) The transcript and minute order of the transfer hearing;
   b) The time that the minor has spent in custody;
   c) The disposition and services that would be available to the minor in juvenile court; and,
   d) Any other relevant evidence submitted by either party.
5) Requires the juvenile court to calendar a case that is transferred back from criminal court within three calendar days.

6) Requires the probation department to prepare a social study on the question of proper disposition.

7) States that a conviction which is transferred back to juvenile court shall be considered an adjudication or admission before the juvenile court for all purposes.

8) Requires the criminal court clerk to report the reverse transfer to the probation department, the arresting law enforcement agency, and the Department of Justice, and to deliver copies of the case record to the juvenile court clerk.

9) Requires the juvenile court clerk to maintain the criminal court records until such time as the juvenile court may issue an order to have them sealed.

EXISTING LAW:

1) Provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

2) Establishes criteria to determine whether to transfer a minor from juvenile court to the court of criminal jurisdiction. (Welf. & Inst. Code, § 707.)

3) States that in a case in which a minor is alleged to have committed any felony when he or she was 16 years of age or older, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(1).)

4) States that in a case in which a minor is alleged to have committed specified offenses when the minor was 14 or 15 years of age, but was not apprehended prior to the end of juvenile court jurisdiction, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

5) Provides that when a prosecutor makes a motion to transfer a juvenile case to adult court, the court shall order the probation officer to submit a report on the behavioral patterns and social history of the minor. (Welf. & Inst. Code, § 707, subd. (a).)

6) Requires the court to consider the following criteria when deciding to transfer the case:
   a) The degree of criminal sophistication exhibited by the minor;
   b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court’s jurisdiction;
   c) The minor’s previous delinquent history;
   d) Success of previous attempts by the juvenile court to rehabilitate the minor; and,
e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

7) Enumerates specific serious and/or violent predicate offenses which permit transfer to adult court. (Welf. & Inst. Code, § 707, subd. (b).)

8) Requires the clerk of the criminal court to report to the juvenile court when a conviction does not result. (Welf. & Inst. Code § 707.4.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “Decisions about what charges are filed occurs very early in the case at a time when there has been little opportunity to investigate or talk to witnesses. A significant number of cases are later dismissed or the charges reduced because the information available at the early stages of the case later turns out to be inaccurate or incomplete. Under current law, once a decision is made to transfer the young person, they may not be referred back to the juvenile system. Establishing a process for a juvenile to request a criminal court to return a case to juvenile court for disposition would provide a much-needed mechanism to assure fairness for youth who did not actually commit the crimes that were the basis of transfer and would be in the interests of justice and the welfare of the individual.”

2) Jurisdiction of the Juvenile Court: As a general rule minors between the ages of 12 and 18 who commits a crime falls within the jurisdiction of the juvenile delinquency court. (Welf. & Inst. Code, § 602.) This extends to any minor alleged to have committed a crime before their 18th birthday, regardless of age at the time of arrest or commencement of proceedings. (Welf. & Inst. Code, § 603.)

However, some minors can be tried as adults, depending on the age of the minor and the crime charged. Minors who may be subject to transfer to adult criminal court include those alleged to have committed any felony when 16 years old or older, or 14 and 15-year-old minors who are alleged to have committed one of a list of mostly serious or violent felonies. (Welf. & Inst. Code, § 707.)

3) Proposition 57: Proposition 57, approved by the voters in the November 2016 election, repealed provisions of law permitting the prosecutor to directly file a juvenile case in adult criminal court.

Historically, a minor who was at least 16 years old and charged with a felony could be transferred to adult court if he was found to be unfit for the juvenile court. The minor was presumed unfit for juvenile court if the felony was of those enumerated in Welfare and Institutions Code 707, subdivision (b), and presumed fit if the felony was not one listed there. In 2000, Proposition 21 expanded the role of adult court so that minors as young as 14 years old with a qualifying offense could be sent directly to adult court, and the prosecution had the unchecked discretion to send minors who were at least 16 years old to adult court under certain circumstances. (Former Welf. & Inst. Code, §§ 602, subd. (b), 707, subsds. (a)-(d); see Manduley v. Superior Court (2002) 27 Cal.4th 537, 548-550.) (See Paul Couenhoven,
Proposition 57 undid Proposition 21 by eliminating direct filings. After Prop. 57, a juvenile who is 16 years of age or older and charged with any felony can be transferred to criminal court only if the court finds the minor to be unfit for treatment in the juvenile court. (Welf. & Inst. Code, § 707, subd. (a)(1).) Similarly, a minor who is 14 or 15 years can be transferred to criminal court if the minor is charged with specified offenses listed in Welfare and Institutions Code section 707, subdivision (b) and the court finds him or her to be unfit for juvenile court. (Ibid.)

Additionally, Prop. 57 substantially simplified the existing standards for the juvenile court to consider when determining whether a minor’s case should be heard in the criminal court. Before enactment, the law required the juvenile court to evaluate whether the minor is “a fit and proper subject to be dealt with under the juvenile court law.” (See former Welf. & Inst. Code, § 707.) After Prop. 57 the court must simply consider whether “the minor should be transferred to a court of criminal jurisdiction.” Thus, the concept of fitness has been eliminated. Under the prior statutory scheme, some minors were subject to a presumption of unfitness for juvenile court adjudication based on their age and/or prior offense history. Proposition 57 removed all of those presumptions and gives the court with one set of criteria to apply in a determination of whether the minor should be transferred to criminal court of criminal jurisdiction, with broad discretion given to the court to evaluate and weigh each factor.

4) Current Statutory Reverse Remand Provisions: Before Prop. 57, Penal Code sections 1170.17 and 1170.19 provided a "reverse remand" process if the minor was eventually acquitted of the crime that permitted direct filing in adult court. Under this process, the adult court could either itself conduct the fitness hearing or transfer the matter to the juvenile court for the hearing. Proposition 57 did not change the reverse remand provisions of Penal Code sections 1170.17 and 1170.19 to determine if a juvenile convicted in adult court is fit for a juvenile court disposition. (Couenhoven, supra, p. 42.) But with the abolition of direct file, it appears Penal Code section 1170.17 and reverse remand is no longer in effect.

5) Need for this Bill: Before Prop. 57, when a minor was found not to be a fit and proper subject for juvenile court after a fitness hearing in which he was presumed unfit, he was still subject to the criminal court’s jurisdiction even when not convicted of the crime which triggered the statutory presumption. (People v. Self (1998) 63 Cal.App.4th 58, 61-63.)

Now that the concept of fitness no longer exists, taken in conjunction with the fact that the statutory provisions for reverse transfer after direct prosecutorial filing cannot apply, there appears to be no mechanism to return a case to the juvenile court. This is particularly necessary when the charges which were the basis for the transfer are either dismissed or found not to be true. This bill would establish a new process to return a case to the juvenile court. This bill would also define criteria for eligibility as well as describe evidence the court should consider when exercising its discretion.

6) Argument in Support: According to the Pacific Juvenile Defender Center, “Under California law, juvenile courts deciding whether a young person should be transferred to adult criminal court consider five criteria set forth in Welfare and Institutions Code section
707, subdivision (a)(3). One of the criteria is the "circumstances and gravity of the offense alleged in the petition." (Welf. & Inst. Code §707, subd.(a)(3)(E)(i)and (ii).) In most cases, this means that the court considers the police report written at the time of arrest, and the charges filed on the basis of that report. Under current law, once the young person is transferred, they may not be referred back to the juvenile system, even when the felony charges that rendered them eligible for transfer or that played a significant role in the transfer decision are dismissed or found to be untrue by a judge or jury.

"This happens with some regularity. After the charges are filed (based on the initial report), the prosecutor more fully investigates the case and talks to witnesses. It is relatively common for the investigation to reveal that what happened was not as serious as was originally thought, and occasionally, that the young person did not commit the alleged offense at all. In some cases, the youth would not even have been eligible for transfer based on the charges ultimately sustained. But by then, the young person has been transferred to adult court, with the court relying on the initial more serious report of what happened.

"The unfairness of this situation was raised in People v. Self (1998) 63 Cal.App.4th 58. The Court of Appeal deciding the case concluded that the law did not provide for a return of the case to juvenile court when the offense on which transfer was premised was dismissed. The Court stated that this was ‘a question for the Legislature.’ (People v. Self, 63 Cal.App.4th at p. 62.) A.B. 1423 provides the Legislature with a carefully tailored remedy to address this injustice."

7) **Argument in Opposition:** According to the California District Attorneys Association, “For a period of time prior to the approval of Proposition 57 in November 2016, in some serious cases prosecutors could file charges against certain minors directly in adult court, without a hearing in the juvenile court to evaluate the suitability of the minors for treatment in the juvenile system. While this ability to directly file adult charges against minors was eliminated by Proposition 57, current statutes provide that because no transfer hearing occurred in these cases directly filed in adult court, under certain circumstances minors not convicted as charged may request a transfer hearing and/or have their cases remanded to the juvenile court for disposition.

"Contrary to the will of the voters in approving Proposition 57, this legislation would extend to offenders whose felony cases have been transferred to adult court following a hearing before a juvenile court judge, the ability to file a post-conviction motion in adult court asking that judge to reconsider the decision of the juvenile court judge regarding their suitability for juvenile treatment. The eligibility for such reconsideration would be triggered by convictions of any crimes other than those listed in Welfare & Institutions Code section 707(b), even multiple felonies such as kidnapping, rape of an unconscious person, and hate crimes involving threats and violence, if such a listed crime was charged in the juvenile court petition before transfer to adult court. This would be true even in cases where a plea agreement is reached between the prosecutor and the offender in adult court. Further, the legislation contemplates that as part of the reconsideration by the adult court judge, an additional evidentiary hearing may be conducted. However, none of the statutory criteria or safeguards considered by the juvenile court judge at the original transfer hearing would be applicable.

"Decisions as to which offenders are or are not suitable for juvenile court treatment are best
made by juvenile court judges, with the benefit of specific statutory guidelines and evidence produced in the context of juvenile court transfer hearings. Affording offenders, including those convicted of multiple felonies, the opportunity to have another judge second-guess the informed decision of the juvenile court judge is not only an unnecessary waste of judicial resources, but flies in the face of the clear intent of the electorate in determining that juvenile court judges should make transfer decisions. Further, this legislation would severely restrict the ability of the parties to engage in meaningful and appropriate plea negotiations in adult court, further burdening the justice system.”

8) Related Legislation: AB 1394 (Daly) prohibits a superior court or probation department from charging an applicant a fee for filing a petition to seal juvenile court records. AB 1394 is pending in the Assembly Judiciary Committee.

9) Prior Legislation:

a) SB 439 (Mitchell), Chapter 1006, Statutes of 2018, prohibits the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or specified sex offenses.

b) SB 1391 (Lara) Chapter 1012, Statutes of 2018, repeals the authority of a prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old, unless the minor was not apprehended prior to the end of juvenile court jurisdiction.

REGISTERED SUPPORT / OPPOSITION:

Support

Pacific Juvenile Defender Center (Co-Sponsor)
California Public Defenders Association
Children's Defense Fund-California
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Motivating Individual Leadership for Public Advancement
National Center for Youth Law
Youth Law Center

Opposition

California District Attorneys Association

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

SECTION 1. Section 707.5 is added to the Welfare and Institutions Code, to read:

707.5. (a) In any case in which a person is transferred from juvenile court to a court of criminal jurisdiction pursuant to Section 707, upon conviction or entry of a plea, the person may, under the circumstances described in subdivision (b), request the criminal court to return the case to the juvenile court for disposition.

(b) Upon motion by the person, the criminal court shall have the authority to return the case to juvenile court for disposition in the following circumstances:

(1) If the charges in criminal court found true by the trier of fact or admitted are solely misdemeanors, upon request by the defense, the case shall be transferred back to juvenile court for further proceedings.

(2) If any of the allegations in the juvenile court petition that were the basis for transfer involved an offense listed in subdivision (b) of Section 707, and the person is convicted at trial only of felony offenses that are not listed in subdivision (b) of Section 707, or a combination of such felony offenses or and misdemeanors, upon request, the court shall have the discretion to return the case to juvenile court for further proceedings pursuant to subdivision (c).

(3) If any of the allegations in the juvenile court petition that were the basis for transfer involved an offense listed in subdivision (b) of Section 707, and the person pleads guilty only to felony offenses that are not listed in subdivision (b) of Section 707, or a combination of such felony offenses or and misdemeanors, the court shall have the discretion to return the case to juvenile court for further proceedings pursuant to subdivision (c), but only with the agreement of the prosecutor.

(c) In determining whether the case should be returned to juvenile court pursuant to paragraph (2) or (3) of subdivision (b), the court shall make a finding by a preponderance of the evidence that a juvenile disposition is in the interests of justice and the welfare of the person, and shall so state on the minute order. In making the determination, the court may consider the transcript and minute order of the transfer hearing, the time that the person has served in custody, the dispositions and
services available to the person in the juvenile court, and any relevant evidence submitted by either party.

(d) Upon determining that the case shall be returned to the juvenile court, the court shall transfer the entire case to the juvenile court and the matter shall be calendared within three calendar days.

(e) The juvenile court shall order the probation department to prepare a social study on the questions of the proper disposition, and the case shall proceed to disposition as set forth in Sections 702, 706, 706.5, and 730, and Article 18 (commencing with Section 725), as applicable. A conviction or guilty plea that is transferred back to juvenile court shall be considered an adjudication or admission before the juvenile court for all purposes.

(f) The clerk of the criminal court shall report the transfer to juvenile court to the probation department, the law enforcement agency that arrested the minor for the offense, and the Department of Justice. The clerk of the criminal court shall deliver to the clerk of the juvenile court all copies of the minor’s record in criminal court and shall obliterate the person’s name for any index maintained in the criminal court. The clerk of the juvenile court shall maintain the criminal court records as provided by Article 22 (commencing with Section 825) until such time as the juvenile court may issue an order that the records be sealed.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500), as applicable of Division 4 of Title 2 of the Government Code.

Sandy Uribe
Assembly Public Safety Committee
04/04/2019
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