AGENDA

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

PART II

AB 1294 (Salas) – AB 1598 (Fong)
Date of Hearing: April 9, 2019
Counsel: Matthew Fleming

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

AB 1435 (Nazarian) – As Introduced February 22, 2019

As Proposed to be Amended in Committee

SUMMARY: Adds specified procedural requirements to investigations conducted by the Office of Law Enforcement Support (OLES) into employees or contractors at developmental centers and state hospitals. Specifically, this bill:

1) Requires that any person contacted by OLES, prior to an investigatory interview, be informed as to the voluntary nature of the interview and the fact that information from the interview can be used in criminal or administrative actions.

2) Provides that if OLES uses subject matter experts to assist in an investigation, it should also consult a panel of peers of the person being investigated to review the allegations and assist the office in evaluating those allegations.

EXISTING LAW:

1) Requires the Department of State Hospitals (DSH) to report any of the following incidents to the appropriate protection and advocacy agency, as defined, no later than the close of the first business day following the discovery of the reportable incident:

   a) Any unexpected or suspicious death, regardless of whether the cause is immediately known;

   b) Any allegation of sexual assault, as defined, in which the alleged perpetrator is an employee or contractor of a state mental hospital or of the Department of Corrections and Rehabilitation; and,

   c) Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined, in which a staff member is implicated. (Welf. & Inst. § 4023.)

2) Requires a developmental center or State Department of Developmental Services (DDS)-operated facility to immediately report the following incidents involving a resident to the local law enforcement agency having jurisdiction over the city or county in which the developmental center or DDS-operated facility is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident:

   a) A death;
b) A sexual assault, as specified;

c) An assault with a deadly weapon or with force likely to produce great bodily injury, as specified;

d) An injury to the genitals when the cause of the injury is undetermined; and,

e) A broken bone when the cause of the break is undetermined. (Welf. & Inst. Code § 4427.5.)

3) Requires OLES to investigate the incidents that the Department of State Hospitals, developmental centers, and State Department of Developmental Services-operated facilities are required to report, including those involving death, sexual assault, physical abuse, injury to the genitals or broken bone with an undetermined cause, as well as all other incidents that the Chief of OLES, the Secretary of the California Health and Human Services Agency, or the Undersecretary of the California Health and Human Services Agency directs the office to investigate. (Welf. & Inst. Code § 4023.6.)

4) Defines "sexual assault" as "sexual battery, rape, rape in concert, spousal rape, incest, Sodomy, Oral copulation, Sexual penetration, or Lewd or lascivious acts," as specified. (Welf. & Inst. § 15610.63; Pen. Code, §§ 243.4, 261, 262 264.1, 285, 286, 287, 288(b)(2), 289.)

5) Defines "physical abuse" as "assault, battery, assault with a deadly weapon or force likely to produce great bodily injury, unreasonable physical constraint, or prolonged or continual deprivation of food or water," as specified. (Welf. & Inst. § 15610.63, Pen. Code, §§ 240, 242, 245.)

6) Requires OLES to issue regular reports, no less than semiannually, to the Governor, the Legislature, and the Joint Legislative Budget Committee, summarizing the investigations it conducted and its oversight of investigations. (Welf. & Inst. Code § 4023.5.)

7) Requires OLES to be responsible for contemporaneous oversight of investigations that are conducted by the State Department of State Hospitals or the State Department of Developmental Services and involve an incident that meet specified criteria. (Welf. & Inst. Code § 4023.7.)

8) Makes the officers of State Department of Hospitals and State Department of Developmental Services peace officers. (Pen. Code § 830.38)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 1435 will increase the efficiency of investigations in DSH and DDS by ensuring that our public employees are provided due process during investigations. The peer review panel process is currently used in both the public and private sectors to ensure professional integrity. This measure would extend that same process to OLES investigations. AB 1435 is not intended to target law enforcement or
 imply any sort of malfeasance on their part. Rather, it simply creates a peer review panel of rank and file practitioners within DSH and DDS in order to aid investigations which aim to keep patients and staff safe."

2) **Office of Law Enforcement Support:** The Office of Law Enforcement Support monitors and oversees law enforcement in the psychiatric facilities operated by the California Department of State Hospitals (DSH) and the developmental centers operated by the state Department of Developmental Services (DDS) in order to ensure the safety and security of the patients and clients so they receive optimal treatment and care. By statute, OLES is tasked with investigating serious allegations of misconduct by any employee or contractor working at a DSH or DDS facility that may result in administrative or criminal sanctions. Their primary responsibility, however, is to investigate an allegation that a DSH or DDS law enforcement officer committed serious criminal misconduct or serious administrative misconduct. (OLES Semi-Annual Report, Mar. 2019, available at: http://www.oles.ca.gov/Documents/March%202019%20Legislative%20Report%20FINAL.pdf, [as of Apr. 1, 2019].)

Both DSH and DDS are required to report certain kinds of incidents to OLES when they occur in their facilities. Those incidents include suspicious deaths, and allegations of physical abuse or sexual assault. In addition, OLES must investigate other incidents that the chief of OLES, the Secretary of the California Health and Human Services Agency, or the Undersecretary of the California Health and Human Services Agency directs the office to investigate. OLES is required to submit a semi-annual report regarding its investigations and oversight to the Governor and the Legislature.

The most recent OLES report was published in March, 2019. (OLES Semi Annual Report, supra.) In that report, OLES indicates that for the period from July, 2018 to December 2018, it received a total of 656 reports. It then determined that 176 of them met the statutory criteria for an investigation. (Id. at 8.) Those 176 incidents represent a little more than 25% of the reportable incidents. (Ibid.) These figures are relatively consistent with the totals from prior years. (Id. at pp. 16, 24.)

3) **Office of Protective Services:** The Office of Protective Services (OPS) is a full service, specialized law enforcement agency with structure and rank similar to a local city police department. OPS is responsible for providing police officers at DSH and DDS facilities. The DSH police officers provide safety, service, and security to patients, employees and the public in and around each hospital. There are approximately 700 DSH Police Officers, 30 Communications Operators (Dispatchers) and 40 Investigators assigned to five different hospitals (Atascadero, Coalinga, Metropolitan/L.A, Napa, and Patton) in California. (DSH website, available at: http://www.dsh.ca.gov/Law_Enforcement/default.aspx.) OPS also provides police officers to DDS, and according the DDS website has the responsibility for ensuring the safety and well-being of consumers and others who live, work, and visit their Developmental Centers and Community Facility. (https://www.dds.ca.gov/OPS/)

This bill would provide DSH and DDS employees and contractors that are subject to an OLES investigations with two procedural protections. First, it would require OLES to inform the subject that any interview with them is voluntary and any information obtained during that interview can be used in criminal or administrative actions. This protection is consistent with basic notions of due process. Secondly, in cases in which a subject mater
expert has been retained to assist in an investigation, it would encourage OLES to also consult a group of peers of the subject of the investigation. This protection would be important in cases in which there is some technical or medical allegation, such as incorrect diagnosis or treatment of a medical condition. According to proponents of the bill, staff at DSH and DDS facilities are often the subject of many frivolous complaints and the OLES semi-annual report provides support for that conclusion. They further submit that the establishment of a peer review panel to assist with specified allegations of misconduct would help weed out frivolous allegations without impeding the more serious allegations of misconduct.

4) **Argument in Support:** According to the *California Association of Psychiatric Technicians*: “At the Department of State Hospitals alone, there are roughly 500 false allegations made a year that have to be investigated by the department’s investigative staff. The peer review process could potentially weed out many of the false allegation claims saving the department investigators time and allow them to focus their efforts on legitimate cases of wrongdoing. Additionally, it would reduce overtime as staff that has an allegation made against them must be immediately put on administrative leave or placed in a position that does not have patient contact. The peer review process outlined in this bill provides a level of efficiency to the investigatory process that is sorely needed, especially with extraordinarily high overtime numbers by level-of-care staff.”

5) **Related Legislation:** AB 803, (Gipson) would require the California Department of Corrections and Rehabilitation to establish a Peer Support Labor Management Committee tasked with crafting and updating a standardized statewide policy for the department’s peer support program. AB 803 is pending in the Assembly Appropriations committee.

6) **Prior Legislation:** SB 85 (Committee on Budget and Fiscal Review) Chapter 26, Statutes of 2015, among other things, established OLES as the investigating authority for DDS facilities.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Federation of State, County, and Municipal Employees  
California Association of Psychiatric Technicians

**Opposition**

None

**Analysis Prepared by:** Matthew Fleming / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-1435 (Nazarian (A))

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

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

SECTION 1. Section 4023.6 of the Welfare and Institutions Code is amended to read:

4023.6. (a) The Office of Law Enforcement Support within the California Health and Human Services Agency shall investigate both of the following:

(1) Any incident at a developmental center or state hospital that involves developmental center or state hospital law enforcement personnel and that meets the criteria in Section 4023 or 4427.5, or alleges serious misconduct by law enforcement personnel.

(2) Any incident at a developmental center or state hospital that the Chief of the Office of Law Enforcement Support, the Secretary of the California Health and Human Services Agency, or the Undersecretary of the California Health and Human Services Agency directs the office to investigate.

(b) All incidents that meet the criteria of Section 4023 or 4427.5 shall be reported immediately to the Chief of the Office of Law Enforcement Support by the Chief of the facility’s Office of Protective Services.

(c) When conducting an investigation pursuant to subdivision (a), the Office of Law Enforcement Support shall meet the following standards:

(1) The investigation shall include a panel of peers of the person being investigated to review the allegations and assist the office in evaluating the allegations.

(2) Any person contacted by the office pursuant to an investigation shall, prior to an interview, be informed as to the voluntary nature of the interview and the fact that information from the interview can be used in criminal or administrative actions.

(3) If the office uses subject matter experts to assist an investigation, information provided by the subject matter experts shall be made available to the party being investigated before that party participates in any investigatory interview. It should also consult a panel of peers of the person

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being investigated to review the allegations and assist the office in evaluating those allegations.

(d) (1) Before adopting policies and procedures related to fulfilling the requirements of this section related to the Developmental Centers Division of the State Department of Developmental Services, the Office of Law Enforcement Support shall consult with the executive director of the protection and advocacy agency established by Section 4901, or their designee; the Executive Director of the Association of Regional Center Agencies, or their designee; and other advocates, including persons with developmental disabilities and their family members, on the unique characteristics of the persons residing in the developmental centers and the training needs of the staff who will be assigned to this unit.

(2) Before adopting policies and procedures related to fulfilling the requirements of this section related to the State Department of State Hospitals, the Office of Law Enforcement Support shall consult with the executive director of the protection and advocacy agency established by Section 4901, or their designee, and other advocates, including persons with mental health disabilities, former state hospital residents, and their family members.

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SUMMARY: Revises the standards for determining if a victim failed to cooperate with the Victim Compensation Board (board) for purposes of compensation under the California Victim Compensation Program (CalVCP). Specifically, this bill:

1) Deletes the current eligibility standard allowing the board to deny compensation based on the nature of the applicant's involvement in the events leading to the crime, and instead only allows denial if the applicant engaged in criminally injurious conduct immediately before initiation of the crime that directly provoked the suspect.

2) Defines "criminally injurious conduct" as any conduct or attempted conduct which poses a substantial threat of personal injury or death and that is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.

3) Excludes from the definition of "criminally injurious conduct" conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when:

   a) The person engaging in the conduct intended to cause personal injury or death;

   b) The person engaging in the conduct was under the influence of any alcoholic beverage or drug; or,

   c) The conduct constitutes vehicular manslaughter.

4) Prohibits denial of an application based on victim involvement if either of the following apply:

   a) The victim's injury or death occurred as a direct result of the crimes of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor; or

   b) The victim died as a result of the qualifying crime.

5) Deletes the current standard requiring denial of claims if the applicant fails to reasonably cooperate with law enforcement, and instead states that an application may be reduced or denied if the applicant actively and intentionally interferes with law enforcement in apprehension and conviction of the perpetrator.

6) Prohibits denial of a claim based on victim interference if either of the following apply:
a) The victim’s injury or death occurred as a direct result of the crimes of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor; or

b) The victim died as a result of the qualifying crime.

7) States that board can’t find that the victim interfered solely because the applicant fails to report the crime or testify in the court proceedings.

8) Prohibits the denial of an application solely because the applicant failed to file a police report or notify law enforcement.

9) Requires the board to adopt guidelines that allow it to consider and approve applications by relying on evidence other than a police report to establish that a qualifying crime has occurred.

10) Provides that this evidence may include any corroborating information approved by the board, including but not limited to: medical or physical evidence; reports to a victim’s advocate, chaplain, or attorney; information by credible witnesses; and restraining orders.

**EXISTING LAW:**

1) Establishes the board to operate the CalVCP. (Gov. Code, § 13950 et. seq.)

2) Provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a.).)

3) States that, except as specified, a person shall be eligible for compensation when all of the following requirements are met:

   a) The person for whom compensation is being sought any of the following:

      i) A victim;

      ii) A derivative victim; and,

      iii) A person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.

   b) Either of the following conditions is met:

      i) The crime occurred in California, but only when the board determines that there are federal funds available to the state for the compensation of crime victims; or

      ii) Whether or not the crime occurred in California, the victim was any of the following:

          (1) A California resident;

          (2) A member of the military stationed in California; or,
(3) A family member living with a member of the military stationed in California.

c) If compensation is being sought for derivative victim, the derivative victim is a resident of California or any other state who is any of the following:

i) At the time of the crime was the victim's parent, grandparent, sibling, spouse, child or grandchild;

ii) At the time of the crime was living in the victim's household;

iii) At the time of the crime was a person who had previously lived in the victim's house for a period of not less than two years in a relationship substantially similar to a previously listed relationship;

iv) Another family member of the victim who witnessed the crime, including, but not limited to, the victim's fiancé or fiancée; or,

v) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

d) And other specified requirements. (Gov. Code, § 13955.)

4) Authorizes denial of a claim, in whole or in part, if the board finds that denial is appropriate because of the nature of the applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gave rise to the claim. (Gov. Code, § 13956, subd. (a).)

5) States that factors to be considered for determining involvement in the crime include, but are not limited to:

a) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime;

b) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim; and,

c) The victim or derivative victim was committing a crime that could be charged as a felony and that reasonably lead to him or her being victimized. This limitation does not apply if the victim's injury or death occurred as a direct result of the crimes of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor. (Gov. Code, § 13956, subd. (a)(1).)

6) States that, if the board finds that the victim or derivative victim was involved in events leading to the crime, factors that may be used to mitigate or overcome involvement, include, but are not limited to:

a) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement;
b) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim; and,

c) The victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns. (Gov. Code, § 13956, subd. (a)(2).)

7) Requires denial of a claim if the board finds that the victim failed to cooperate reasonably with law enforcement in the apprehension and conviction of the perpetrator. (Gov. Code, § 13956, subd. (b)(1).)

8) States that in determining reasonable victim cooperation, the board must consider the person's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health and safety concerns. (Gov. Code, § 13956, subd. (b)(1).)

9) Provides that, in cases of domestic violence, sexual assault, and human trafficking, lack of cooperation shall not be found based on delayed reporting of the crime. (Gov. Code, § 13956, subd. (b)(1).)

10) Provides that, in cases of domestic violence, sexual assault, and human trafficking, an application cannot be denied solely because the victim did not file a police report, and allows the board to consider specified corroborating information when a police report has not been filed in those cases. (Gov. Code, § 13956, subds. (b)(2), (3) & (4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 1449 ensures that the experience and needs of crime survivors is at the center of victim's compensation policy. This bill expands access and eliminates unfair and burdensome barriers that serve only to prevent survivors from accessing the services and support they're entitled to under the law."

2) **CalVCP:** The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds. (See board Website <http://www.vegcb.ca.gov/board>.)

3) **Necessity for this Bill:** The main premise of this bill is that too many crime victims and derivative victims are being denied compensation because they have failed to report to law enforcement or failed to reasonably cooperate with law enforcement. And yet, data collected by the Bureau of Justice Statistics indicates that victims often do not report crime to law enforcement.

The Bureau of Justice Statistics 2017 report on Criminal Victimization, which contains information from the National Crime Victimization Survey states:
Victims may not report a victimization for a variety of reasons, including fear of reprisal or getting the offender in trouble, believing that police would not or could not do anything to help, and believing the crime to be a personal issue or too trivial to report. Police notification may come from the victim, a third party (including witnesses, other victims, household members, or other officials, such as school officials or workplace managers), or police at the scene of the incident. Police notification may occur during or immediately following a criminal incident or at a later date.

Based on the 2017 survey, less than half (45%) of violent victimizations were reported to police, which was not statistically different from 2016 (44%) There was also no statistically significant change in the percentage of serious violent victimizations reported to police from 2016 (53%) to 2017 (51%), or in the percentage of property crimes reported to police from 2016 (35%) to 2017 (36%).


In recognition victims often fail to report a crime to law enforcement, this bill would prohibit the board from denying a claim solely because a victim failed to report to police. Under current law an application cannot be denied solely because the victim did not file a police report, only in domestic violence, sexual assault, and human trafficking cases.

This bill would require the board to establish guidelines on how to evaluate applications for which there is no police report and what other corroborating evidence should be considered, as is already done in the case of victims of domestic violence, sexual assault, and human trafficking.

4) **Financial Condition of 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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<tbody>
<tr>
<td>Adjusted Beginning Balance</td>
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<td>47,749</td>
<td>49,964</td>
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<td>Net Revenue</td>
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<td>($18,262)</td>
<td>($13,992)</td>
<td>($23,669)</td>
<td>($23,735)</td>
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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.
The second component of this bill would allow a person to apply for relief through CalVCP even if the person actively and intentionally interferes with law enforcement in apprehension and conviction of the perpetrator. Arguably, active and intentional interference with law enforcement in trying to apprehend and convict a perpetrator amounts to obstruction of justice or being an accessory after the fact. Should the Legislature relax eligibility standards in this way while revenue is depleting and there are concerns about insolvency?

6) **Argument in Support**: According to *Californians for Safety and Justice*, the sponsor of this bill, “Currently, the California Victim Compensation board (CalVCB) must deny compensation if it finds the victim did not cooperate with law enforcement. CalVCB can consider some mitigating circumstances when assessing whether cooperation was reasonable. If there is no police report for certain groups of victims, CalVCB may use other evidence to verify that a crime occurred.

“This bill would extend these other avenues for reporting to all victims, creating multiple pathways for victims to seek help and access compensation. The bill would allow CalVCB to verify that a crime occurred in other ways when there is no police report. Survivors who seek care at a hospital, from a mental health service provider, or from others in their communities could still access compensation, even if the crime was not reported to police. The bill would also limit denials based on the victim's interactions with law enforcement, and bar denials based on a victim's decision not to testify for the prosecution.

“The 2017 National Crime Victimization Survey found that only 45% of violent victimizations are ever reported to police. People do not report crimes to law enforcement for various reasons, including fear of reprisal, fear that they might be blamed or not believed, or the feeling the police could not or would not do anything – during a time when a victim is struggling through perhaps the worst moment of their life. This bill would help ensure that these common experiences do not bar survivors who seek healing in other ways from accessing it.”

7) **Related Legislation:**

a) **AB 415 (Maienschein)**, would allow the board to compensate for temporarily housing a pet. AB 415 is pending in the Assembly Appropriations Committee.

b) **AB 445 (Choi)**, would allow the board to compensate for up to $2,500 in attorney fees for victims to enforce their rights under the Victim’s Bill of Rights in the California Constitution. AB 445 failed passage in this Committee.

c) **AB 629 (Smith)**, authorizes CalVCP to provide compensation equal to loss of income or support to human trafficking victims. AB 629 is pending in the Assembly Appropriations Committee.

d) **SB 375 (Durazo)**, eliminates the deadlines for filing an application for compensation with the board. SB 375 is pending in the Senate Public Safety Committee.
8) Prior Legislation:

a) AB 1639 (E. Garcia), Chapter 161, Statutes of 2018, requires the board to provide training which affirms that neither access to information about victim compensation, nor an application for compensation through the CalVCP, shall be denied on the basis of the victim's or derivative victim's immigration status or connection, or suspected connection, with a gang.

b) AB 1563 (Rodríguez), Chapter 121, Statutes of 2016, established a six-month deadline for the board to respond to an appeal by a crime victim who has had an application for compensation denied.

c) AB 1140 (Bonta), Chapter 569, Statutes of 2015, revised standards for involvement in a crime and for cooperation with the board in various circumstances; authorized compensation for non-consensual distribution of sexual images of minors, and revised various other rules governing the CalVCP.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
A New Way of Life Reentry Project
Citizen Film
Detours Mentoring Group Inc.
Homies Unidos Inc.
Movement of Mourning Mothers Association
Public Health Advocates

Opposition

None

Analysis Prepared by:  Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Requires every county to establish an on-line database to for specified agencies to track the reporting of substantiated allegations of child abuse and neglect by 2030. Specifically, this bill:

1) Makes legislative findings and declarations about the duties of law enforcement, district attorney offices, and county welfare departments to immediately, or as soon as practicably possible, cross-report cases involving allegations of child abuse and neglect, about the deficiencies of mandated reports which use the written Suspected Child Abuse Report (SCAR) form, and why electronic reports (E-SCARS) are better.

2) Requires every county to establish, on or before January 1, 2030, a secure on-line database for cross-reporting substantiated reports of child abuse and neglect among agencies and individuals authorized to receive that information.

3) States that the database must reflect a real time, Web-based information sharing system that allows rapid and secure electronic transmission and receipt of mandated cross-reports, ensuring that the proper agencies receive the report and providing a detailed history of past incidents of abuse entered into the system by child and family welfare agencies.

4) Requires each county to develop policies and procedures for entering, reviewing, and purging information in the database, criteria for substantiating reports, and retention periods for information.

5) Requires each county to develop a process for an individual to petition to have his or her name removed from the database if the report against the individual is found to be unsubstantiated.

6) States that a county with an existing online reporting system that meets these requirements is deemed to be compliant with this section.

7) Requires that each online database be implemented with policies to oversee the sharing of information, including, but not limited to, cross-reporting among the county welfare department, the district attorney’s office, and local law enforcement agencies, to ensure that each agency carries out its mandated investigative response to reports of child abuse or neglect.

8) Provides that each database must be used and operated in compliance with all state and federal regulations, statutes, and guidelines.
9) States that the database can only be used by law enforcement officials, child and family welfare service agencies, and district attorneys’ offices for the purposes of reporting and investigating reports of child abuse and neglect.

10) Requires all reports that are not substantiated to be purged from the database.

11) Defines “cross-reporting” as “the transmission of information to the agencies given responsibility for the investigation of cases under Section 300 of the Welfare and Institutions Code and subject to the mandated reporter requirements of Section 11166.”

12) States that this section does not relieve entities from the duty to submit substantiated reports of abuse and neglect to the Child Abuse Central Index (CACI) maintained by the Department of Justice (DOJ).

13) Names these provisions “Gabriel’s Law.”

EXISTING LAW:

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

2) Requires specified local agencies to send the California Department of Justice (DOJ) reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Penal Code, § 11169, subd. (a).)

3) Directs the DOJ to maintain an index, referred to as the CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170, subds. (a)(1) and (a)(3).)

4) Allows DOJ to disclose information contained in the CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. (Pen. Code, § 11170, subd. (b).)

5) Requires reporting agencies to provide written notification to a person reported to the CACI. (Pen. Code, § 11169, (c).)

6) Provide that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which complies with due process before the agency that requested the person’s CACI inclusion. (Pen. Code, §11169, subds. (d) and (e).)

7) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

8) Requires the DOJ to remove a person’s name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report.
(Pen. Code, § 11169, subd. (h).)

9) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, §11169, subd. (f).)

10) Provides that any non-reoffending minor who is listed in CACI shall be removed after 10 years. (Pen. Code, § 11169, subd. (g).)

11) Allows any county to establish a computerized data base system within that county to allow provider agencies, as defined, to share specified identifying information regarding families at risk for child abuse and neglect, for the purposes of forming multidisciplinary personnel teams. (Welf. & Inst. Code, § 18965.1, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “Children are among the most vulnerable populations; they deserve protection from anyone that intends to do them harm. This case was not an outlier: Anthony Avalos died at the hands of his abusive mother just last year and a mere week ago, a young girl died in Fontana the same way. This is a very real problem that happens much more often than it should. AB 1450 aims to ensure we are doing everything we can so that not one more child has to suffer the way Gabriel Fernandez did.”

2) **Impetus for this Bill:** According to the background provided by the author, this bill is the result of the tragic murder of eight-year-old Gabriel Fernandez by his mother and her boyfriend. On May 22, 2013, the Los Angeles Fire Department responded to a call in East Palmdale, reporting that Gabriel was not breathing. He was taken to the hospital with multiple injuries including a fractured skull, BB pellets in his lungs and groin, two missing teeth, broken ribs, and cigarette burns. Gabriel died from his injuries the following day.

Before his death, Gabriel's teacher had made several calls to the county after he came to school with bruising. A security guard had also made a call to 911 when he saw Gabriel with injuries, including what appeared to be cigarette burns. The 911 operator told him it was not an emergency. Several agencies had investigated allegations of abuse before Gabriel's death without removing him from the home. Law enforcement had also responded to the home and school several times but concluded there was no evidence of abuse.


Gabriel's death also led as well to criminal charges against several social workers, who left
the boy in the home, based on a theory that their actions amounted to criminal negligence. In addition, the sheriff’s deputies visited the home multiple times were later disciplined in connection with the death. (http://www.latimes.com/local/lanow/la-me-ln-gabriel-fernandez-murder-penalty-20171213-story.html)

In response to Gabriel’s horrific death, this bill would require every county in the state to establish an on-line database for cross-reporting substantiated allegations of child abuse and neglect between the county welfare department, the district attorney’s office, and local law enforcement. The county databases are to be used as investigatory tools.

However, it is not apparent how such a database would help in a case such as Gabriel’s since both law enforcement and social workers determined that allegations of abuse were unfounded. Moreover it should be noted that Los Angeles County already had established an on-line system for reporting allegations of abuse to be used as an investigatory tool by law enforcement, the district attorney’s office, referred to as E-SCARS, at the time of Gabriel’s death.

3) **Problems with Local Databases**: Investigatory databases established for other purposes have been criticized for inaccuracy and lack of oversight.

For example, in August 2016, the California State Auditor released findings of the first ever investigation into the workings and impact of CalGang and the other shared gang databases that feed into it across the state. The audit revealed many concerns, including: the oversight structure is inadequate and does not ensure that user agencies collect and maintain criminal intelligence in a manner that preserves individuals’ privacy rights; the governing entities act without statutory authority, transparency, or public input; there is little evidence that the governing entities have ensured user agencies to comply with federal regulations regarding databases; the investigators could not substantiate the validity of numerous CalGang entries; the gang databases were “tracking people who do not appear to justifiably belong in the system;” user agencies that responded to the auditor’s statewide survey admitted that they use CalGang for employment or military-related screenings which is prohibited; user agencies have not ensured that CalGang records are added, removed, and shared in ways that maintain system accuracy and safeguard individuals’ rights; the programming underlying CalGang did not purge all records within the required timeframe. (https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf)

Additionally, as will be discussed below, the statewide database for reporting child abuse was previously fraught with problems and the subject of extensive litigation.

Creating 58 databases of allegations of child abuse without oversight, minimum standards, or procedural safeguards raises the same policy concerns.

4) **Child Abuse Central Index (CACI)**: The CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. This is not an index of persons who necessarily have been convicted of any crime; it is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency (local welfare departments and law enforcement) to meet the requirements for inclusion, according to standards that have changed over the years.
Access to CACI initially was limited to official investigations of open child abuse cases, but in 1986 the Legislature expanded access to allow the Department of Social Services (DSS) to use the information for conducting background checks on applications for licenses, adoptions, and employment in child care and related services positions.

DOJ provides the following summary of CACI on its website:

"The Attorney General administers the Child Abuse Central Index (CACI), which was created by the Legislature in 1965 as a tool for state and local agencies to help protect the health and safety of California's children.

"Each year, child abuse investigations are reported to the CACI. These reports pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. The reports are submitted by county welfare and probation departments.

"The information in the Index is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information also is provided to designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements, and adoptions. Dissemination of CACI information is restricted and controlled by the Penal Code.

"Information on file in the Child Abuse Central Index include:

- "Names and personal descriptors of the suspects and victims listed on reports;
- "Reporting agency that investigated the incident;
- "The name and/or number assigned to the case by the investigating agency;
- "Type(s) of abuse investigated; and
- "The findings of the investigation for the incident are substantiated.

"It is important to note that the effectiveness of the index is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a 'pointer' back to the original submitting agency." (See <http://oag.ca.gov/childabuse>.)

DOJ is not authorized to remove suspect records from CACI unless requested by the original reporting agency. (https://oag.ca.gov/childabuse/selfinquiry.)

5) Prior CACI Legislation and Litigation: In 1963, the Legislature began requiring physicians to report suspected child abuse. (See Smith v. M.D. (2003) 105 Cal.App.4th 1169 [discussing evolution of child abuse detection laws].) Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of the CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether
they were listed in the CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate the parents' due process rights. Specifically, "[t]he lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the [parents'] due process rights." (*Id.*) The court ruled that, "California must promptly notify a suspected child abuser that his name is on the CACI and provide 'some kind of hearing' by which he can challenge his inclusion." (*Id.* at 1201.)

In 2011, the Legislature amended the Child Abuse and Neglect Reporting Act to provide notice of inclusion and for a hearing to seek removal from the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 2011.) The same legislation also limited the reports of abuse and neglect for inclusion in CACI to substantiated reports. Inconclusive and unfounded reports were removed.

While this bill, as amended, would limit reporting to "substantiated" reports of child abuse and neglect, there is no definition for that term. And while each county is required to develop a process for a person to petition to be removed from the database if the report is determined to be "unsubstantiated" (which is also not defined), there is no requirement that that an individual be given notice of inclusion, so how would a person know to petition for removal? What about removal of substantiated reports that do not result in conviction? These are just some examples of potential due process concerns. Without uniform definitions, standards, and oversight, due process will vary by county. Arguably, creating county databases without standards and procedural safeguards will subject counties to similar litigation as the CACI litigation.

6) **Los Angeles County E-SCARS:** E-SCARS is an online reporting system that provides child welfare agencies with one central database containing histories of all abuse or neglect allegations, investigative findings and other information pertaining to a child or suspected perpetrator.

The system links Los Angeles County Department of Children and Family Services's Child Protection Hotline with the District Attorney's Office, the Los Angeles County Sheriff's Department, the Los Angeles Police Department and 45 other municipal police departments, and all city prosecutors' offices.

E-SCARS was implemented in 2009 (several years before Gabriel's death). In April 2014, the Blue Ribbon Commission on Child Protection submitted a final report to the Los Angeles
County Board of Supervisors, part of which detailed its findings and recommendations on E-SCARS. The commission found that “insufficient resources have been allocated for updating and maintaining ESCARS, as well as for needed oversight by the DA’s Office.” Other deficiencies included: Failure by some law enforcement agencies to cross-report (SCARs) to DCFS and the district attorney’s office and document their actions; differing standards among law enforcement agencies for investigating reports of alleged abuse; inadequate methods of retrieving cross-reported SCARs by law enforcement so that some are not seen for days; and lack of sufficient mandatory and continuing training for all levels of law enforcement personnel on handling child safety cases and E-SCARS. (See The Road to Safety for Our Children: Final Report of the Los Angeles County Blue Ribbon Commission on Child Protection, April 18, 2-14, pp. 15-16, <http://ceo.lacounty.gov/pdf/brc/BRCCP_Final_Report_April_18_2014.pdf>.)

This bill would require each county to implement an on-line reporting database like E-SCARS by 2030.

7) Practical Concerns: This bill, as currently drafted, is vague on details and therefore raises a number of practical concerns.

For example, this bill limits inclusion in the database to “substantiated” reports of child abuse. However, as noted above, that term is not defined. Although the term is defined in law for purposes of the statewide CACI, that definition is not cross-referenced. This raises the possibility that each county is permitted to decide constitutes a “substantiated” report. In fact, other language suggests this may very well be the case as each county is required to “develop criteria for substantiating reports.”

This bill would require the database to have “a detailed history of past incidents of abuse entered into the system by child and family welfare agencies.” It is unclear what this means. Is this triggered by the inclusion of a new substantiated report? Or are child and family welfare agencies required to enter other historical information. And if so, pertaining to whom and going how far back?

This bill would require “each county to develop policies and procedures for entering, reviewing, and purging information in the database, criteria for substantiating reports, and retention periods for information.” The bill does not specify which entity in the county is tasked with these responsibilities. Is it the board of supervisors, the district attorney, child welfare agencies, a working group? Moreover, as noted above because there are no minimum standards, the policies and procedures will vary from county to county.

This bill would also require each county to develop a process for persons included in the database to petition for removal if the report is determined to be “unsubstantiated.” Again, that term is not defined. Additionally removal of unsubstantiated reports appears to conflict with the limitation of only including substantiated reports. Moreover, this bill also seems to suggest that all reports that are not substantiated should automatically be purged, since it states, “All reports that are not substantiated shall be purged from the database.” How will this happen and when?

And what of reports that were initially substantiated but that do not subsequently result in charges being filed or that do not result in conviction? Do these reports get purged? If so, is
the purging automatic or does the individual have to petition for removal?

Other basic implementation questions include: which agency administers the database; who in each agency has access; can counties share information with other counties, and why is there a delayed implementation of more than a decade?

8) **Argument in Support:** According to the *Peace Officers Research Association of California*, "The current process for transmission of the report is antiquated and has not ensured the consistent, timely sharing and coordination of information, nor does it allow for the sharing of historical information among designated agencies. Previously completed investigations of abuse and neglect by both child welfare and law enforcement agencies help determine the level of risk to children when assessing current reports of suspected child abuse and neglect.

"AB 1450 will require each County, by January 2030, to establish an electronic database to reflect a real time information sharing system that allows rapid and secure transmission and receipt of mandated cross-reports, ensuring that the proper agencies receive the report, strictly to be used for the purposes of investigating allegations of child abuse and neglect. PORAC takes our children’s safety very seriously and we believe this bill will help protect the security of our most vulnerable youth."

9) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, "The creation of any government database containing sensitive personal information raises concerns regarding who will have access to the information, the uses to which the information will be put, and how the database will be kept secure from unauthorized access and use. Information regarding allegations of child abuse is of the highest sensitivity, especially when, as here, the information includes unproven allegations. Yet AB 1450 fails to specify which agencies will have access to the information contained in the proposed fifty-eight county databases or how they are authorized to use the information, stating only that there will be information sharing “including but not limited to” cross-reporting among the county welfare department, the district attorney’s office and local law enforcement agencies. Nor does the bill require that implementation include safeguards against unauthorized access. Finally, although the bill requires the purging of reports that are “not substantiated” and to allow individuals to petition to have their names removed from the database if the report is found to be unsubstantiated, there is no definition of what it means for a report to be “substantiated,” no uniform requirements as to the procedures for removing someone from the database, and no indication as to how individuals on the database will know that they are included or what information regarding them is in the database.

"A similar lack of safeguards and due process protections led to terrible due process violations and abuses regarding California’s statewide database of child abuse reports, the Child Abuse Central Index. Although some protections have been put in place as the result of litigation and legislative action, even with those changes there are still problems with the CACI system today. Under AB 1450, the same kinds of problems may be replicated in all fifty-eight counties with little or no legislative guidance or state oversight to prevent this from happening."
10) Prior Legislation:

a) AB 1911 (Lackey), of the 2017-2018 Legislative Session, as amended, was identical to this bill except for the date of implementation. AB 1911 failed passage in this Committee.

b) AB 2005 (Santiago), of the 2017-2018 Legislative Session, would require a police or sheriff’s department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are investigated and determined to be substantiated to the DOJ. AB 2005 was vetoed.

c) AB 1707 (Ammiano), Chapter 848, Statutes of 2012, removed non-reoffending minors from the CACI after 10 years, and amended the CACI notice provisions.

d) AB 717 (Ammiano), Chapter 468, Statutes of 2011, amended the CACI provisions by including only substantiated reports and removing inconclusive and unfounded reports from CACI.

e) SB 1312 (Peace), Chapter 91, Statutes of 2002, would have made numerous changes to CACI including the purging of old reports. The provisions dealing with CACI were deleted before SB 1312 was chaptered.

f) AB 2442 (Keeley), Chapter 1064, Statutes of 2002, established the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and CACI.

g) AB 1447 (Granlund), of the 1999-2000 Legislative Session, would have made numerous changes to CACI including the purging of old reports. AB 1477 was never heard by the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California

Opposition

American Civil Liberties Union of California

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

AB 1493 (Ting) – As Amended March 21, 2019

SUMMARY: Authorizes the subject of a Gun Violence Restraining Order petition to submit a form to the court voluntarily relinquishing the subject’s firearm rights and stating that the subject is not contesting the petition.

EXISTING LAW:

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

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

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

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

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

6) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

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

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

d) A recent violation of an unexpired protective order;

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

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

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

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

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

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

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

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

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

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

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

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

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, "AB 1014 (Skinner, 2014) created the system for gun violence restraining orders. In the three years since the program has been implemented, 424 GVROs have been issued. As people recognize the protections that GVROs can provide, it is important that we continue to improve the process. In complying with a GVRO, people have a few options such as selling the firearms, storing them with an approved facility, or relinquishing them to law enforcement. However, the availability and clarity of these options can change from county to county. The GVRO process can be streamlined by creating a form that the subject of a GVRO can submit to the court, expressing their willingness to cooperate."

2) **Gun Violence Restraining Orders:** California's GVRO laws went into effect on January 1, 2016. Once a GVRO issued against a person it prohibits him or her from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: 1) a temporary emergency GVRO, 2) an ex-parte GVRO, and 3) a GVRO issued after notice and hearing. All three GVROs prohibit the subject of the order from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition.

A law enforcement officer may seek a temporary emergency GVRO from a judicial officer orally or by submitting a written petition to a judicial officer. The officer must assert and the judicial officer must find that there is reasonable cause to believe two things. First, the
subject of the order poses an immediate and present danger to him or herself by virtue of access to a firearm or ammunition. Second, the temporary emergency order is necessary to prevent injury to the subject of the order or another because alternative solutions have proved ineffective or are otherwise inadequate or inappropriate. A temporary emergency GVRO expires 21 days after it is issued. Within those 21 days, there must be a hearing to determine whether a more permanent GVRO should be issued.

An immediate family member or a law enforcement officer can petition for an ex parte GVRO. An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for up to 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order. A GVRO after notice and hearing has been provided to the person to be restrained can last for up to one year.

3) **Prevalence of Gun Violence Restraining Orders Statewide:** Since 2016, the number of GVROs issued in the State has been low, but there does appear to be increase in their use from year to year. According to data provided by the Department of Justice (DOJ), fewer than 100 GVROs were issued statewide in 2016 and only slightly more than 100 were issued in 2017. Last year, approximately 420 GVROs issued throughout the state. San Diego County accounted for more than 200 GVROs; 31 were issued in Los Angeles, and exactly one was issued in San Francisco. According to DOJ data, a GVRO has never been used in 20 of California’s 58 counties.

4) **Related Legislation:**

   a) **AB 339 (Irwin),** would require each law enforcement agency to develop, adopt, and implement written policies and standards relating to gun violence restraining orders on or before January 1, 2021. AB 339 is currently in the Assembly Appropriations Committee.

   b) **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 gun violence restraining order. AB 61 failed passage in the Assembly Committee of Public Safety and has been granted reconsideration.

5) **Prior Legislation:**

   a) **AB 2526 (Rubio),** Chapter 873, Statutes of 2018, allowed law enforcement officers to orally obtain temporary emergency gun violence restraining orders provided they sign a declaration under oath attesting to the facts supporting the request.

   b) **SB 1331 (Skinner),** Chapter 137, Statutes of 2018, required POST to include training on procedures and techniques for assessing lethality or signs of lethal violence in domestic violence situations.
c) SB 1200 (Skinner), Chapter 898, Statutes of 2018, made various changes to the GVRO laws in order to address a variety issues that had surfaced since the GVRO was established.

d) AB 1014 (Skinner), Chapter 872, Statutes of 2014, allows the court to issue a GRVO and established the process by which the orders can be obtained.

REGISTERED SUPPORT / OPPOSITION:

Support
Bay Area Student Activists

Opposition
None

Analysis Prepared by:  Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Requires, for all sexual assault forensic evidence received on and after January 1, 2020, a law enforcement agency to either submit the evidence to a crime lab within 20 days or ensure that a rapid turnaround DNA program is in place, as specified, and would require a crime lab to either process the evidence as soon as practically possible, and no later than 120 days after receiving the evidence, or transmit the evidence to another crime lab for processing, as specified. Specifically, this bill:

1) Requires a law enforcement agency to do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2020 for specified sex offenses:
   a) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or
   b) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

2) Requires a crime lab to do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2020:
   a) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence; or
   b) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

3) Requires a law enforcement agency to submit sexual assault forensic evidence to the crime lab within six months for any sexual assault forensic evidence received by the law enforcement agency before January 1, 2020, for specified sex offenses.

4) Requires a crime lab to do one of the following for any sexual assault forensic evidence received by the crime lab before January 1, 2020:
a) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but within no more than 120 days; and

b) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but within no more than 30 days, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab shall upload the profile into CODIS as soon as practically possible, but no later than 30 days after being notified about the presence of DNA.

5) Specifies that a crime lab need not test all items of forensic evidence obtained in a sexual assault forensic evidence examination and will be considered to be in compliance with this section when representative samples of the evidence are processed by the lab in an effort to detect the DNA of the perpetrator.

6) Specifies that this section does not require a DNA profile to be uploaded into CODIS if the DNA profile does not meet federal guidelines regarding the uploading of DNA profiles into CODIS.

7) Sunsets the provisions pertaining to the handling of sexual assault evidence prior to January 1, 2020 on January 1, 2021.

EXISTING LAW:

1) Provides that in order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required and to ensure the longest possible statute of limitations for sex offenses the following should occur:

   a) A law enforcement agency in whose jurisdiction a specified sex offense occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

      i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; and

      ii) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

   b) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:

      i) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.

      ii) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for
processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified. (Pen. Code, § 680, subds. (b)(7)(A) and (B).)

2) Specifies that crime labs do not need to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. (Pen. Code, § 680, subd. (b)(7)(C).)

3) Specifies that a DNA profile need not be uploaded into CODIS if it does not meet the federal guidelines. (Pen. Code, § 680, subd. (b)(7)(D).)

4) Defines “rapid turnaround DNA program” as a program for training of sexual assault team personnel in the selection of a representative samples of forensic evidence from the victim to be the best evidence based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based. (Pen. Code, § 803, subd. (b)(7)(E).)

5) Provides that a criminal complaint for a registerable sex offense may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing as specified. (Pen. Code, § 803, subd. (g).)

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

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

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

9) Encourages crime labs to do one of the following:
   a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
   b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Penal Code § 680 (b)(7)(B).)

10) Provides that upon the request of a sexual assault victim, the law enforcement agency investigating a specified sex offense shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence form the victim’s case. (Penal Code § 680(c)(1))
11) Establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:

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

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

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

12) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Penal Code §§ 680 (e) and (f), 803.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “The current backlog of untested rape kits in our state has caused lasting harm to the victims of sexual assault and shaken the confidence of the public. When we fail to test rape kits the results are crystal clear: investigations are delayed, prosecutions are weakened, and perpetrators are given a second chance to harm our citizens. As Martin Luther King Jr. famously wrote, ‘Justice too long delayed is justice denied.’ It is past time to require the testing of these rape kits and ensure that victims of sexual crimes have equal access to justice.”

2) Sexual Assault Kits: After a sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a “sexual assault kit.” Sexual assault kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers. (U.S. DOJ’s National Institute of Justice. (2015). Sexual Assault Kits: Using Science to Find Solutions. https://nij.gov/unsubmitted-kits/Pages/default.aspx [as of June 19, 2018].)

The composition of sexual assault kits vary depending on jurisdiction. For example, the police and sheriff's department in Los Angeles use identically arranged sexual assault kits, however, the rest of California does not. (United States Department of Justice (USDOJ) National Institute of Justice (2011), The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf> [as of June 19, 2018].)
3) **Combined DNA Index System (CODIS):** Analyzing forensic evidence from sexual assault kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a sexual assault kit examination, it transfers the kit to a local law enforcement agency. From here, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

Created by the FBI in 1990, CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI, *Combined DNA Index System (CODIS)*, [https://www.fbi.gov/services/laboratory/biometric-analysis/codis](https://www.fbi.gov/services/laboratory/biometric-analysis/codis) [as of June 19, 2018].) At present, more than 190 law enforcement agencies use CODIS. (Id.)

4) **Unsubmitted Sexual Assault Kits:** California law does not currently require any agency to send a sexual assault kit to a crime lab. Recently, however, legislation has been enacted that encourages such transfers. (Pen. Code, § 680, subd. (b)(7)(A).) There are a number of reasons why law enforcement authorities do not submit a kit to a crime lab. For example, identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety of reasons, or a guilty plea may be entered rendering further investigation moot. (USDOJ’s National Institute of Justice, *supra*.)

A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. (California State Auditor. (2014) *Sexual Assault Evidence Kits.* [https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf] [as of June 19, 2018].) Specifically, the report found that “[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.” (Id.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The “decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors.” (Id.)

Although the audit found the explanations for not submitting the sexual assault kits to be reasonable, testing those kits may have identified offenders who had committed another
crime for which they were never previously identified. The National Institute of Justice funded Detroit, Michigan and Houston, Texas to test their unsubmitted sexual assault kits. The results revealed that testing unsubmitted kits can lead to convicting hundreds to thousands of serial offenders; such testing identified over 400 serial rapists in Detroit alone. (National Institute of Justice. (2016). *National Sexual Assault Kit Initiative (SAKI): FY 2017 Competitive Grant Announcement.* <https://www.bja.gov/funding/SAKI17.pdf> [as of June 19, 2018].)

Testing unsubmitted kits may be particularly effective in California, which passed Proposition 69 in 2004, requiring all persons arrested or charged of a felony to submit DNA samples. (Pen. Code, § 296.) For example, a serial offender is currently “awaiting trial in Alameda County Superior Court for sexual assaults against five women ranging in age from 15 to 46, and for the 2015 killing of one rape victim, Randhir Kaur, who was a UCSF dental student. All of the cases are linked by DNA evidence.” In one of his earlier cases from 2008, the law enforcement agency did not get the sexual assault kit tested, which, if they had, could have identified him as he was in the national DNA database for a 2005 felony gun conviction. (San Francisco Chronicle. (2018). *Efforts to Clear California’s Rape Kit Testing Backlog Fall Short.* <https://www.sfchronicle.com/news/article/Efforts-to-clear-California-s-rape-kit-testing-12760627.php> [Apr. 5, 2018].)

5) **The Effect of this Bill:** Existing law provides that law enforcement agencies should either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that rapid turnaround DNA program in in place. This bill would require law enforcement to take one of these actions.

Existing law also encourages a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions shall be taken.

Although this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill (http://www.endthebacklog.org/california) – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource to keep up with the influx of new kits.

6) **Related Legislation:**

a) AB 358 (Low), would require DOJ to modernize its databases for sexual forensic evidence supply chain tracking, as specified and would require each law enforcement agency that has investigated a case involving the collection of sexual assault kit evidence to create an information profile for the kit only if one does not currently exist. AB 358 is pending hearing in the Assembly Public Safety Committee.

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

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

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

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

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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 1501 (Low) – As Introduced  February 22, 2019

SUMMARY: Requires law enforcement agencies to obtain ballistic images from firearms, cartridge cases, and bullets obtained by the agencies in connection with criminal investigations, as specified, and submit those images to the National Integrated Ballistic Identification Network (NIBIN). Specifically, this bill:

1) States that if a law enforcement agency recovers an operable firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, or is acquired by the agency as an abandoned or discarded firearm, the agency shall test fire the firearm as soon as practicable and submit the ballistic images to the National Integrated Ballistic Information Network (NIBIN) or a similar automated ballistic identification system used by that agency to determine whether the firearm is associated with a crime, or individual associated with or related to, a crime.

2) Specifies that if a law enforcement agency recovers any cartridge case at a crime scene or has reason to believe that a recovered cartridge case is related to the commission of a crime, that agency shall, as soon as practicable, submit the ballistic image to the NIBIN or a similar automated ballistic identification system used by that agency.

3) States that a law enforcement agency that does not have the capability to test fire a firearm or to obtain or submit ballistic images shall comply with provisions of this bill by contracting or otherwise having an agreement with another law enforcement agency or crime lab in the state that has the appropriate capability and access to process any firearms or cartridge cases the agency seizes or recovers.

4) Requires the Department of Justice (DOJ) to develop a protocol for the implementation of this bill.

5) Defines “law enforcement agency” as “the police department of any city or sheriff’s department of any county, the Department of the California Highway Patrol, and the University of California or the California State University Police Departments.”

EXISTING LAW:

1) Allows local law enforcement agencies to enter into the United States Department of Justice, National Integrated Ballistic Information Network (NIBIN) information to ensure that representative samples of fired bullets and cartridge cases collected at crime scenes, from test-fires of firearms recovered at crime scenes, and other firearm information needed to investigate crimes, are recorded into the NIBIN in accordance with specified protocols. (Pen.
2) Requires the Attorney General, in cooperation with the law enforcement agencies that choose to do so, to develop a protocol to allow local law enforcement agencies to enter information to NIBIN. (Pen. Code, § 11108.10, subd. (b).)

3) Requires each sheriff or police chief executive to submit descriptions of serialized property, or non-serialized property that has been uniquely inscribed, which has been reported stolen, lost, found, recovered or under observation, directly into the appropriate DOJ automated property system for firearms, stolen bicycles, stolen vehicles, or other property, as the case may be. (Pen. Code, § 11108, subd. (a).)

4) States information about a firearm entered into the automated system for firearms shall remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error. (Pen. Code, § 11108, subd. (b).)

5) Provides that in addition to the requirements of existing law that apply to a local law enforcement agency's duty to report to DOJ the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the AG in consultation with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. (Pen. Code, § 11108.3, subd. (a).)

6) States that when the DOJ receives information from a local law enforcement agency pursuant to existing law, it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to the extent practicable. (Pen. Code, § 11108.3, subd. (b).)

7) Provides that a law enforcement agency shall enter into the DOJ Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, within seven calendar days after being notified. (Pen. Code, § 11108.2, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 1501 helps solve gun crimes by creating a uniform submission process to ensure that all eligible ballistic images from firearms and cartridge cases are entered into the NIBIN database or a comparable system in order to quickly to assist law enforcement in solving gun crimes, apprehending shooters, and bringing them to justice."

2) **National Integrated Ballistic Information Network (NIBIN):** The NIBIN Program is part of the Firearms Programs Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). In 1999, ATF established the National Integrated Ballistic Information Network (NIBIN) to provide federal, state, and local partner agencies with an automated...
ballistic imaging network. NIBIN is the only national network that allows for the capture and comparison of ballistic evidence. NIBIN provides investigators the ability to compare their ballistics evidence against evidence from other violent crimes on a national, regional and local level, thus generating investigative links. (https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network)

Since the program’s inception in 1999, NIBIN partners have captured approximately 3.3 million images of ballistic evidence, 99,000 NIBIN leads, and 110,000 NIBIN hits.

NIBIN is the only interstate automated ballistic imaging network in operation in the United States and is available to most major population centers in the United States. Prior to the NIBIN Program, firearms examiners performed this process manually which was extremely labor intensive. To use NIBIN, firearms examiners or technicians enter cartridge casing evidence into the Integrated Ballistic Identification System (IBIS). These images are correlated against the database. Law enforcement can search against evidence from their jurisdiction, neighboring ones, and others across the country. (https://www.atf.gov/firearms/national-integrated-ballistic-information-network-nibin)

The ATF states that for NIBIN to be most effective, it requires adherence to four steps:

1. **Comprehensive Collection and Entry**: Partner agencies must collect and submit all evidence suitable for entry into NIBIN, regardless of crime. Evidence includes both cartridge cases recovered from crime scenes and test fires from recovered crime guns.

2. **Timely Turnaround**: Violent crime investigations can go cold very quickly, so the goal is to enter the evidence into the network as quickly as possible in order to identify potential NIBIN Leads, and subsequently providing this relevant and actionable intelligence to the investigators.

3. **Investigative Follow-Up and Prosecution**: Linking otherwise unassociated crimes gives investigators a better chance to identify and arrest shooters before they reoffend.

4. **Feedback Loop**: Without feedback, NIBIN partners cannot know how their efforts are making the community safer, which is necessary for sustained success. (https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network)

3) **NIBIN Use in California**: There are approximately 20 law enforcement agencies in California that are participating in NIBIN. Among the law enforcement entities utilizing NIBIN, the Santa Clara County District Attorney Crime Laboratory, San Diego Sheriff’s Department, San Diego Police Department Crime Laboratory, Los Angeles County Scientific Services Bureau Firearms Identification Section/Los Angeles Police Department Scientific Investigation Division, Firearms Analysis Unit, Santa Ana Police Department Forensic Services, San Mateo County Sheriff’s Forensic Laboratory, Sacramento California Police Department, Alameda County Sheriff’s Crime Laboratory, Oakland Police Department Criminalistics Division, Contra Costa County Office of the Sheriff, San Joaquin County Sheriff’s Office. (https://www.atf.gov/firearms/nibin-interactive-map)

Optimally, each agency would have its own IBIS terminal. However, the terminals cost
approximately $250,000 per terminal. At the terminal site, any firearms that are available (e.g., a firearm recovered from a crime scene) must be test fired to obtain casings with the ballistic markings. Images of the casings from the crime scene and/or fired from the gun are then entered into NIBIN. A significant amount of law enforcement time is required to enter the data into the system.

This bill would require every firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, to be test fire the firearm and submit the ballistic images to NIBIN. This bill would also require every cartridge case or fired bullet recovered from a crime scene to submit the ballistic image to NIBIN. The mandates in this bill would require significant resources.

4) **Argument in Support:** According to *Brady United Against Gun Violence – California*, “In 2012, the International Association of Chiefs of Police adopted a resolution titled *Regional Crime Gun Processing Protocols*, which recommends the ‘timely processing of crime gun test fires and ballistics evidence through NIBIN’. The resolution finds that ballistic evidence from a crime gun can be used to link a firearm to prior crimes and to link two or more crimes together, and can provide law enforcement agencies with timely and actionable information to help identify and apprehend armed suspects before they do more harm.

“Existing California law permits local law enforcement agencies to enter images of ballistic evidence associated with crime scenes into NIBIN. Additionally, SB 248, enacted in 2007, required the Attorney General to develop a protocol for the submission of ballistic evidence. That protocol was never established. AB 1501 will require law enforcement agencies, as defined, to submit ballistic images of recovered cartridge cases found at a crime scene or associated with a crime to NIBIN or a similar automated ballistic identification system used by an agency. The agencies shall also have a recovered firearm that was unlawfully possessed, associated with a crime, or abandoned test-fired and submit the ballistic images to NIBIN or a comparable system used by an agency. Further, the bill requires, once again, the Department of Justice to develop a protocol for the submission of ballistic evidence.

“Brady California’s objective is consistent and timely entry of ballistic evidence images into NIBIN by law enforcement so that more gun crimes can be solved, both nationally and within California. AB 1501 will move California closer to this goal. NIBIN’s success at increasing public safety depends on comprehensive collection and entry of ballistic evidence nationwide and our state, the largest in the nation, must do its part.”

5) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “This bill represents a costly, unfunded mandate that will potentially prioritize the analysis and examination of certain types of evidence at the expense of others. AB 1501 contains no funding for the very burdensome requirement to test fire firearms that are unlawfully possessed, used for any unlawful purpose, recovered from a crime scene, or otherwise acquired by an agency.

“Additionally, we are concerned about the precedent of legislative mandates governing the nature in which law enforcement investigations are undertaken. Many types of evidence and information are routinely gathered during the course of an investigation, and trained investigators should have the discretion to process that evidence in the context of the individual situation and with the benefit of experience, expertise, and training that is the
cornerstone of the law enforcement profession."

6) Prior Legislation:

a) AB 2781 (Low), of the 2017-2018 Legislative Session, would have required law enforcement agencies to obtain ballistic images from firearms, cartridge cases, and bullets obtained by the agencies in connection with criminal investigations, as specified, and submit those images to the NIBIN. AB 2781 was held on the Suspense File of the Senate Appropriations Committee.

b) AB 2222 (Quirk), Chapter 864, Statutes of 2018, requires all law enforcement agencies to report to DOJ any information in their possession necessary to identify and trace the history of a recovered firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime.

c) AB 2733 (Harper), of the 2017-2018 Legislative Session, would have deleted the requirement that a firearm be designed and equipped with microscopic characters that leave an imprint, as specified, on each cartridge when the firearm is fired in order to be listed on the roster of not unsafe handguns. AB 2733 was failed passage in the Assembly Public Safety Committee.

d) SB 248 (Padilla), Chapter 639, Statutes of 2007, authorized law enforcement agencies to have specified information related to firearms entered into the NIBIN to ensure that representative samples of fired bullets and cartridge cases from crime scenes are recorded, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California United Against Gun Violence
Santa Clara District Attorney

Oppose

California State Sheriffs' Association

Analysis Prepared by: David Billingsley / PUB. S./ (916) 319-3744
SUMMARY: Authorizes a person to apply to the sheriff of the county for an emergency license to carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person (CCW) if the person reasonably believes they are in immediate and grave danger of becoming a victim, as specified, and a firearm is necessary to protect them from harm. Specifically, this bill:

1) Authorizes a person that reasonably believes that they are in immediate and grave danger due to having been a victim of, or, based on specific articulable facts, reasonably fear they are in immediate and grave danger of becoming a victim of, an act of domestic violence, sexual assault, or stalking, and reasonably believe that a firearm is necessary to protect them from harm, to apply to the sheriff of the county in which they reside for an emergency CCW that would allow them to carry a concealed firearm.

2) Provides that a person applying for an emergency license pursuant to this bill shall submit a written affidavit, signed under the penalty of perjury, that includes specific and articulable facts describing the applicant’s need for an emergency license, and attesting that the person is not prohibited by law from owning or possessing a firearm.

3) Requires a sheriff to, upon receipt of an application pursuant to this section, immediately and without delay issue to the person a temporary license to carry a pistol, revolver, or other firearm capable of being concealed upon the person which shall be valid until 30 days after the issuance and shall not be renewed or reissued.

4) States that a sheriff may, prior to issuance of an emergency license pursuant to this section, reasonably verify the following:
   a) That the applicant is a resident of the county;
   b) That the applicant is not prohibited from owning or possessing a firearm; and,
   c) That the signed affidavit, on its face establishes that the person reasonably believes they are in immediate and grave danger of becoming a victim, and a firearm is necessary to protect them from harm.

5) Prohibits the sheriff, prior to issuance of the emergency license, from investigating the facts or veracity of the affidavit.

6) Specifies that any verification shall take place at the time the application is submitted and shall not unreasonably delay the immediate issuance of the emergency license.
7) States that an emergency license grants the same privileges and protections as a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person that is issued under existing law.

8) Provides that an applicant for an emergency license described in this section may, at the time of application, also submit an application for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person. Fingerprints submitted to the Department of Justice (DOJ), for an application for an emergency CCW shall include a notation that they are being submitted for an application made pursuant to this subdivision and require expedited processing.

9) States that an application for a CCW that is submitted concurrent with an application for an emergency license shall be accepted without payment of the required fees and without completion of the course of training.

10) Requires the sheriff to, within 30 days after the initial application is made, issue a CCW for which an applicant has applied pursuant to this subdivision, if the applicant has subsequently met all of the requirements including completion of the firearm safety and proficiency course of training and payment of all required fees. For purposes of those requirements, the facts stated in the affidavit, if not fraudulent, shall establish good cause for the issuance of the license.

11) Requires an applicant eligible for an emergency license pursuant to this bill to reasonably believe that they are in immediate and grave danger due to having been a victim of, or, based on specific articulable facts, reasonably fear they are in immediate and grave danger of becoming a victim of, an act of domestic violence, sexual assault, or stalking, and reasonably believe that a firearm is necessary to protect them from harm.

12) Requires the DOJ to expedite the report for any application for an emergency CCW and furnish the report to the licensing authority no later than 21 days after receipt of fingerprints.

EXISTING LAW:

1) Provides a county sheriff or municipal police chief may issue a CCW upon proof that:
   a) The person applying is of good moral character (Pen. Code, §§ 26150 & 26155, subd. (a)(1).);
   b) Good cause exists for the issuance (Pen. Code, §§ 26150 & 26155, subd. (a)(2).);
   c) The person applying meets the appropriate residency requirements (Pen. Code, §§ 26150 & 26155, subd. (a)(3).); and,
   d) The person has completed the appropriate training course (Pen. Code, §§ 26150 & 26155, subd. (a)(4)).

2) Provides that the license may either:
a) Allow the person to carry a concealed firearm on his or her person (Pen. Code, §§ 26150 & 26155, subd. (b)(1).); or

b) Allow the person to carry a loaded and exposed firearm in a county whose population is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150 & 26155, subd. (b)(2).)

3) States that for a new applicant for a CCW, the course of training for issuance of a CCW may be any course acceptable to the licensing authority and shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. (Pen. Code, § 26165, subd. (a).)

4) Provides that a CCW license is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)

5) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code § 26200, subds. (a) & (b).)

6) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice (DOJ). Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, §§ 26180 & 26185.)

7) Specifies that applications for CCW licenses, applications for amendments to CCW licenses, amendments to CCW licenses, and CCW licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. (Pen. Code, § 26175, subd (a)(1).)

8) Provides that the Attorney General shall convene a committee composed of one representative of the California State Sheriffs’ Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for CCW licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. (Pen. Code, § 26175, subd (a)(2).)

9) States that the application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. (Pen. Code, § 26175, subd (b).)

10) Provides that the standard application form for CCW licenses shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant’s age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. (Pen. Code, § 26175, subd (c).)

11) Specifies that applications for licenses shall be filed in writing and signed by the applicant. (Pen. Code, § 26175, subd (d).)

12) Provides that applications for amendments to CCW licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought and the reason for
desiring the amendment. (Pen. Code, § 26175, subd (e).)

13) States that the forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application. (Pen. Code, § 26175, subd (f).)

14) Provides that an applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form, except to clarify or interpret information provided by the applicant on the standard application form. (Pen. Code, § 26175, subd (g).)

15) States that the standard application form is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act. (Pen. Code, § 26175, subd (h).)

16) Provides that any CCW license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated. (Pen. Code, § 26175, subd (i).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, "Because of the extraneous concealed carry license process, Californians who fear domestic violence and sexual assault are not able to carry and protect themselves from predators. The California Department of Justice reports that over 150,000 domestic violence-related calls were made in 2017 alone, a 3 percent increase from 2008. Moreover, the amount of rape cases in California have nearly doubled since 2008, with over 15,000 reported in 2017.

   "Several states offer temporary concealed carry weapon licenses. Sheriffs in Ohio, Colorado, Wisconsin, and Minnesota can issue a Temporary Emergency License to allow someone to legally carry a gun before receiving their concealed carry permit. In Washington, the chief of police of the municipality or the sheriff of the county where an applicant resides may issue a temporary emergency license for good cause, pending review of an applicant's background for a concealed pistol license.

   "California should not allow bureaucracy to stand in between victims of violence and their 2nd amendment right. Assembly Bill 1559 allows a person who reasonably believes they are in danger of domestic violence, sexual assault, or stalking to apply for a 30-day temporary concealed carry emergency license once they submit an application for a conceal carry weapon, and shall require the Department of Justice to complete necessary concealed carry weapon background check within 21 days."

2) **Background:** *Peruta v. County of San Diego:* For approving a license to carry a concealed firearm, the County of San Diego required that an applicant show that good cause exists for issuance of the license and provided that generalized self-defense could not serve as good cause. Mr. Peruta, a San Diego County resident, contested the condition as
unconstitutionally abridging his Second Amendment right to bear arms. The U.S. District Court for the Southern District of California ruled against Mr. Peruta in a summary judgment, and Mr. Peruta appealed. In a 2-to-1 decision, the U.S. Court of Appeals for the Ninth Circuit held that "the Second Amendment does require that the states permit some form of carry for self-defense outside the home." (Peruta v. County of San Diego (2014) 742 F.3d 1144, 1172.) The majority went on to state that "concealed carry per se does not fall outside the scope of the right to bear arms; but insistence upon a particular mode of carry does." (Ibid.) The dissent felt that the county's "good cause" policy fell squarely within the Supreme Court's definition of a presumptively lawful regulatory measure and would have found in favor of Mr. Peruta.

On February 27, 2014, the Department of Justice, on behalf of the state, filed a motion to for en banc review of the decision. (Peruta v. County of San Diego (2015) 824 F.3d 919, en banc.) On June 9, 2016 the en banc court affirmed the lower court ruling, saying that, "there is no Second Amendment right for members of the general public to carry concealed firearms in public." In June of 2016, the United States Supreme Court denied review leaving the en banc Ninth Circuit’s decision in place.

3) **This Bill Would Circumvent Existing CCW Requirements:** Under current law, there are a number of prerequisites to the lawful issuance of a CCW. Specifically, the applicant for a CCW must establish that they are of good moral character and not prohibited from possessing a firearm, as verified by a DOJ background check. This bill would ignore that prerequisite for the purposes of issuing a temporary, 30-day CCW. Under this bill’s provisions, rather than conducting a fingerprint-verified DOJ background check, the issuing authority could, but would not have to, “reasonable verify” that the person is not prohibited from owning or possessing a firearm. To do so, it could, but would not have to, reference the name of the applicant in the California Law Enforcement Telecommunications System (CLETS).

Additionally, existing law requires “good cause” to be established prior to the issuance of a CCW. “Good cause” is not specifically defined in California State law; it is up to the individual jurisdiction that issues the CCW to determine what “good cause” means. (See Peruta, 824 F.3d, at 924.) For example, San Diego and Yolo counties define good cause as “a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm’s way.” (Id. at 926.) They further state that “[s]imply fearing for one’s personal safety alone is not considered good cause.” (Ibid.) San Diego and Yolo counties’ good cause standard, which was upheld by the Ninth Circuit Court sitting en banc, would be undone by this bill. Any other county that has established a similar good cause standard would also have that standard overridden by this bill, at least for the purposes of a temporary 30-day CCW.

This bill would require a temporary CCW to be issued, upon the assertions of an applicant in a signed affidavit that the applicant believes or fears that they are in danger. The bill expressly prohibits the issuing authority from conducting any investigation or verification of the facts in the affidavit prior to issuing the CCW. Instead, if the applicant’s assertions in the affidavit establish a reasonable fear or belief that the applicant may become a victim, the CCW must be issued “immediately and without delay.” Should the Legislature relax the established CCW requirements to require the issuance of temporary CCWs?
4) **Argument in Support:** According to the Riverside Sheriffs’ Association, “The County of Riverside is approximately the same size as New Jersey, encompassing more than 7,300 square miles. As a result, in many parts of our county, response times during emergencies can be lengthy and even deadly.

“Many Riverside County residents live in sparsely populated, rural areas where they are required, in many cases, to depend on themselves for protection. This need is even more great for those threatened with domestic violence, sexual assault, or stalking.

“AB 1559 will allow specified, endangered persons to be better positioned to protect themselves and their families by allowing them to apply for an emergency CCW permit under limited circumstances.

“Importantly the Department of Justice will be instructed to complete the necessary concealed carry weapon background check within 21 days.”

5) **Argument in Opposition:** California Brady United Against Gun Violence states, “In recent years, there has been a push in state legislatures to arm domestic violence victims by allowing them to carry a gun without a license while waiting for a permit to be approved. Interestingly, domestic violence prevention experts have strongly disagreed with this policy. In news reports, Susan Sorenson, a researcher at the University of Pennsylvania and the director of the Evelyn Jacobs Ortner Center on Family Violence is quoted, ‘There is no evidence to suggest that abused women arming themselves makes them safer. There is evidence that women who, regardless of abuse status, arm themselves are at higher risk of becoming a victim of homicide as well as suicide.’ Kerry Bennett with the Indiana Coalition Against Domestic Violence states, ‘If you put a firearm into the hands of somebody who is untrained and afraid, everything we know about this says it is much more likely to be used against that person.’

“Introducing firearms into an already volatile situation will typically make things worse, not better, and places everyone, including children, at risk. According to John Hopkins School of Public Health, when either the abuser or the victim is armed, the situation becomes more lethal: domestic assaults involving guns are 12 times more likely to result in death than assaults without them. A firearm in the hands of a person who is untrained and afraid is not a safe situation and makes it more likely that someone will die or be seriously injured.

“Under existing law, an applicant for a license to carry a concealed and loaded weapon must have completed a course of training that is at least eight hours and includes instruction on firearm handling and shooting technique and demonstration of safe handling and shooting proficiency. Under AB 1559 no training is required for the emergency license. Furthermore, the bill removes the discretion of sheriffs in issuing a temporary emergency license, even if, in their judgement, a person is not fit to be carrying a concealed and loaded gun.”

6) **Related Legislation:** AB 1096 (Melendez), would have defined "good cause" for the issuance of a license to carry a concealed handgun to include, but not limited to, self-defense, defending the life of another, or preventing crime in which human life is threatened; provides guidelines to determine the presence or absence of "good cause", and requires the issuance of a license to carry a concealed handgun if the applicant meets specified requirements. AB
1096 failed passage in the Assembly Public Safety Committee.

7) Prior Legislation:

a) AB 757 (Melendez), of the 2017-2018 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun to include, but not limited to, self-defense, defending the life of another, or preventing crime in which human life is threatened. AB 757 failed passage in this committee.

b) AB 3026 (Melendez) of the 2017-18 Legislation Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun to include, but not limited to, self-defense, defending the life of another, or preventing crime in which human life is threatened. AB 3026 failed passage in this committee.

c) AB 871 (Jones), of the 2013-2014 Legislative Session, would have provided that "good cause" for the issuance of a license to carry a concealed handgun by a sheriff of a county or a chief of a municipal police force includes, but is not limited to, personal protection or self-defense. AB 871 failed passage in this committee.

d) AB 1563 (Donnelly), of the 2013-2014 Legislative Session, would have required the Department of Justice Requires DOJ to issue a license to carry a concealed handgun upon the person within 30 days of submission of a completed application, as specified and with certain exceptions. AB 1563 failed passage in this committee.

e) AB 2376 (Halderman), of the 2011-2012 Legislative Session, would have defined "good cause" for the issuance of a license to carry a concealed handgun, by a sheriff of a county or a chief of a municipal police force, to include, but not limited to, if the applicant has a report on file with a law enforcement agency evidencing that he or she is a victim of a hate crime. AB 2376 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Riverside Sheriffs’ Association

Opposition

Bay Area Student Activists
California Brady United Against Gun Violence

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Creates a new misdemeanor for knowingly and credibly impersonating another person by electronic means for the purpose of initiating a sexual relationship with another person. Specifically, this bill:

1) Defines “electronic means” to include “opening an email account, an account or profile on a social networking internet website or mobile application, or an account or profile on a dating service internet website or mobile application in another person’s name, using another person’s photograph, or using another person’s personal identifying information, with the intent to cause another person to believe that the defendant is, or was, the other person.”

2) Permits law enforcement officials to maintain the right to impersonate another person by electronic means for the purpose of initiating a sexual relationship, if the officer is acting within the scope of their employment investigating internet crimes.

3) Exempts from criminal activity acts that are satire or parody.

4) States that this new crime does not impose liability on an interactive computer service, as defined in federal Communications Decency Act.

5) Creates a civil cause of action for a person who is harmed by another person who impersonates a person and uses electronic means to initiate a sexual relationship that person.

EXISTING STATE LAW:

1) Prohibits a person from knowingly and without consent credibly impersonating another actual person through or on an internet website or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person. (Pen. Code, § 528.5.)

2) States that an impersonation is credible if another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.

3) Defines “electronic means” to include opening an e-mail account or an account or profile on a social networking internet website in another person’s name.

4) Permits a person to seek civil remedies if that person suffers damage or loss, including compensatory damages and injunctive relief.

5) Provides that every person who falsely personates another in either his or her private or official capacity, and in such assumed character either, and does any of the following, is punishable by a fine not exceeding $10,000, or by imprisonment in the state prison, or in a
county jail not exceeding one year, or by both such fine and imprisonment. (Pen. Code, § 529 (1) to (3));

a) Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety;

b) Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,

c) Does any other act whereby, if done by the person falsely personated, they might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person.

6) Provides that every person who willfully obtains personal identifying information, as defined, of another person and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense; and upon conviction therefore, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed $1,000, or both that imprisonment and fine; or by imprisonment in the state prison, a fine not to exceed $10,000, or both that imprisonment and fine. (Pen. Code, § 530.5, subd. (a).)

7) Defines “personal identifying information” as the name; address; telephone number; health insurance identification number; taxpayer identification number; school identification number; state or federal driver's license number or identification number; social security number; place of employment; employee identification number; mother's maiden name; demand deposit account number; savings account number; checking account number; PIN (personal identification number) or password; alien registration number; government passport number; date of birth; unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation; unique electronic data including identification number, address, or routing code; telecommunication identifying information or access device; information contained in a birth or death certificate; or credit card number of an individual person. (Pen. Code, § 530.5, subd. (b).)

8) Provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in Penal Code 530.5(b), of another person is guilty of a public offense; and upon conviction therefore, shall be punished by imprisonment in a county jail not to exceed one year; a fine not to exceed one $1,000; or by both that imprisonment and fine. (Pen. Code, § 530.5, subd. (d).)

9) Establishes a right to seek damages against a person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian. (Civ. Code, § 3344 subd. (a).)

10) Makes a person who engaged in the authorized use of another person’s likeness liable to the injured party or parties in an amount equal to the greater of $750 or the actual damages
suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. The prevailing party in any action under this section shall also be entitled to attorney’s fees and costs. (Civ. Code, § 3344 subd. (a).)

11) Makes it a crime for a person to intentionally distribute the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. (Pen. Code, § 647, subd. (j)(4)(a).)

EXISTING FEDERAL LAW

1) Existing law provides that “Congress shall make no law... abridging the freedom of speech...” (U.S. Const., Amend. 1.)

2) Existing law applies the First Amendment to the states through operation of the Fourteenth Amendment. (Gitlow v. New York (1925) 268 U.S. 652; NAACP v. Alabama (1925) 357 U.S. 449.)

3) “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” (47 U.S.C. 230.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “AB 1598 updates California law to reflect changes in current interpersonal relationships, culture and technology. Our current laws related to false identities, predate the ubiquitous nature of internet-based tools, online dating and smartphone apps. In order to better protect individuals from predators who are using these tools in nefarious ways, AB 1598 provides a criminal and civil remedy in cases where false identities are used to lure unsuspecting victims into sexual relationships.”

2) “Catfishing”: This bill seeks to police online relationships, specifically, a phenomenon called “catfishing” which Webster’s Dictionary defines as an act “to deceive (someone) by creating a false personal profile online.” Catfishing, now common parlance, was once a new phenomenon in modern society.

That has changed in the last decade. In 2010, a documentary film was released showing the process of a man who developed an online relationship with a woman only to find out that she was a different person than the one she portrayed. The documentary spawned a television show that aired for the first time in 2012, and is currently in its seventh season on MTV. In 2014, Webster’s Dictionary added the term “catfishing” to the dictionary.
As online dating applications and websites have proliferated, acts of catfishing have spawned countless stories which have made the once obscure act a common reality, one that online dating consumers have been advised by apps\(^1\), websites\(^2\) and their friends alike to watch out for.

3) **First Amendment Requires Strict Scrutiny for Laws Limiting Speech:** The First Amendment to the United States Constitution guarantees to all citizens the right to freedom of speech and association. At the core of the exercise of these First Amendment rights is the freedom to engage in interpersonal relationships. Increasingly in modern society, relationships proliferate online.

In *Reno v. ACLU* (1997) 521 U.S. 844, the Supreme Court declared, “As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.” *(Id. at 885.)*\(^3\)

Anytime a Legislature seeks to limit speech in statute, the measure should face exacting scrutiny. In *Ashcroft v. The Free Speech Coalition* (2002) 535 U.S. 234, the Supreme Court cautioned that “the mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. The government ‘cannot constitutionally premise legislation on the desirability of controlling a person’s private thoughts,’ [cite] First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.”

“[T]he government may not prohibit speech because it increases the chances that an unlawful act will be committed at some indefinite future time,” *Ashcroft v. The Free Speech Coalition*, supra, at 253, citing *Hess v. Indiana* (1973) 414 U.S. 105, 108. “[T]he government has shown no more than a remote connection between speech that might encourage thoughts or impulses and any resulting child abuse. Without a significantly stronger, more direct connection, the Government may not prohibit speech on the ground that it may encourage pedophiles to engage in illegal conduct.”

When content-based speech regulation is in question, exacting scrutiny is required. Statutes suppressing or restricting speech must be judged by the sometimes inconvenient principles of the First Amendment. Historically, content-based restrictions on speech have been permitted only in a few specific categories that are well-defined. These categories include: speech to incite imminent lawless action, obscenity, defamation, speech integral to criminal conduct, so-called “fighting words,” child pornography, fraud, true threats, and speech presenting some grave and imminent threat the Government has the power to prevent. Outside these limited categories, content based restrictions on speech are constitutionally suspect. For

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1 Hinge encourages users to report suspicious behavior including “catfish profiles.”

example, the government cannot pass a law to ban lies, false statements, or hate speech. This means that “new” kinds of speech that the Legislature might identify as a result of emerging technology, if they do not fall into an “old” category of prohibited speech, are likely to fail constitutional muster.

Absent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements. United States v. Alvarez (2012) 567 U.S. 709. “Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment.” “The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth.”

4) **Strict Scrutiny Review:** The government may only impose a content-based regulation of speech if it can satisfy the strict scrutiny standard; that is, whether the law “is necessary to serve a compelling state interest,” “that it is narrowly drawn to achieve that end,” and that no “less speech-restrictive means exist to achieve the interest.”

The author of this bill presents the compelling government interest to be to update law to “reflect changes in current interpersonal relationships, culture and technology.” “In order to better protect individuals from predators who are using these tools in nefarious ways” this bill would create criminal and civil liability.

The Legislature should consider whether the interest identified by the author is “compelling” enough to overcome the centuries of case law permitting false speech and overturning laws that infringe on speech rights. Current California law prohibiting impersonation punishes the act only when it rises to the level of behavior that truly harms a person—when it is made with the intent to defraud, intimidate, harass or harm.

This bill appears to criminalize behavior because it has the potential to break someone’s heart. If a person could be prosecuted, or civilly sued by another, for romantic disappointment, the already crowded courts would be utterly overrun.

Moreover, as discussed above, online websites and apps have been warning customers of the dangers of catfishing for many years. These companies have the ability to terminate users who violate the terms of service. Both of these are less restrictive means of addressing bad or disfavored behaviors that do not create legal liability. If this bill were law, online dating companies would be encouraged to act as a law enforcement operation to police their own customers, suing them or turning over information to police instead of simply terminating an account.

5) **This Bill is Vague as to What Constitutes “Initiating a Sexual Relationship”:** There are many reasons why people impersonate others online and meet through dating applications and websites, to flirt and otherwise engage in human relationships. It may be for

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entertainment, friendship, companionship—there may never be an intent by either or both parties to pursue a sexual relationship, or that may develop over time. And the deceit may not ever actually harm a person.

The wording of this bill specifically criminalizes the intent to initiate a sexual relationship. It would still permit a person to impersonate another if the intent is not to initiate a sexual relationship. However, the deception is the same. To the extent that this bill would criminalize impersonation regarding an intent to initiate a sexual relationship, at what point does a person intend the relationship to be a sexual one? Whose intent matters under this proposal?

A law is subject to constitutional scrutiny for vagueness when people “of common intelligence must necessarily guess at its meaning,” an idea founded in the ancient Roman law maxim, “nulla crimen sine lege” meaning “no crime without law.” In general, vague criminal laws raise due process concerns. When the First Amendment is involved, the issue raises even greater concern because of the potential chilling impact on speech.

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

A law that defines a crime in vague terms is likely to raise due-process issues. Courts in the United States give particular scrutiny to vague laws relative to First Amendment issues because of their possible chilling effect on protected rights. Additionally, to attach criminal liability to an ambiguous standard is particularly unjust. Criminal liability can result in the loss of liberty and must therefore be straightforward so that citizens know the boundaries of the law.

6) **Who is a Victim of Catfishing?**: The sponsor of this bill states that not only is a person deceived by a catfisher harmed by the deceit, so can a person who is being impersonated. The sponsor reports that catfish victim often harasses the person they thought they had a relationship with.

Existing law prohibits the misappropriation of another person’s likeness and creates a civil cause of action for a person whose identity is misappropriated.

Existing law also makes it a crime to engage in behavior that is considered “revenge porn,” meaning the distribution of an intimate photo of a person which was obtained with the understanding that the image should remain private. This bill’s sponsor states that often, victims who are catfished share nude photographs and perform sex acts through video and

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5 See Grayned v. City of Rockford (1972), which explains why this is so. First, due process requires that a law provide fair warning and provides a “persons of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” Second, the law must provide “explicit standards” to law enforcement officials, judges, and juries so as to avoid “arbitrary and discriminatory application.” Third, a vague statute can “inhibit the exercise” of First Amendment freedoms and may cause speakers to “steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked.”
web cameras. Those photos may then be shared by a catfisher. This conduct is already unlawful under California law.

7) **Exemption for Parody or Satire:** While this bill includes an exemption for parody and satire, it still potentially criminalizes speech that is lawful. These terms stem from copyright law and are insufficient for detailing the breadth of speech that may not be harmful or prohibited under law. For example, this exemption would not protect a teenager who sets up an online dating account as a "joke" with a friend.

The current MTV show "Catfish" would not fall within the exemption for parody or satire. It is unclear whether this bill would criminalize the publisher of the television show, but at minimum, this bill would chill speech regarding any reporting of catfishing stories that come out of California.

8) **Communications Decency Act:** This bill states the proposed law does not impose liability on an interactive computer service, as defined in Section 230 of Title 47 of the United States Code. The Communications Decency Act protects online platforms, including dating applications and websites, from any liability for permitting users to post and publish information that may create liability for the person posting. Thus, a dating website will not face any liability for facilitating the unlawful behavior of its users.

9) **Argument in Support:** According to *Match Group*, the bill's sponsor, "AB 1598 addresses gaps in California's existing online impersonation law. This bill recognizes that there are many victims of fraudulent online impersonation—commonly referred to as 'catfishing'—who are not protected by existing law because they are targeted for sexual purposes rather than an intent to defraud for money, intimidate, threaten, or harm. Catfishers may target these victims out of loneliness, boredom, or sexual interest. Victims form genuine emotional connections and believe that they are in real relationships with trustworthy partners. When they discover that these relationships were based on deception, they experience humiliation, betrayal, and sometimes psychological trauma. A 2015 study found that romance scam victims who incurred financial losses were more upset by the loss of the relationship than the loss of money in most cases. Further, the harm may be more severe when sexual activity is involved; the study found that these kinds of catfishing victims who had performed sexual acts in front of a webcam reported an impact similar to survivors of rape. Under the current law, these victims have no legal recourse if they cannot show that the scammer intended to benefit financially or to harm or intimidate them.

"It is important to remember that the individuals whose identities are used by catfishers are also victims in these cases. They experience harassment and threats by catfishing victims who locate and approach them in real life. Again, these individuals have no recourse if the catfisher using their photos are motivated by sex rather than money.

“This issue is so prevalent that there is even a popular TV program, entitled ‘Catfish’, that highlights this issue. But the truth of the matter is that catfishing is not entertainment and should not be treated as such. The victims of catfishing need the protections granted them in this legislation... Every day, millions of people look for meaning relationships on Match Group’s platforms. The vast majority are genuine, and we have tools and processes in place that help us to actively identify and remove those who are not. However, more can be done. AB 1598 will serve as a strong deterrent to bad actors and will provide a remedy to victims.
who are targeted by them."

10) **Related Legislation:** AB 569 (Fong) would have made it an alternate felony or misdemeanor to falsely report an active shooter situation. AB 569 died in this committee.

11) **Prior Legislation:** SB 1411 (Simitian), Chapter 335, Statutes of 2010, make it a crime for a person to knowingly and without consent credibly impersonate another actual person through electronic means for the purpose of harming, intimidating, threatenning, or defrauding another person.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Match Group

**Opposition**

None

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