AGENDA

9:00 a.m. – February 26, 2019
State Capitol, Room 126

ADOPTION OF COMMITTEE RULES

REGULAR ORDER OF BUSINESS

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Date of Hearing: February 26, 2019
Counsel: Sandra Uribe

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

AB 32 (Bonta) – As Introduced December 3, 2018

REVISED

SUMMARY: Prohibits the California Department of Corrections and Rehabilitation (CDCR) from entering into, or renewing contracts with for-profit private prisons after January 1, 2020, and eliminates their use by January 1, 2028. Specifically, this bill:

1) Prohibits CDCR from entering into a contract with any private, for-profit prison, on or after January 1, 2020. Applies to both in-state and out-of-state facilities.

2) Prohibits CDCR from renewing contracts with any private, for-profit prison on or after January 1, 2020. Applies to both in-state and out-of-state facilities.

3) Requires all state prison inmates under the jurisdiction of CDCR to be removed from private, for-profit prison facilities on or before January 1, 2028.

EXISTING LAW:

1) Authorizes the Secretary of CDCR to enter into agreements with private entities to obtain secure housing capacity within California. Sunsets this authority on January 1, 2020. (Pen. Code, § 2915, subds. (a) & (d).)

2) Authorizes the Secretary of CDCR to enter into agreements with private entities to obtain secure housing capacity in another state. (Pen. Code, § 2915, subds. (b) & (d).)

3) Prohibits CDCR from operating its own facility outside of California. (Pen. Code, § 2915, subd. (b).)

4) Allows the Secretary of CDCR to enter into an agreement with a city, county, or city and county, to permit the transfer of prisoners in the custody of the secretary to a jail or other adult correctional facility. Sunsets this authority on January 1, 2020. (Pen. Code, § 2010, subds. (a) & (h).)

5) Anticipates, as outlined in the Budget Act of 2018, that all California inmates will be returned from out-of-state contract correctional facilities by February 2019. (Pen. Code, § 2067, subd. (a).)

6) Requires CDCR, to the extent that the adult offender population continues to decline, to begin reducing private in-state male contract correctional facilities in a manner that maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. The private in-state male contract correctional
facilities that are primarily staffed by non-Department of Corrections and Rehabilitation personnel shall be prioritized for reduction over other in-state contract correctional facilities. (Pen. Code, § 2067, subd. (a).)

7) Requires CDCR to consider the following factors in reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities:

a) The cost to operate at the capacity;

b) Workforce impacts;

c) Subpopulation and gender-specific housing needs;

d) Long-term investment in state-owned and operated correctional facilities, including previous investments;

e) Public safety and rehabilitation; and,

f) The durability of the state’s solution to prison overcrowding. (Pen. Code, § 2067, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “The built-in incentives for these businesses are all wrong. A private, for-profit company that is traded on Wall Street will inherently be incentivized to maximize profits and minimize costs—including the important ‘cost’ of investments in programs, services and rehabilitation efforts for inmates—through warehousing our inmates. These companies have a duty to shareholders, not to California. It’s time we redirect our criminal justice system to value and prioritize effective prison rehabilitation programs, which will help minimize recidivism rates and maximize successes for inmates upon their reentry into society.”

2) Court-Ordered Limits on Prison Overcrowding: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (Coleman/Plata vs. Schwarzenegger (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. (Brown v. Plata (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.
CDCR is currently in compliance with the three-judge panel’s order on the prison population. CDCR’s January 2019 monthly report on the prison population notes that the in-state adult institution population is currently 113,861 inmates, which amounts to 133.8% of design capacity.

(https://www.cdc.ca.gov/Reports_Research/Offender Information Services Branch/Monthly/TPOP1A/TPOP1Ad1901.pdf.) However, the state needs to maintain a “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).

As of January 31, 2019, there are 1,821 prisoners being housed in Arizona. In addition, there are 6,371 inmates under the jurisdiction of CDCR housed at in-state contract beds. (https://www.cdc.ca.gov/Reports_Research/Offender Information Services Branch/Monthly/TPOP1A/TPOP1Ad1901.pdf.) CDCR has informed this committee that it does not consider the 2,400 contract beds at the California City Correctional Facility to qualify as private, for-profit prisons because it is a leased facility staffed and operated by CDCR.

This bill would prohibit the housing of prisoners in for-profit prisons, both in and out of state, by January 1, 2028. Additionally, the bill would prohibit CDCR from renewing or entering into new contracts after January 1, 2020. While CDCR does not consider the 2,400 contract beds at California City to fall within the parameters of this bill, arguably a lease is still a contract with a private, for-profit facility. Should this bill define a “private, for-profit prison facility” in order to clarify this ambiguity?

As to the aspect of the bill prohibiting a new contract or renewal after January 1, 2020, CDCR has provided this Committee with the following information regarding contract term dates:

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<tr>
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<td>Golden State MCCF</td>
<td>June 30, 2023</td>
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<td>Desert Valley MCCF</td>
<td>June 30, 2023</td>
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<td><strong>Out-of-State Private</strong></td>
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<tr>
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<td>June 30, 2019</td>
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The Governor’s January proposed budget for 2019-2020 “assumes all inmates will be returned from out-of-state facilities by the end of the current year. However, due to the higher-than-expected population in 2018-19, all inmates are now expected to return in June 2019 instead of January 2019 as projected in the 2018 Budget Act.” (http://www.ebudget.ca.gov/2019-20/pdf/BudgetSummary/PublicSafety.pdf.) Thus, the question is whether CDCR will be able to maintain a durable solution to prison overcrowding without housing inmates at in-state private facilities within the timelines established in this
3) **Concerns with Private Prisons:** In 2016, the U.S. Department of Justice’s Office of the Inspector General conducted an investigation of private prisons and issued a report. The investigation found that private prisons were less safe than federal prisons, poorly administered, and provided limited long-term savings for the federal government. For example, the contract prisons confiscated eight times as many contraband cell phones annually on average as the federal institutions. Private prisons also had higher rates of assaults, both by inmates on other inmates and by inmates on staff. Additionally, two of the three contract prisons inspected by the Inspector General’s Office discovered they were improperly housing new inmates in Special Housing Units (SHU), which are normally used for disciplinary or administrative segregation, until beds became available in general population housing. (See Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons, August 2016, <https://oig.justice.gov/reports/2016/e1606.pdf#page=2>.)

It should be noted that the for-profit prisons inspected by the U.S. Department of Justice were operated by three private corporations: Corrections Corporation of America¹, GEO Group, Inc., and Management and Training Corporation. CDCR has informed this Committee that it also contracts with GEO Group and the Corrections Corporation of America. The out of state prison is owned by Corrections Corporation of America, and the Geo Group has the contracts for all the in state beds.

4) **Concerns Regarding Lack of Transparency:** Private, for-profit detention facilities are accountable to their shareholders and not the people of the State of California. For example, these facilities claim exemptions to the public disclosure requirements under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) because they are private corporations, which makes the potentially unlawful conduct occurring within the facility hidden from discovery. These facilities similarly claim an exemption to California’s State counterpart, the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq).

5) **Argument in Support:** According to the *American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO*, "The accelerated use of for-profit, private prisons by California was in response to a court order from a three-judge panel ordering the state to reduce its prison population to 137.5 percent of capacity. Since peaking in 2006, California’s prison population has been steadily declining, currently standing at 135 percent of design capacity. While more still needs to be done to further prison reform, California no longer needs to rely on private prisons to meet the demand of inmate housing."

"Private prisons are notorious for their use of exploitative practices on their inmates. Prisoners are forced to work for egregiously low wages, while the facilities enter into contracts with private companies which charge expensive rates for basic services. For instance, some private prisons have eliminated in-person visitation and have instead contracted with telecommunications companies to provide video calls with then charge inmates and their families exorbitant rates. These practices do nothing to further rehabilitation and instead only serve to increase the profits of the prison at the expense of the

¹Corrections Corporation of America has changed its name to CoreCivic. (See http://www.correctionscorp.com/)
inmates and their families. In fact, studies have found that private prisons may increase the likelihood of recidivism by up to 22 percent.

“AB 32 prohibits the California Department of Corrections and Rehabilitation from entering into, or renewing, a contract with a private, for-profit prison. As the strain on our public correctional facilities begins to relax due to a decreasing prison population, the validity of the need for private prisons vanishes. Ending the contracting of private prisons will allow California to focus on rehabilitating inmates rather than warehousing them. When we shift these priorities, inmates will have the ability to complete their sentence with the tools that allow them to leave a life of crime and become productive members of society.”

6) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “Many different tools and approaches are included in California’s efforts to eliminate overcrowding in the state prison system. Over the past few years, private prisons have been but one part of a multi-pronged approach to reduce overcrowding, promote better outcomes, and protect public safety.

“While there has been a significant reduction in the state prison population since Realignment, it remains a challenge to continue to meet the federal three-judge panel mandate to relieve prison overcrowding. Removing CDCR’s authority to contract with private prisons takes away a tool and increases the likelihood of releases of dangerous inmates from state prison and heightens pressure to have county jails take on more custodial capacity that would otherwise be housed in state prison. Given the significant responsibilities and challenges already assumed by local entities under Realignment and the great pressure on local systems that would surely occur in the wake of an influx of new, serious, offenders in local custody, we are exceedingly concerned about hamstringing state prison officials.”

7) **Prior Legislation:**

a) AB 1320 (Bonta), of the 2017-2018 Legislative Session, would have prohibited CDCR from entering into, or renewing contracts with private prisons after January 1, 2018, and eliminates their use by January 1, 2028. AB 1320 was vetoed.

b) SB 1289 (Lara), of the 2015-2016 Legislative Session, would have prohibited local governments and law enforcement from contracting with companies that operate for-profit immigration detention facilities, starting January 1, 2018, and requires these facilities to uphold national standards for humane treatment of detainees. SB 1289 was vetoed.

c) SB 843 (Committee on Budget), Chapter 43, Statutes of 2016, extended the authority of CDCR to contract with in-state, and out-of-state, for-profit prison through January 1, 2020.

d) SB 105 (Steinberg), Chapter 310, Statutes of 2013, authorized the state to act expeditiously in contracting with private and public entities to house inmates inside of California as well as outside of California. Sunset this authority January 1, 2017.

**REGISTERED SUPPORT / OPPOSITION:**
Support

American Federation of State, County and Municipal Employees - AFL-CIO
California Civil Liberties Advocacy
California Public Defenders Association
Oakland Privacy
Pico California
Riverside Sheriffs' Association

Oppose

California State Sheriffs' Association

Analysis Prepared by:  Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Repeals the authorization that allows the Secretary of the California Department of Corrections and Rehabilitation (CDCR), a sheriff, chief or director of corrections, or chief of police to charge a fee for an inmate initiated medical visit, or for durable medical equipment or medical supplies. Specifically, this bill:

1) Provides that a sheriff, chief or director of corrections, or chief of police shall not charge a fee for an inmate-initiated medical visit of an inmate confined in a county or city jail.

2) States that a sheriff, chief or director of corrections, or chief of police shall not charge a fee for durable medical equipment or medical supplies provided to an inmate confined in the state prison as medically necessary to ensure the inmate has equal access to jail services, programs or activities.

3) Provides that the Secretary of CDCR shall not charge a fee for an inmate-initiated medical visit of an inmate confined in the state prison.

4) Provides that the Secretary of CDCR shall not charge a fee for durable medical equipment or medical supplies provided to an inmate confined in the state prison as medically necessary to ensure the inmate has equal access to prison services, programs or activities.

5) Defines “durable medical equipment” as equipment that is prescribed by a licensed provider to meet the medical needs of an inmate that meets all of the following criteria:

   a) The equipment can withstand repeated use;

   b) The equipment is used to serve a medical purpose;

   c) The equipment is not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly; and,

   d) The equipment is appropriate for use in or out of the prison.

6) Durable medical equipment includes, but is not limited to, eyeglasses, artificial eyes, dentures, artificial limbs, orthopedic braces and shoes, and hearing aids.

7) Defines “medical supplies” as supplies that are prescribed by a licensed provider to meet the medical needs of an inmate that meets all of the following criteria:
a) The supplies cannot withstand repeated use;

b) The supplies are usually disposable in nature;

c) The supplies are used to serve a medical purpose;

d) The supplies are not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly; and,

e) The supplies are intended for use in an outpatient setting.

EXISTING LAW:

1) Provides that the Director of the Department of Corrections is authorized to charge a fee in the amount of $5 for each inmate initiated medical visit of an inmate confined in the state prison. (Pen. Code, § 5007.5, subd. (a).

2) Provides that the fee shall be charged to the prison account of the inmate. If the inmate has no money in his or her personal account, there shall be no charge for the medical visit. (Pen. Code § 5007.5, subd. (b).

3) States that an inmate shall not be denied medical care because of a lack of funds in his or her personal account. (Pen. Code, § 5007.5, subd. (c).

4) Allows the medical provider to waive the fee for any prison inmate-initiated treatment, and requires waiver of the fee for any life-threatening or emergency situation, defined as those health services required for alleviation of severe pain or for immediate diagnosis and treatment of unforeseen medical conditions that if not immediately treated could lead to disability or death. (Pen. Code. § 5007.5, subd. (d).

5) States that follow-up medical visits, at the direction of the medical staff, shall not be charged to the prison inmate. (Pen. Code, § 5007.5, subd. (e).)

6) Authorizes a sheriff, director of corrections, or chief of police to charge a fee in the amount of $3 for each inmate initiated medical visit of an inmate confined in a county or city jail. (Pen. Code § 4011.2, subd. (a).

7) States that the fee shall be charged to the inmate's personal account at the jail facility. If the inmate has no money in his or her personal account, there shall be no charge for the medical visit. (Pen. Code § 4011.2, subd. (b).

8) Provides that a jail inmate shall not be denied medical care because of a lack of funds in his or her personal account. (Pen. Code § 4011.2, subd. (c).

9) Provides that the medical provider may waive the fee for any inmate-initiated treatment and shall waive the fee for any life-threatening or emergency situation, defined as those health services required for alleviation of severe pain or for immediate diagnosis and treatment of unforeseen medical conditions that if not immediately treated could lead to disability or
10) States that follow-up medical visits, at the direction of the medical staff, shall not be charged to the jail inmate. (Pen. Code § 4011.2, (e.).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "While a $5.00 copayment may seem small to those of us outside the prison system, an incarcerated person working for 8 cents per hour would need to work for over 60 hours just to afford one medical appointment. Limiting access to care in this way leads to unnecessary suffering, the development of more chronic conditions, and the spread of infectious diseases.

   "Fair and just access to healthcare is a human right, and that right doesn’t go away when a person is incarcerated. Eliminating copayments will remove a significant barrier to healthcare in California prisons and jails and will ensure that all incarcerated people can access the care they need, regardless of their ability to pay."

2) **Argument in Support:** According to the *American Civil Liberties Union California,* "AB 45 eliminates the copays for medical and dental services inside California prisons and jails. Copays for incarcerated people – many of whom make no income, or make as little as eight cents per hour – discourage people from seeking medical care until their condition becomes a more threatening and costly emergency. This barrier to healthcare jeopardizes the health not just of those who are imprisoned and who work in prisons and jails, but also of the general public.

   "In order to see a doctor or dentist, people in prison must pay a $5 fee to initiate a visit. While this may not seem like an onerous sum, most people in prison typically earn only $0.08 to $0.37 per hour. After paying 55% in restitution fees, most people receive only $1 to $6 per week. People incarcerated in most county jails must pay a $3 copay to initiate a visit, often earning no wages. Although people without the required funds are able to access care, a hold is placed on their account for 30 days in prison – and as long as six months in jails – after healthcare visit, during which any income is withdrawn towards the copay. Medical debt then prevents people from being able to purchase needed items like over-the-counter medicine, basic toiletries, phone card, stamps, and paper to maintain contact with family and loved ones.

   "People who are incarcerated are the most at-risk for chronic and infectious diseases due to crowding, malnutrition, stress, and trauma. Medical copays only serve to further existing problematic conditions. Indeed, in 2003, the Centers for Disease Control and Prevention identified copays as one of the factors contributing to a MRSA outbreak among incarcerated people in California.

   "Medical copays exacerbate racial inequities in public health, and promote a two-tiered system in which those with funds can access healthcare when needed, while those without funds who are forced to wait until minor issues become serious or life-threatening.”
3) **Argument in Opposition:** According to the *Riverside Sheriffs Association*, "We applaud your efforts to ensure that appropriate inmate medical care is available to all those in custody. Our members support efforts to help inmates become and remain healthy since they work in close proximately with the inmates.

"Unfortunately, our members also recognize that if any inmate at any time can request medical attention for any reason, there would never be enough staff to handle the inmate transfers from cell to medical. This is even more concerning as applied to dangerous, violent or mentally ill offenders who require at least two correctional deputies to conduct the inmate transfers, especially those inmates held in higher security areas of our jails.

"Proponents of AB 45 have provided no showing of authoritative or academic research that substantiates the need for this bill, other than to assert that the fee program does not raise adequate revenue cover the associated costs of the fee.

"Again, current law prohibits the sheriff, police chief or CDCR from imposing the fee on inmates who cannot pay, making AB 45 a solution in search of non-existent problem.

"For the protection of our members, the Riverside Sheriffs’ Association must oppose AB 45 and we respectfully request that the bill remain with the committee so we can discuss practical alternatives to a program that has been in place about 25 years.”

4) **Prior Legislation:**

a) AB 2533 (Stone), Chapter 764, Statutes of 2018, would have eliminated the medical and dental copayment for indigent inmates in the state prison. This provision was amended out of the bill prior to being chaptered.

b) AB 681 (Melendez), of the 2013-14 Legislative Session, increased from $3 to $5 the fee charged for each inmate-initiated medical visit of an inmate confined in a county or city jail. AB 681 was amended in the Senate into an unrelated subject matter.

c) AB 2261 (Valadao), of the 2011-12 Legislative Session, would have increased from $3 to $5 the fee charged for each inmate-initiated medical visit by an inmate confined in a county or city jail. AB 2261 failed passage in the Senate Public Safety Committee.

d) AB 1487 (Hill), of the 2009-10 Legislative Session, would have increased from $3 to $6 the fee charged for each inmate-initiated medical visit by an inmate confined in a county or city jail, and required that the $3 fee increase be deposited in the county inmate welfare fund. AB 1487 was amended in the Senate into an unrelated subject area.

e) AB 2232 (Nielsen), of the 2009-10 Legislative Session, would have required that a $5 fee be charged by the California Department of Corrections for each inmate-initiated medical visit of an inmate confined in the state prison, extended the fee to dental visits, and required that inmates be charged for medically directed follow up visits. AB 2232 was never heard by this Committee.
REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
California Coalition for Women Prisoners (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Initiate Justice (Co-Sponsor)
Union of American Physicians and Dentists (Co-Sponsor)
Act for Women and Girls
Anti-Recidivism Coalition
Asian Americans Advancing Justice - California
California Catholic Conference Inc.
California Latinas for Reproductive Justice
California Pan - Ethnic Health Network
California Public Defenders Association
California United for a Responsible Budget (CURB)
Center on Juvenile and Criminal Justice
Center on Reproductive Rights And Justice (CRRJ)
Citizens for Choice
City and County of San Francisco
Disability Rights Legal Center
Fair Chance Project
Friends Committee on Legislation of California
Harm Reduction Coalition
Human Impact Partners
Indivisible CA: Statestrong
Justice Teams Network
League of Women Voters of California
Legal Services for Prisoners with Children
National Health Law Program
Positive Women's Network-USA
Prison Law Office
Prison Policy Initiative
Project Rebound, Sacramento State University
Public Health Justice Collective
Re:Store Justice
Rubicon Programs
San Francisco Bay Area Physicians for Social Responsibility
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) Bay Area
SIA Legal Team
The Greenlining Institute
The W. Haywood Burns Institute
Tides Advocacy
Transgender, Gender-Variant, Intersex Justice Project
TransLatin@ Coalition
Western Center on Law & Poverty, Inc.
Women's Foundation of California
Youth Justice Coalition

3 Private Individuals

Oppose

California State Sheriffs' Association
Riverside Sheriffs' Association

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Clarifies the procedure for a law enforcement agency to delay access to a video or audio recording that it is otherwise required to disclose to certain individuals, as specified, under the California Public Records Act (CPRA) if release of the record would impede an ongoing law enforcement investigation. Specifically, this bill:

1) Provides that a law enforcement agency may delay the disclosure of a video or audio recording to a person depicted in the record, or that person’s authorized representative, as specified, after 45 days from the date of the incident, if release of the record would substantially interfere with an ongoing investigation.

2) Requires a law enforcement agency to provide specified individuals with the estimated date for disclosure of a video or audio recording if the agency delays access to the record after 45 days from the date of the incident because disclosure would substantially interfere with an ongoing investigation.

3) Contains an urgency clause to require that this bill take effect immediately so that an agency may properly delay disclosure of records of a critical incident, as specified, that are subject to disclosure as of July 1, 2019.

EXISTING LAW:

1) Establishes the California Public Records Act and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)

2) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6250 et seq.)

3) Provides that commencing July 1, 2019, a video or audio recording retained or owned by an agency at the time of the request that relates to a “critical incident,” as defined, must be disclosed unless the agency demonstrates that it is necessary to delay disclosure to ensure the successful completion of an investigation. (Gov. Code, § 6254 subd. (f)(4).)

4) Sets forth timing for disclosure of a video or audio recording that relates to a critical incident, allowing an agency to delay disclosure for 45 days from the date the agency knew or reasonably should have known about the incident, and allowing an agency to continue delaying access to the record for longer if the agency demonstrates that disclosure would
substantially interfere with the investigation. (Gov. Code, § 6254 subd. (f)(4)(A)-(B).)

5) Defines a critical incident as (i) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (ii) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury. (Gov. Code, § 6254 subd. (f)(4)(c).)

6) Specifies that after one year from the date the agency knew or reasonably should have known about a critical incident, the agency may continue to delay disclosure of a recording in its custody only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. (Gov. Code, § 6254 subd. (f)(4)(B).)

7) Allows an agency to demonstrate, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording. In that case, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. (Gov. Code, § 6254 subd. (f)(4)(B)(i).)

8) Provides that if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:

a) The subject of the recording whose privacy is to be protected, or his or her authorized representative;

b) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected; and,

c) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected. (Gov. Code, § 6254 subd. (f)(4)(B)(ii).)

9) States that if an agency withholds a record from a specified individual who has a special right to access a recording of a critical incident, the agency shall provide in writing to the requester the specific basis for its determination to delay access, on the basis that disclosure would substantially interfere with an investigation, and the agency should then “provide the video or audio recording.” (Gov. Code, § 6254 subd. (f)(4)(B)(iii).)

10) Provides that specified peace officer or custodial officer personnel records and records retained or owned by any state or local agency, including any video or audio recording of a critical incident, shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act. (Pen. Code, § 832.7 subd. (b)(i)(A)(i)-(ii).)
11) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 54 corrects a drafting error from last session's AB 748, which created the first statewide standard for disclosure of police recordings of critical incidents. Reading through the narrative of AB 748, especially in the context of the Public Records Act, it is otherwise very clear that the intent is not to require disclosure of footage in instances when doing so would interfere with an investigation. This bill will provide flexibility for law enforcement agencies while protecting the public’s right to transparency in order to fully realize the intent of AB 748."

2) New Public and Individual Right to Access Law Enforcement Records: Last year, AB 748 (Ting) created a new right for the public to access law enforcement records related to a critical incident, as specified, under the CPRA. Prior to the passage of AB 748 and also SB 1421 (Skinner), which amended Penal Code Section 832.7, law enforcement agencies had wide discretion to deny the public access to any law enforcement record deemed "investigatory." AB 748 and SB 1421 repealed this discretion to withhold certain investigatory and personnel records in response to a CPRA request, providing new mandates for law enforcement agencies to timely release records, including audio or video recordings, in certain cases as specified, including critical incidents.

AB 748, which becomes effective on July 1, 2019, provides a member of the public the right to request and access any video or audio recording related to a critical incident after 45 days from the date of the incident, unless access to that record by the public generally would invade a person depicted in the record’s reasonable expectation of privacy. In that case, the agency is required to redact or otherwise distort the record to protect that individual's privacy rights and produce the record to the requester. If the agency is unable to protect a person’s reasonable expectation of privacy by redacting or otherwise distorting the record, the agency may deny access to the requester. However, AB 748 contains a separate provision that establishes a special right of access for an individual depicted in the recording, or that person’s authorized representative, as specified.

AB 748 intended to permit an agency to delay producing a recording for longer than 45 days from the date of the incident, under the special right of access provision when disclosure would substantially interfere with an ongoing investigation. However, due to a drafting error, the law fails to recognize the agency’s right to delay disclosure after 45 days, and instead requires the agency to produce the record immediately despite the agency’s finding that disclosure would interfere with an ongoing investigation.

3) Clerical Error in AB 748: The intent of AB 748 was to provide access to a video or audio recording of a critical incident on a specified timeline, generally requiring disclosure 45 days after the date of the critical incident, unless interests in protecting an ongoing investigation warrant additional delay, in which case, the agency may delay access indefinitely, until the
interest in protecting the investigation has extinguished. AB 748 reflects this intent by allowing an agency to delay disclosure to the public generally on the basis that disclosure would substantially interfere with an ongoing investigation. However, the section that provides an individual depicted in the recording with a special right to access the recording, when the public generally cannot access it, does not mirror this intent. As drafted, AB 748 states that when a law enforcement agency determines that disclosure of the video or audio record to a specified individual would substantially impede an investigation, the agency shall notify the requester of this fact and then “provide the video or audio recording.”

This is contrary to the intent of the law. Read literally, AB 748 as drafted leads to absurd results—providing an agency both permission to delay disclosure while simultaneously mandating the agency disclose the recording. This bill seeks to rectify that drafting error and provides that an agency may delay disclosure of a video or audio recording to specified persons if disclosure after 45 days from the date of the incident would impede an ongoing investigation. This would bill require the responding agency to provide the requester with an estimated date for disclosure of the record, eliminating the requirement that the agency produce the record immediately.

4) **Letter to the Journal:** Assemblymember Ting wrote a letter to the Journal of the Assembly, stating that AB 748 contained a drafting error due to a missing, necessary clause, resulting in the law imposing conflicting instructions that an agency may delay disclosure of a record while also requiring it to immediately release the record.

Due to the legislative calendar, the author was unable to amend AB 748 to correct the drafting error last year. Accordingly, the author committed to fix this error in a letter to the Journal, printed on Friday, August 31, 2018. The letter states:

_I am writing to clarify the wording of one sentence of my bill, AB 748. In Government Code 6254(f)(4)(B)(iii), the bill inadvertently states that a law enforcement agency would ‘‘provide the video or audio recording’’ if the agency determines that disclosure would substantially interfere with the investigation._

This part of the bill is intended to mirror Government Code 6254(f)(4)(A)(ii) added in an earlier section of the bill. As such, the following phrase—"the estimated date for the disclosure of"—was unintentionally omitted from this subparagraph and should instead be drafted accordingly:

_If disclosure pursuant to clause (ii) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation, and provide the estimated date for the disclosure of the video or audio recording._

Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in clause (ii) of subparagraph (A). Our intention in Government Code 6254(f)(4)(B)(iii) is to state that the agency would be able to withhold the recording if the disclosure would substantially interfere with an investigation, and that the agency shall provide the estimated date for the disclosure of the video or audio recording. Reading through the narrative of the bill, especially in the context of the Public Records Act, it is
otherwise very clear that the intent is not to require disclosure of footage in instances when doing so would interfere with an investigation.

I commit to immediately introduce clean-up urgency legislation this year when the legislature reconvenes, and before AB 748 takes effect on July 1, 2019, which would reflect the specific changes described in this letter. This clarification will provide flexibility for law enforcement agencies while protecting the public’s right to transparency in order to fully realize the intent of AB 748.

5) **Urgency Clause:** This bill contains an urgency clause to ensure that existing law, as established by AB 748, is amended prior to its implementation on July 1, 2019 to remove the conflicting instructions that permit delay and require simultaneous disclosure. If this bill is not passed prior to July 1, the law will technically require the immediate disclosure of a record to a person with a special right to access that record, even if the release of the record would interfere with an investigation.

6) **Argument in Support:** According to the *American Civil Liberties Union of California*, “This bill fulfills your pledge to correct an inadvertent drafting error that went unnoticed in the enactment of your AB 748 last year, which provided important clarity in public access to law enforcement recordings, balancing transparency and privacy interests with the investigative needs of law enforcement. This follow-up bill is needed to avoid any potential misunderstanding. It is appropriate that this is an urgency measure to ensure that the error is corrected as soon as possible.”

7) **Argument in Opposition:** According to the *Peace Officers Research Association of California*, “As far as PORAC understands, the bill’s author has not identified any financial resources for departments to properly address the requests that will come in. PORAC knows firsthand the amount of work required to release information to public, as seen in last year’s SB 1421 by Senator Skinner. San Diego Police Department, for example, has roughly 120 officers working at any one time per shift in the field, 3 shifts per day, and this does not include specialized units. Each officer works approximately 10 hours per day and the agency is struggling to fulfill the requests presented through SB 1421. LAPD has a special unit with over 100 officers whose job is to process PRA and video requests. PORAC member associations will find it nearly impossible to afford the requirements of AB 54.”

8) **Related Legislation:** None

9) **Prior Legislation:**

a) AB 748 (Ting), Chapter 960, Statutes of 2018, requires disclosure of video and audio recordings that depict a use of force including the discharge of a firearm or force that results in great bodily injury or death.

b) SB 1421 (Skinner), Chapter 998, Statutes of 2018, establishes a right to access specified police records, including video or audio footage of an incident regarding a police use of force that includes the discharge of a firearm or results in great bodily injury or death.

c) AB 459 (Chau), Chapter 291, Statutes of 2017, provides that public agencies are not required to disclose video or audio created during the commission or investigation of the
crimes of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording, as specified.

d) AB 1957 (Quirk), of the 2015-2016 Legislative Session, would have required a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage. AB 1957 failed passage on the Assembly Floor.

c) AB 66 (Weber), of the 2015-2016 Legislative Session, would have established statewide policies and guidelines for law enforcement agencies that require its officers to wear body-worn cameras. AB 66 was not taken up in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California Civil Liberties Advocacy
California News Publishers Association

Opposition

Peace Officers Research Association of California

Analysis Prepared by:  Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Authorizes an employer, a coworker, an employee of a secondary school, or postsecondary school the person has attended in the last six months, to file a petition requesting a court to issue an ex parte gun violence restraining order (GVRO), a one year GVRO, or a renewal of a GVRO, and clarifies that a person who is authorized to request a GVRO is not required to seek one.

EXISTING LAW:

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

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

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

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

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

6) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:
a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

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

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

d) A recent violation of an unexpired protective order;

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

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

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

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

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

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

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

b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)
11) Provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175, subd. (c)(1) & (2)

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

2) Gun Violence Restraining Orders: California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVROs: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer
may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night. In contrast, an immediate family member or a law enforcement officer can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

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

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

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

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

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

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

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

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

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

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

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

"The statutory scheme creating the Gun Violence Restraining Order (Penal Code §§ 18100-18205) was established in 2014 (AB 1014, Skinner). Under this scheme a family member, or any law enforcement officer, who has reason to believe a person owns a gun and poses a significant danger to themselves or others, may petition the court for an *ex parte* order to prohibit the subject from possessing a gun for up to 21 days, at which time a hearing is held to determine whether to extend the order for to one year."
"An *ex parte* order means the person subject to the restraining order is not informed of the court proceeding and therefore has no opportunity to contest the allegations. We support the efforts to prevent gun violence, but we must balance that important goal with protection of civil liberties so we do not sacrifice one in an attempt to accomplish the other. We believe AB 1014 was crafted in order to properly strike that balance. By expanding the parties that could apply for such an *ex parte* restraining order to include all the parties listed above, many of whom lack the relationship or skills required to make an appropriate assessment, AB 61 upsets that balance and creates significant potential for civil rights violations."

6) **Prior Legislation:**

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

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

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

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

**Oppose**

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

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Allows a person who is under the supervision and on the property of the California Highway Patrol, to drive a vehicle while under the influence of a drug, or while under the combined influence of a drug and alcohol, for the purpose of conducting research on impaired driving, and it contains an urgency clause.

EXISTING LAW:

1) Makes it unlawful to drive a vehicle while under the influence of an alcoholic beverage. (Veh. Code § 23152, subd. (a).)

2) Makes it unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Veh. Code § 23152, subd. (b).)

3) Makes it unlawful for a person who is under the influence of any drug to drive a vehicle. (Veh. Code § 23152, subd. (f).)

4) Makes it unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Veh. Code § 23152, subd. (g).)

5) States that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation driving under the influence of drugs or alcohol. If a blood or breath test, or both, are unavailable, then the person shall give urine. (Veh. Code, § 23612, subd. (a)(1)(A).)

6) Provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested driving under the influence of drugs or drugs and alcohol. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (a)(1)(B).)

7) States that the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of specified driving under the influence offenses. (Veh. Code, § 23612, subd. (a)(1)(C).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement:** According to the author, “In 2016, voters approved the California Marijuana Legalization Initiative (Proposition 64) which authorized the Department of California Highway Patrol (CHP) three million dollars annually for five years to develop internal protocols for detection, testing, and enforcing laws against driving under the influence. However, in existing law, there is no statutory exemption which permits anyone to be both lawfully under the influence of a drug and to drive a vehicle (VEH 23152). This impacts the Department’s ability [sic] adequately test and observe the effects cannabis has on driving related abilities. Ultimately, this hinders the Department from completing its obligation to the California voters. This bill will make a technical, statutory fix to permit CHP to develop protocols as approved by voter [sic] in Proposition 64.

“The impairment effects of cannabis on driving related abilities needs to be further studied. I am excited to partner with both law enforcement and researchers to keep our neighborhoods and communities safe.”

2) **Proposition 64:** In 2016, Californians voted to approve Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). Prop 64 legalized the recreational use of marijuana by adults age 21 and over, imposed taxes on the retail sale and cultivation of marijuana, and took a number of other steps to establish a regulatory and administrative scheme for the product.

Prop 64 also established the California Marijuana Tax Fund, which is a continuously appropriated fund consisting of specified taxes, interest, penalties, and other amounts imposed by AUMA. AUMA requires, after other specified disbursements are made from the fund, the Controller to disburse the sum of $3,000,000 annually to the Department of the California Highway Patrol beginning fiscal year 2018–2019 until fiscal year 2022–2023, and requires the department to use those funds to, among other things, establish and adopt protocols to determine whether a driver is operating a vehicle while impaired and setting forth best practices to assist law enforcement agencies.

3) **Research on Marijuana Impaired Driving:** The Center for Medicinal Cannabis Research (CMCR) was established by SB 847 (Vasconcellos), Chapter 750, Statutes of 1999. CMCR has worked closely with California State legislators, regulatory agencies, and law enforcement regarding the development and implementation of research and policy pertaining to the use and impact of cannabis and cannabinoid products. Since the passage of California Proposition 64, CMCR leadership has met with representatives from the Bureau of Cannabis Control, the Medical Board of California, the California Highway Patrol, and the California Office on Traffic Safety, among others.

Although California is one of just ten states that has legalized the recreational use of marijuana, every state in the country criminalizes the act of driving under the influence. Unlike alcohol, however, there is no per se level at which a person is presumed to be under the influence as a result of marijuana use. Alcohol is straightforward: a higher concentration in the bloodstream means more impairment and a higher likelihood of accidents. Marijuana is more complex. The psychoactive ingredient in marijuana is tetrahydrocannabinol (THC). Although there are tests that can determine the concentration level of THC in a driver’s blood, saliva, urine, and hair, the level of intoxication associated with a given THC blood
concentration depends on how marijuana was ingested, whether someone is a regular user, the level of THC in the dose, and whether they've ingested other drugs or alcohol. (Berger, *Why It's Difficult to Develop a Test for Roadside Marijuana*). Healthline (January 25, 2018), available at: https://www.healthline.com/health-news/difficult-to-develop-roadside-test-for-marijuana#1, [as of February 12, 2019].)

The National Institutes of Health (NIH) notes that “Marijuana significantly impairs judgment, motor coordination, and reaction time, and studies have found a direct relationship between blood THC concentration and impaired driving ability.” (https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving, [as of Feb. 11, 2019].) The NIH goes on to state:

“Marijuana is the illicit drug most frequently found in the blood of drivers who have been involved in vehicle crashes, including fatal ones. Two large European studies found that drivers with THC in their blood were roughly twice as likely to be culpable for a fatal crash as drivers who had not used drugs or alcohol. However, the role played by marijuana in crashes is often unclear because it can be detected in body fluids for days or even weeks after intoxication and because people frequently combine it with alcohol. Those involved in vehicle crashes with THC in their blood, particularly higher levels, are three to seven times more likely to be responsible for the incident than drivers who had not used drugs or alcohol. The risk associated with marijuana in combination with alcohol appears to be greater than that for either drug by itself.” (Id.).

The NIH also points out a study by the United States Department of Transportation’s National Highways Traffic Safety Association (NHTSA). (https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812117-drug_and_alcohol_crash_risk.pdf, [as of Feb. 11, 2019].) The NHTSA study initially found that drivers with higher levels of THC in their system correlated with a higher risk of being involved in a crash. Ultimately, however, the NHTSA concluded that once the analyses were adjusted for variables such as age, gender, ethnicity, and alcohol concentration level, there was not a significant increase in levels of crash risk associated with the presence of THC. (Id. at p. 8.) The study done by the NHTSA appears to be at odds with a number of other studies which did find a statistically significant increase in crash risk associated with higher THC concentrations. (See E.g. Hartman, *Cannabis Effects on Driving Skills*, Clinical Chemistry, Vol. 59, iss. 3, March 2013, available at: http://clinchem.aaccjnls.org/content/59/3/478.long, [as of February 13, 2019].) At this point, there is no scientific consensus on what amount or level of THC in breath, blood or saliva constitutes functional impairment for drivers.

4) **Argument in Support:** According to the Center for Medicinal Cannabis Research, “Because Cannabis is still federally classified as a Schedule I substance, there are few studies providing empirically supported evidence regarding the impairing effects of cannabis on driving-related skills. We are currently collaborating with the CHP on a cannabis-impaired driving study following administration via smoking, and assessing driving performance using advanced simulators. However, more research is needed for the Department to have a clearer understanding of its effects and the varying nuances between products, potency levels, and user characteristics, including during actual on-road driving (using a test track).”
5) **Related Legislation:** AB 397 (Chau) would recast existing law to make driving under the influence of cannabis, driving under the influence of a drug other than cannabis, and driving under the combined influence of cannabis and another drug, all separate offenses. AB 397 is pending hearing in the Assembly Public Safety Committee.

6) **Prior Legislation:**

   a) SB 94 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2017, appropriated $3 million to the California Highway Patrol to be used to for training drug recognition experts.

   b) AB 266 (Bonta), Chapter 689, Statutes of 2015, required CHP to establish protocols to determine whether a driver is operating a vehicle under the influence of medical marijuana, and required CHP to develop protocols setting forth best practices to assist law enforcement agencies.

   c) SB 1462 (Huffman), of the 2015-2016 Legislative Session, would have authorized an officer to use a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance as a further investigatory tool in order to establish reasonable cause to believe the person was driving a vehicle in violation of certain prohibitions against driving under the influence of drugs. SB 1462 was held in the Senate Appropriations Committee.

   d) AB 1356 (Lackey), of the 2015-2016 Legislative Session, would have authorized an officer to use a preliminary oral fluid screening test that indicates the presence or concentration of a drug or controlled substance based on a sample as a further investigatory tool in order to establish reasonable cause to believe the person was driving a vehicle in violation of certain prohibitions against driving under the influence of drugs. AB 1356 failed passage in the Assembly Public Safety Committee.

   e) SB 289 (Correa), of the 2013-2014 Legislative Session, would have made it unlawful for a person to drive a motor vehicle if his or her blood contained any drug classified as a schedule I, II, III, or IV controlled substance. SB 289 died in the Senate Public Safety Committee.

   f) AB 2552 (Torres), Chapter 753, Statutes of 2012, recast existing law to make driving under the influence of alcohol, driving under the influence of drugs, and driving under the combined influence of drugs and alcohol three separate offenses.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Center for Medicinal Cannabis Research
California District Attorneys Association
California Police Chiefs Association
Riverside Sheriffs’ Association
Opposition

None

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

AB 137 (Cooper) – As Introduced December 7, 2018
As Proposed to be Amended in Committee

SUMMARY: Describes what information must be provided to a peace officer prior to questioning in an administrative disciplinary proceeding. States that specified communications between peace officers and their disciplinary representative are confidential. Specifically, this bill:

1) States that prior to an interrogation of a peace officer as part of an administrative disciplinary proceeding the officer shall be informed of the following:

a) The time and date of any incident at issue;

b) The location of any incident at issue;

c) The internal affairs case number, if any; and,

d) The title of any policies, orders, rules, procedures, or directives alleged to have been violated with a general characterization of the conduct events that are the basis of the allegation.

2) Specifies that for administrative investigations that have voluminous complaints for the same rule or policy violation, the agency may list the date, time, and location, and characterization for 10 events and, in addition, list the timeframe from the first to the last event and the total number of events within that timeframe.

3) Defines “voluminous complaints” as violations that have 25 or more incidents being investigated, for purposes of this bill.

4) Clarifies that this bill does not provide a right to full discovery of investigation reports and witness statements or a detailed description of the events that are the basis of the allegation before the officer’s interrogation.

5) States that the provisions of this bill do not preclude eliminating or adding other policy or rule citations as may be warranted by the discovery of new information or evidence during the course of an investigation nor does it limit the policies or rules the violation of which may form the basis of potential misconduct charges once the truth of a matter has been ascertained.

6) Specifies that a public safety officer shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information exchanged between the
representative selected by the peace officer when noncriminal disciplinary action has been initiated, and the officer.

EXISTING LAW:

1) Defines "public safety officer" as all peace officers, except as specified. (Gov. Code, § 3301.)

2) Finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations between public safety employees and their employers. (Gov. Code, § 3301.)

3) Provides that when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the specified conditions. (Gov. Code, § 3303.)

4) States that, for purposes of the POBOR, "punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

5) Specifies that when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions:

   a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise; (Gov. Code, § 3303, subd. (a).)

   b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation; (Gov. Code, § 3303, subd. (b).)

   c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation; (Gov. Code, § 3303, subd. (c).)

   d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities; (Gov. Code, § 3303, subd. (d).)

   e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action; (Gov. Code, §
3303, subd. (e).

f) The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent; (Gov. Code, § 3303, subd. (e).)

g) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding, subject to certain qualifications; (Gov. Code, § 3303, subd. (f).)

h) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file; (Gov. Code, § 3303, subd. (g).)

i) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights; (Gov. Code, § 3303, subd. (h).)

j) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation; and (Gov. Code, § 3303, subd. (i).)

k) The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. (Gov. Code, § 3303, subd. (i).)

6) States that the restrictions on interrogation shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

7) Specifies that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights under the Public Safety Officers Procedural Bill of Rights, or the exercise of any rights under any existing administrative grievance procedure. (Gov. Code, § 3304.)

8) States that administrative appeal by a public safety officer Public Safety Officers Procedural Bill of Rights shall be conducted in conformance with rules and procedures adopted by the local public agency. (Gov. Code, § 3304.5.)

9) No public employee shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or
recognized representative of any employee bargaining unit. (Gov. Code, § 3502.1.)

10) Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights to join unions. (Gov. Code, § 3506.)

11) A public agency shall not do any of the following: (Gov. Code, § 3506.5.)

a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter;

b) Deny to employee organizations the rights guaranteed to them by this chapter;

c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization;

d) Dominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage employees to join any organization in preference to another; and

e) Refuse to participate in good faith in an applicable impasse procedure.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “The Importance of maintaining good employer-employee relationships is paramount in a harmonious, fair and productive workplace. This takes time and attention. AB 137 will ensure that when police officers are notified of a non-criminal, administrative complaint against them that they are afforded sufficient information to discuss the complaint with their union representative and effectively prepare for direct and accurate responses. This is critical in transparent and swift conclusions of administrative complaints. Furthermore, AB 137 will ensure that the communications between an employee and his/her union representative are confidential over matters within the scope of the organization's representation. AB 137 ensures that peace officers are afforded the fundamental and basic rights afforded to all union members.”

2) Public Safety Officers Bill of Rights (POBOR): POBOR provides peace officers with procedural protections relating to investigation and interrogations of peace officers, self-incrimination, privacy, polygraph exams, searches, personnel files, and administrative appeals. When the Legislature enacted POBOR in 1976 it found and declared “that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern.” While the purpose of POBOR is to maintain stable employer-employee relations and thereby assure effective law enforcement, it also seeks to balance the competing interests of fair treatment to officers with the need for swift internal investigations to maintain public confidence in law enforcement agencies. (Pasadena Police Officers Assn. v. City of Pasadena (1990) 51 Cal.3d 564.)
3) **Providing Facts About the Nature of the Allegation(s) Before Interrogation of An Officer is Consistent with the Purpose of POBOR:** Under POBOR, an interrogation is an investigatory interview of the public safety officer regarding a matter which would form the basis of an administrative disciplinary action. The rules under POBOR which pertain to "interrogations" do not apply when investigating actions of a police officer that are potentially criminal in nature. Existing law requires that the public safety officer under investigation for disciplinary purposes be informed of the "nature" of the investigation prior to any interrogation (Government Code, § 3303, subd. (c).) In order to communicate the "nature" of the investigation to the officer it seems necessary to provide some description of the conduct which is the subject of the investigation. Otherwise, the requirement to notify the officer of the "nature" of the investigation would have little meaning.

In interpreting POBOR, the court in *Ellins v. City of Sierra Madre* (2016) 244 Cal.App.4th 445, discussed the benefits of disclosing the "nature" of the investigation to the officer prior to the interrogation.

Although the disclosure of *discovery* regarding misconduct in advance of an interrogation might 'frustrate the effectiveness of any investigation' by 'color[ing] the recollection of the person to be questioned or lead[ing] that person to confirm his or her version of an event to that given by witnesses' whose statements have been disclosed in discovery, advanced disclosure of *the nature of the investigation* has the opposite effect: It allows the officer and his or her representative to be 'well-positioned to aid in a full and cogent presentation of the [officer's] view of the matter, bringing to light justifications, explanations, extenuating circumstances, and other mitigating factors' and removes the incentive for uninformed representative[s] ... to obstruct the interrogation 'as a precautionary means of protecting employees from unknown possibilities.' Thus, advance disclosure of the nature of the investigation serves *both* purposes of POBRA by contributing to the efficiency and thoroughness of the investigation while also safeguarding the officer's personal interest in fair treatment. (*Id.* at 454, citations omitted.)

The court in *Ellins* contrasted disclosure of the nature of the investigation prior to the interview to a requirement that the officer to be provided discovery prior to the interview. Discovery requires full disclosure of witness statements and any other evidence supporting an allegation of misconduct. The court pointed out that disclosure of the discovery prior to an interview is likely to diminish the effectiveness of the interview.

... to require disclosure of crucial information about an ongoing investigation to its subject before interrogation would be contrary to sound investigative practices. During an interrogation, investigators might want to use some of the information they have amassed to aid in eliciting truthful statements from the person they are questioning. Mandatory preinterrogation discovery would deprive investigators of this potentially effective tool and impair the reliability of the investigation. This is true in any interrogation, whether its purpose is to ferret out criminal culpability or, as in this case, to determine if a peace officer used a mailing list in contravention of a direct order by his superiors. Pasadena Police Officers Assn. vs. City of Pasadena
This bill would require the following disclosures to the officer prior to the interrogation:

The time and date of any incident at issue;

The location of any incident at issue;

The internal affairs case number, if any;

The title of any policies, orders, rules, procedures or directives alleged to have been violated with a brief factual description of the conduct upon which the allegation(s) against the public safety officer were based.

The disclosure of information demanded by this bill is limited in scope and should not infringe on the ability of an investigator to test the credibility of an officer in an interrogation based on other statements or evidence gathered as part of the investigation.

4) **Police Officers are Entitled to Select a Representative When They Are Facing Administrative Discipline:** Current law under POBOR allows an officer to be represented by another individual when the officer faces disciplinary action. Current law protects that representative from disclosing any information received from the officer under investigation for noncriminal matters.

   Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation; and (Government Code, § 3303, subd. (i).)

   The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. (Government Code, § 3303, subd. (i).)

Current law does not specifically provide reciprocal protection to ensure that the officer subject to administrative investigation and discipline is not required to disclose his communications with his representative.

In the background information, the Author states that, “The problem is that even though most employers have traditionally respected the privilege of this communication both ways, more recently peace officers are being ordered to disclose that they talked to a union representative, and even the content of that communication.”

The amendments proposed to be adopted in committee would ensure a reciprocal right to confidentiality for the officer regarding communications between the officer and his or her representative, when the officer is facing non-criminal discipline.
5) **Argument in Support:** According to the *Fraternal Order of Police*, “Current law requires that when a peace officer is notified that they are subject of an internal investigation, that the communication between them and a chosen representative remain confidential for non-criminal, administrative complaints. Unfortunately, the law only protects union representatives and does not prohibit an employer from asking the peace officer if they have spoken with their union representative. AB 137 simply clarifies that communications for these types of internal investigations between the peace officer and their union representative is privileged communication.

“AB 137 also seeks to provide the peace officer and their union representative with the appropriate level of notice to respond to the internal investigation. By clarifying the law, we can ensure our peace officers and union representatives are privy to the necessary information, treated fairly, and also ultimately saving our departments time and resources.”

6) **Argument in Opposition:** According to *California Civil Liberties Advocacy*, “The CCLA opposes this bill, particularly, because we strongly feel that its provisions grant rights to officers alleged to have committed wrongdoing that are not afforded to common citizens under criminal investigation, and will further erode the public’s trust and confidence in the integrity of California’s nearly 120,000 law enforcement personnel.

“Specifically, AB 137 mandates that an officer under investigation shall be informed of the time, date, and location of any incident at issues, the internal affairs case number, and the titles of any policies, orders, rules, procedures, or directives alleged to have been violated with a general characterization of the event giving rise to that allegation.

“Common citizens are never afforded any such pre-interview discovery, to prepare their defense ahead of time. The law has many allowances for ex parte orders for various methods of surveillances and searches so that a defendant is not afforded an opportunity to change their conduct or impede an ongoing investigation. If this same rationale is applied to affording officers who are investigated for wrongdoing-including criminal allegation-then the need for this bill appears to be a thinly disguised attempt to grant officers more rights than the common citizens they are sworn to serve. The CCLA’s position is that wrongdoing is wrongdoing and no one is above the law.”

7) **Related Legislation:** AB 418 (Kalra), would provide that a union agent, as defined, and a represented employee have an evidentiary privilege to refuse to disclose any confidential communication between the employee or former employee and the union agent while the union agent was acting in his or her representative capacity, except as specified.

8) **Prior Legislation:**

a) AB 887 (Cooper), of the 2017-2018 Legislative Session, contained provisions nearly identical to this bill. AB 887 was gut and amended in the Senate. AB 887 was referred back to the Senate Rules Committee and ultimately held in the Senate Rules Committee.

b) AB 3121 (Kalra), of the 2017-2018 Legislative Session, was substantial the same as AB 418 (Kalra). AB 3121 died on the Senate Inactive File.
c) AB 1298 (Santiago), of the 2018-2018 Legislative Session, would have required clear and convincing evidence to sustain an administrative disciplinary action against a law enforcement officer for making a false statement. AB 1298 was held in the Senate Public Safety Committee.

d) AB 729 (Hernández), of the 2013-2014 Legislative Session, would have provided that a union agent and a represented employee or represented former employee have a privilege to refuse to disclose any confidential communication between the employee or former employee and the union agent while the union agent was acting in his or her representative capacity, except as specified. AB 729 was vetoed by the Governor.

e) SB 388 (Lieu), of the 2013-2014 Legislative Session, would have provided that if an interrogation focuses on matters that may result in punitive action against a public safety officer who is not formally under investigation, but is interviewed regarding the investigation of another public safety officer, the public safety officer being interviewed is entitled to representation, as specified. SB 388 was vetoed by the Governor.

f) SB 313 (De Leon), Chapter 779, Statutes of 2013, prohibits any public agency from taking any punitive action against a public safety officer, or denying a promotion on grounds other than merit, because that officer is placed on a "Brady list," as specified.

g) AB 955 (De Leon), Chapter 494, Statutes of 2009, Specified that discipline need not be imposed upon peace officers within the one-year time limit placed upon the investigation and imposition of penalty by the Public Safety Officers Procedural Bill of Rights (POBOR).

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Orange County Deputy Sheriff's (Sponsor)
California Fraternal Order of Police (Sponsor)
Long Beach Police Officers Association (Sponsor)
Sacramento County Deputy Sheriffs Association (Sponsor)
California Correctional Peace Officers Association
California Statewide Law Enforcement Association
Riverside Sheriffs' Association

Oppose

American Civil Liberties Union of California
California Civil Liberties Advocacy
California Public Defenders Association
California State Sheriffs' Association
Ella Baker Center for Human Rights
San Francisco Public Defender's Office

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

SECTION 1. Section 3303 of the Government Code is amended to read:

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) (1) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation. For this purpose, the officer shall be informed of the following:

(A) The time and date of any incident at issue.

(B) The location of any incident at issue.

(C) The internal affairs case number, if any.

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(D) The titles of any policies, orders, rules, procedures, or directives alleged to have been violated with a general characterization of the event giving rise to the allegation against the public safety officer.

(2) This subdivision shall not be construed to provide a right of full discovery of investigation reports and witness statements or a detailed description of the events that are the basis of the allegation made before an officer’s interrogation.

(3) (A) For administrative investigations that have voluminous complaints for the same rule or policy violation, the agency may list the date, time, and location, and characterization for 10 events and, in addition, list the timeframe from the first to the last event and the total number of events within that timeframe.

(B) For purposes of this subdivision, “voluminous complaints” are defined as violations that have 25 or more incidents being investigated.

(d) The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer’s exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

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(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer’s personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. The representative and the public safety officer shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from exchanged between the representative and the officer under investigation for noncriminal matters.

(j) (1) This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(2) This section does not preclude eliminating or adding other policy or rule citations as may be warranted by the discovery of new information or evidence during the course of an investigation nor does it limit the policies or rules the violation of which may form the basis of potential misconduct charges once the truth of a matter has been ascertained.

(k) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

SEC. 2. Section 3309.2 is added to the Government Code, to read:

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3309.2. Neither a representative of a recognized employee organization nor a public safety officer shall be required to disclose, or be subject to punitive action for refusing to disclose, the existence of, or content of, any communication between them seeking representation or regarding matters within the scope of the organization's representation.
SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to
develop and implement a course of training regarding Gun Violence Restraining Orders (GVRO)
for peace officers and incorporate it into the course of basic training. Specifically, this bill:

1) Requires POST to develop and implement GVRO training for law enforcement officers on or
before January 1, 2021.

2) Requires POST to consult with members of law enforcement and the community who have
expertise in the area of gun violence and gun violence restraining orders in order to develop
and implement the training.

3) Requires that the training be incorporated into the course or courses of basic training for law
enforcement officers and dispatchers, and that it include, but not be limited to the following:
   a) The process of filing a petition for a GVRO;
   b) Situational training to assist officers in identifying when a GVRO is appropriate; and,
   c) How law enforcement can respond effectively to situations that might necessitate the
      filing for a GVRO.

4) Requires law enforcement officers, administrators, and executives who have completed basic
training prior to January 1, 2021, to participate in supplementary training that includes all of
the topics described above, and requires that the supplementary training shall be completed
on or before December 31, 2023.

EXISTING LAW:

1) Requires POST to adopt rules and training that establish minimum standards for peace
officers. (Pen. Code § 13510.)

2) Requires that the course of basic training for law enforcement officers include adequate
instruction in specified procedures and techniques relating to domestic violence complaints,
including:
   a) The legal duties imposed on peace officers to make arrests and offer protection and
      assistance including guidelines for making felony and misdemeanor arrests;
b) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim;

c) The nature and extent of domestic violence;

d) The signs of domestic violence;

e) The legal rights of, and remedies available to, victims of domestic violence;

f) The services and facilities available to victims and batterers; and,

g) Emergency assistance to victims and how to assist victims in pursuing criminal justice options. (Pen. Code § 13519.)

3) Requires that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to the handling of persons with developmental disabilities or mental illness. (Pen. Code § 13519.2, subd. (a).)

4) Requires that the course of instruction relating to the handling of developmentally disabled or mentally ill persons be developed in consultation with appropriate groups and individuals having an interest and expertise in this area, and that it include information on the cause and nature of developmental disabilities and mental illness, as well as the community resources available to serve these persons. (Pen. Code § 13519.2, subd. (b).)

5) 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.)

6) Prohibits a person that is subject to a GVRO from having in his or her custody any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)

7) Requires the court to order the restrained person to surrender all firearms and ammunition in his or her control. (Pen. Code, § 18120, subd. (b)(1).)

8) States that the officer serving the GVRO shall request the surrender of all firearms or ammunition immediately, or in the alternative, the surrender shall occur within 24 hours of being served with the GVRO by surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer. (Pen. Code, § 18120, subd. (b)(2).)

9) Requires the law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition to issue a receipt to the person surrendering the firearm, or firearms, or ammunition, or both, at the time of surrender and the restrained person shall within 48 hours of being served, do both of the following:

a) File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt
shall constitute a violation of the restraining order; and

b) File a copy of the receipt with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order. (Pen. Code, § 18120, subd. (d.).)

10) Allows law enforcement to obtain a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

a) The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by possessing a firearm; and

b) The emergency GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a.).)

11) States that a temporary GVRO shall expire 21 days from the date the order is issued. (Pen. Code, § 18125, subd. (b.).)

12) States that a law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council;

b) Serve the order on the restrained person, if the restrained person can reasonably be located;

c) File a copy of the order with the court as soon as practicable after issuance; and,

d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code §18140.)

13) Allows an immediate family member, as defined, or law enforcement officer to file a petition requesting that the court issue an ex parte GVRO enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

14) Allows a court to issue an ex parte GVRO if an affidavit, made in writing and signed by the petitioner under oath, or an oral statement, and any additional information provided to the court on a showing of good cause that the subject of the petition poses a significant risk of personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors. (Pen. Code, §§ 18150, subd. (b) & 18155.)

15) Requires a law enforcement officer to serve the ex parte GVRO on the restrained person, if the restrained person can reasonably be located. When serving a gun violence restraining
order, the law enforcement officer shall inform the restrained person that he or she is entitled
to a hearing and provide the restrained person with a form to request a hearing. (Pen. Code, §
18160.)

16) States that an ex-parte GVRO shall expire no later than 21 days from the date the order is
issued. (Pen. Code, § 18155, subd. (c).)

17) Allows an immediate family member or law enforcement officer to file a petition requesting
that the court issue a GVRO after notice and a hearing enjoining a person from having in his
or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen.
Code, § 18170.)

18) States that at the hearing, the petitioner has the burden of proof, which is to establish by clear
and convincing evidence that the person poses a significant danger of causing personal injury
to himself, herself, or another by having under his or her custody and control, owning,
purchasing, possessing, or receiving a firearm. (Pen. Code, § 18175, subd. (b).)

19) Allows a restrained person to file one written request for a hearing to terminate the order.
(Pen. Code, §18185.)

20) Allows a request for renewal of a GVRO. (Pen. Code, § 18190.)

21) States that every person who files a petition for an ex parte GVRO or a GVRO issued after
notice and a hearing, knowing the information in the petition to be false or with the intent to
harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

22) States that every person who violates an ex parte GVRO or a GVRO issued after notice and a
hearing, is guilty of a misdemeanor and shall be prohibited from having under his or her
custody and control, owning, purchasing, possessing, or receiving, or attempting to purchase
or receive, a firearm or ammunition for a five-year period, to commence upon the expiration
of the existing gun violence restraining order. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “Gun Violence Restraining Orders are a
critical tool that allows [sic] police officers to temporarily confiscate guns from, and prevent
the purchase of new guns by, individuals who pose a significant risk of harm to themselves
or others. In light of tragedies like the Borderline shooting and increased rates of suicide, it is
imperative that all of our law enforcement officials have the training needed to file GVROs
when they feel public safety is at risk.”

2) Peace Officer Basic Training: The POST-certified Regular Basic Course is the training
standard for police officers, deputy sheriffs, school district police officers, district attorney
investigators, as well as a few other classifications of peace officers. The basic training
includes a minimum of 664 hours of POST-developed training and testing in 42 separate
areas of instruction called Learning Domains. Most POST-certified basic training academies
exceed the 664 hour minimum by 200 or more hours with some academies presenting over 1000 hours of training and testing.

Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a rigorous physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy.

The current basic training course for peace officers does not include training on GVROs. According to POST, eight hours are dedicated to training regarding domestic violence restraining orders but none of that time is spent on GVROs specifically.

3) **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.

4) **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. The counties that have not used GVROs are mostly rural, but also include San Mateo County; a county whose population is nearly one million residents.

5) **Borderline Shooting:** On November 7, 2018, a man entered the Borderline Bar and Grill in Thousand Oaks, CA with a semi-automatic pistol and several high-capacity magazines. The man fired more than 50 rounds into the crowd, killing 12 people and wounding 1 before taking his own life.

The perpetrator of the Borderline shooting was later identified Ian Long, a young man who had a history of domestic disturbances and erratic behavior. The Ventura County Sherriff’s Department had multiple contacts with Long prior to the Borderline tragedy. In April, seven months before the shooting, law enforcement had been called out to Long’s home in order to respond a disturbance. According to a local report, Long was acting irate and destroying property inside of his home. (Carlson, *In the Wake of Borderline Tragedy, Expert Says Mass Shootings Don’t Have to Be New Normal*, Ventura County Star, November 17, 2018, available at: https://www.vcstar.com/story/news/local/2018/11/17/borderline-shooting-raises-questions-gun-restraining-orders/1979148002/, [as of February 14, 2019].) A mental health team conducted an evaluation of Long at that time and ultimately determined that he should not be taken in for further mental health observation under a process known as a 5150 hold.

Although Long was not found to meet the rather strict criteria of a 5150 hold, some experts have indicated that a GVRO could have been used in order to remove the semi-automatic pistol used in the Borderline shooting from Long’s possession. (Id.) If a GVRO had been requested at the time of the domestic disturbance in April, and a judge had decided to issue a GVRO that restrained Long following notice and a hearing, he would have been prohibited from acquiring any new firearms and any firearms in his possession would have been subject to confiscation. That order could have remained in effect for up to one year.

6) **Argument in Support:** According to the *California Statewide Law Enforcement Association*: “Since the passage and enactment of AB 1014 (Skinner), which created the gun violence restraining order to combat gun violence, individuals can seek a Firearms Emergency Protective Order from a peace officer if someone poses an immediate and present danger of causing personal injury to himself/herself or to another person. AB 165 will take the necessary steps to, in the course of training to become a peace officer, educate all officers on the process for issuing these restraining orders. Further, upon issuance of an order, officers are required to confiscate a person’s firearms and ammunition. Proper de-escalation training will help officers maintain safety in these potentially dangerous situations.”

7) **Argument in Opposition:** According to the *Peace Officers Research Association of California*, “Currently, peace officers are required to take eight hours of POST training relating to restraining orders. Many peace officers are not in situations where they need this type of training; therefore, the language in AB 165 is too broad and cumbersome.”

8) **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 pending hearing in the Assembly Public Safety
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 is set for hearing on February 26 in the Assembly Public Safety Committee.

9) 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

California Chapters Of The Brady Campaign To Prevent Gun Violence (Co-Sponsor)
Giffords Law Center To Prevent Gun Violence (Co-Sponsor)
Bay Area Student Activists
California District Attorneys Association
California Psychiatric Association
California Statewide Law Enforcement Association
Los Angeles City Attorney
Los Angeles City Attorney’s Office
Youth Alive!

Oppose

Peace Officers Research Association of California

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Expands the crime of causing injury to, or the death of, any guide, signal, or service dog, and adds the medical expenses and lost wages of the owner to the existing list of recoverable restitution costs. Specifically, this bill:

1) Deletes from specified crimes against guide, signal, or service dogs the requirement that the dog be in discharge of its duties when the injury or death occurs.

2) Makes these crimes applicable to the injury or death of dogs enrolled in a training school or program for guide, signal, or service dogs, as specified.

3) Requires a peace officer investigating this crime to remain at the scene until an animal control officer arrives.

4) Requires a defendant convicted of these crimes to pay restitution to the person for medical or medical-related expenses, or for loss of wages or income.

5) Defines “replacement costs” for purposes of victim restitution as “all costs that are incurred in the replacement of the guide, signal, or service dog, including, but not limited to, the training costs for a new dog, if needed, the cost of keeping the now-disabled dog in a kennel while the handler travels to receive the new dog, and, if needed, the cost of the travel required for the handler to receive the new dog.”

EXISTING LAW:

1) States that a person who intentionally causes injury to or the death of any guide, signal, or service dog, while the dog is in discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail for up to one year, or by a fine not exceeding $10,000, or by both a fine and imprisonment. (Pen. Code, § 600.5, subd. (a).)

2) Provides that a defendant convicted of personally causing injury or death to a guide, signal, or service dog must pay restitution for any veterinary bills, replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. (Pen. Code, § 600.5, subd. (b).)

3) Makes it a crime for a person to allow a dog owned or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, while the dog is discharging its duties punishable as follows: (Pen. Code, § 600.2, subd. (a).)
a) If a violation is caused by the person’s failure to exercise ordinary care in the control of his or her dog, then it is punishable as an infraction; or, (Pen. Code, § 600.2, subd. (b).)

b) If a violation is caused by the person’s reckless disregard in controlling his or her dog, then it is punishable as a misdemeanor. (Pen. Code, § 600.2, subd. (c).)

4) Provides that if a defendant is convicted of allowing his or her dog to cause injury or death to a guide, signal, or service dog, then he or she must pay restitution for any veterinary bills, replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. (Pen. Code, § 600.2, subd. (d).)

5) Defines “guide dog” as “any guide dog that was trained by a licensed person, as specified, or as defined under the regulations implementing the Americans with Disabilities Act.” (Civ. Code, § 54.1, subd. (b)(6)(C)(i).)

6) Defines "signal dog" as “any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.” (Civ. Code, § 54.1, subd. (b)(6)(C)(ii).)

7) Defines “service dog” as “any dog individually trained to the requirements of the individual with a disability including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.” (Civ. Code, § 54.1, subd. (b)(6)(C)(iii).)

8) Authorizes a person with a disability whose dog has been injured or killed in violation of either crime to apply for compensation from the California Victim Compensation Board in an amount not to exceed $10,000. (Gov. Code, §§ 13955, subd. (f)(4) & 13957, subd. (a)(10); and Pen. Code, §§ 600.5, subd. (b) & 600.2, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “Guide, signal and service dogs need to feel secure if they are to perform their duties appropriately. These are the animals whose life’s work revolves around protecting us. The least we can do for them is ensure that both they and their owners are properly cared for in a time of need.”

2) Governor’s Veto Message: AB 1865 (Lackey), of the 2017-2018 legislative session, was substantially similar to this bill and was vetoed.

In his veto message, Governor Brown said, “[This bill] expands the scope of several crimes without commensurate evidence that this is needed. Moreover, the existing provisions allowing compensation for crimes against service dogs have been in place for over three years and have not resulted in a single eligible claim. No claim has been denied because a dog was not in the performance of its duties at the time of a crime-the subject matter of this ‘Replacement costs’ means all costs that are incurred in the replacement of the guide, signal, or service dog, including, but not limited to, the training costs for a new dog, if needed, the cost of keeping the now-disabled dog in a kennel while the handler travels to receive the new dog, and, if needed, the cost of the travel required for the handler to receive the new dog. Accordingly I don’t believe the proposed changes are warranted.”
3) **The Cost of Injury to Guide and Service Dog:** If a guide dog must be retired due to injury or death, the cost, in both economic and human terms, is significant. According to Guide Dogs of America, which provides specially bred and trained dog guides for blind persons, "Formal training takes four to six months with the instructor. Then, each guide dog and their blind partner will spend three weeks in class learning to work together as a team." As far as economic costs, according to The Seeing Eye Dog, "[T]he cost incurred by the guide dog school to breed, raise and train a replacement guide dog and to instruct the blind person to work with a new dog well exceeds $50,000. (See, 2011 Dog Attack and Interference Survey United States Report, [http://www.seeingeye.org/assets/pdfs/dog-attack-survey.pdf](http://www.seeingeye.org/assets/pdfs/dog-attack-survey.pdf)."

4) **Argument in Support:** According to *Golden State Guide Dog Handlers, Inc.*, "[I]t is an infraction or a misdemeanor for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog while the service animal is in discharge of its duties. This bill would expand the scope of that provision to instances when the service animal is not in discharge of its duties, and would include service dog in training from a training school or program within these provisions. A survey conducted by Guide Dogs for the Blind, along with anecdotal information from guide dog handlers throughout the state, indicates that dog attacks against guide dogs, whether or not engaged in their duties, are quite frequent. The training costs for a guide dog are approximately $60,000. Moreover, an attack may result in loss of income to the guide dog handler, and the incurring of veterinary and other expenses. Thus, it is important to broaden these protections by applying them to instances when the guide dog is not in discharge of its duties.

"The bill would also expand the scope of expenses for which restitution may be claimed to include medical expenses or loss of wages when incurred by the service animal handler. The death or retirement of a guide dog may require the handler to miss work either because he/she is injured in the attack or until he/she can obtain a replacement to travel to and from his/her place of employment. In addition, the handler may incur medical expenses due to suffering an injury during the attack on his/her service animal. This bill would help to remedy these financial issues."

5) **Related Legislation:** AB 415 (Maienschein) Authorizes the California Victim Compensation Board to reimburse as part of eligible relocation costs both a pet deposit and any additional rent required because the victim has a pet. AB 415 is pending hearing in this Committee.

6) **Prior Legislation:**

a) AB 1865 (Lackey), of the 2017-2018 Legislative Session, was substantially to this bill. AB 1865 was vetoed.

b) AB 1824 (Chang), of the 2015-2016 Legislative Session, as introduced would have expanded the scope of certain crimes against guide dogs, lowered the standard for convicting an individual who causes injury or death to such a dog, and allowed for victims compensation in those instances. AB 1824 was vetoed.
c) AB 2264 (Levine), Chapter 502, Statutes of 2014, allows a person with a disability who has ownership or custody of a guide, signal, or service dog that has been injured or killed due to the intentional actions of another individual, as specified, to seek reimbursement from the board for veterinary bills, replacement costs, or other costs deemed reasonable by the court, if the defendant is unable to pay restitution.

REGISTERED SUPPORT / OPPOSITION:

Support
American Council of the Blind
American Society For The Prevention Of Cruelty To Animals
California Council of the Blind
Canine Companions For Independence
Child & Family Center
Disability Rights California
Golden State Guide Dog Handlers, Inc.
Guide Dogs For The Blind
Helping Hands For The Blind
Independent Living Center Of Kern County
International Association Of Assistance Dog Partners
Society For The Blind

43 Private Individuals

Opposition
None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-169 (Lackey (A))

Mock-up based on Version Number 98 - Amended Assembly 2/20/19
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 13955 of the Government Code is amended to read:

13955. Except as provided in Section 13956, a person is eligible for compensation if all of the following requirements are met:

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

(1) A victim.

(2) A derivative victim.

(3) (A) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to paragraph (9) or (10) of subdivision (a) of Section 13957.

(B) This paragraph applies without respect to any felon status of the victim.

(b) Either of the following conditions is met:

(1) The crime occurred in California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.

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

(A) A resident of California.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in California.

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

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(1) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(2) At the time of the crime was living in the household of the victim.

(3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé, and who witnessed the crime.

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

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from that act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which the driver knowingly and willingly participated.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (b) of Section 191.5, subdivision (c) of Section 192, or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or
crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 236.1, 261, 262, 271, 273a, 273d, 285, 286, 287, or 288 of, former Section 288a of, Section 288.5, 289, or 653.2 of, or subdivision (b) or (c) of Section 311.4 of, the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, and criminal charges were filed. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(4) Injury to, or the death of, a guide, signal, or service dog, as defined in Section 54.1 of the Civil Code, and medical or medical-related expenses of, and loss of wages and income incurred by, the person with a disability as a result of a violation of Section 600.2 or 600.5 of the Penal Code.

(5) Emotional injury to a victim who is a minor incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the minor appears.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.7, inclusive.

SEC. 2. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim for services that were provided by a licensed medical provider, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as described in Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of

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the victim in the presence of the victim, whether or not the family member relationship existed at
the time of the crime, that became necessary as a direct result of the crime, subject to the following
conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health
counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, grandparent, sibling, child, grandchild, spouse,
or fiancé of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (e) of
Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced
pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not
more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health
counseling in an amount not to exceed five thousand dollars ($5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that
mental health counseling of a derivative victim described in paragraph (5) of subdivision (e) of
Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the
victim.

(ii) A minor who suffers emotional injury as a direct result of witnessing a violent crime and who
is not eligible for reimbursement of the costs of outpatient mental health counseling under any
other provision of this chapter. To be eligible for reimbursement under this clause, the minor must
have been in close proximity to the victim when the minor witnessed the crime.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling
in excess of that authorized by subparagraph (A) or (B) or for inpatient psychiatric, psychological,
or other mental health counseling if the claim is based on dire or exceptional circumstances that
require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services
may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article
1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed in California to provide those services, or who is properly supervised
by a person who is licensed in California to provide those services, subject to the board's approval
and subject to the limitations and restrictions the board may impose.

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(3) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board shall not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(4) Authorize a cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services.

(5) Reimburse the expense of installing or increasing residential security, not to exceed one thousand dollars ($1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(6) Reimburse the expense of renovating or retrofitting a victim's residence, or the expense of modifying or purchasing a vehicle, to make the residence or the vehicle accessible or operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(7) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime giving rise to the relocation. The board may authorize more than one relocation per crime if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars ($2,000). For purposes of this paragraph, a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

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(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim’s new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. A victim may be required to repay the relocation payment or reimbursement to the board if the victim violates the terms set forth in this paragraph.

(F) Notwithstanding subparagraphs (A) and (B), the board may increase the cash payment or reimbursement for expenses incurred in relocating to an amount greater than two thousand dollars ($2,000), if the board finds this amount is appropriate due to the unusual, dire, or exceptional circumstances of a particular claim.

(G) If a security deposit is required for relocation, the board shall be named as the recipient and receive the funds upon expiration of the victim’s rental agreement.

(8) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars ($7,500). The board shall not create or comply with a regulation or policy that mandates a lower maximum potential amount of an award pursuant to this subparagraph for less than seven thousand five hundred dollars ($7,500).

(9) When the crime occurs in a residence or inside a vehicle, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health—trauma scene—waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(10) When the crime is a violation of Section 600.2 or 600.5 of the Penal Code, the board may reimburse the expense of veterinary services, replacement costs, medical or medical-related expenses of, and loss of wages or income incurred by, the person with a disability, or other reasonable expenses, as ordered by the court pursuant to Section 600.2 or 600.5 of the Penal Code, in an amount not to exceed ten thousand dollars ($10,000).

(11) An award of compensation pursuant to paragraph (5) of subdivision (f) of Section 13955 shall be limited to compensation to provide mental health counseling and shall not limit the eligibility of a victim for an award that the victim may be otherwise entitled to receive under this part. A derivative victim shall not be eligible for compensation under this provision.

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(b) The total award to, or on behalf of, each victim or derivative victim shall not exceed thirty-five thousand dollars ($35,000), except that this award may be increased to an amount not exceeding seventy thousand dollars ($70,000) if federal funds for that increase are available.

SEC. 3-1. Section 600.2 of the Penal Code is amended to read:

600.2. (a) It is a crime for a person to permit a dog that is owned, harbored, or controlled by the person to cause injury to, or the death of, a guide, signal, or service dog.

(b) A violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) if the injury or death to a guide, signal, or service dog is caused by the person’s failure to exercise ordinary care in the control of the person’s dog.

(c) A violation of this section is a misdemeanor if the injury or death to a guide, signal, or service dog is caused by the person’s reckless disregard in the exercise of control over the person’s dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of a guide, signal, or service dog. A violation of this subdivision is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), or both that fine and imprisonment. The court shall consider the costs ordered pursuant to subdivision (d) when determining the amount of any fines.

(d) A defendant who is convicted of a violation of this section shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills, replacement costs of the dog if it is disabled or killed, medical or medical-related expenses of the person with a disability, loss of wages or income of the person with a disability, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, in an amount not to exceed ten thousand dollars ($10,000).

(e) A peace officer enforcing this section shall remain at the crime scene until an animal control officer is present if a guide, signal, or service dog has been injured or killed by another dog.

(f) For the purposes of this section, the following definitions apply:

(1) “Guide, signal, or service dog” means a guide dog, signal dog, or service dog, as defined in Section 54.1 of the Civil Code. “Guide, signal, or service dog” also includes a dog enrolled in a training school or program, located in this state, for guide, signal, or service dogs.

(2) “Located in this state” includes the training of a guide, signal, or service dog that occurs in this state, even if the training school or program is located in another state.
(3) "Loss of wages or income" means wages or income that are lost by the person with a disability as a direct result of a violation of this section.

(4) "Replacement costs" means all costs that are incurred in the replacement of the guide, signal, or service dog, including, but not limited to, the training costs for a new dog, if needed, the cost of keeping the now-disabled dog in a kennel while the handler travels to receive the new dog, and, if needed, the cost of the travel required for the handler to receive the new dog.

SEC. 4-2. Section 600.5 of the Penal Code is amended to read:

600.5. (a) A person who intentionally causes injury to, or the death of, a guide, signal, or service dog is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. The court shall consider the costs ordered pursuant to subdivision (b) when determining the amount of any fines.

(b) A defendant who is convicted of a violation of this section shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills, replacement costs of the dog if it is disabled or killed, medical or medical-related expenses of the person with a disability, loss of wages or income of the person with a disability, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, in an amount not to exceed ten thousand dollars ($10,000).

(c) For the purposes of this section, the following definitions apply:

(1) "Guide, signal, or service dog" means a guide dog, signal dog, or service dog, as defined in Section 54.1 of the Civil Code. "Guide, signal, or service dog" also includes a dog enrolled in a training school or program, located in this state, for guide, signal, or service dogs.

(2) "Located in this state" includes the training of a guide, signal, or service dog that occurs in this state, even if the training school or program is located in another state.

(3) "Loss of wages or income" means wages or income that are lost by the person with a disability as a direct result of a violation of this section.

(4) "Replacement costs" means all costs that are incurred in the replacement of the guide, signal, or service dog, including, but not limited to, the training costs for a new dog, if needed, the cost of keeping the now-disabled dog in a kennel while the handler travels to receive the new dog, and, if needed, the cost of the travel required for the handler to receive the new dog.
SEC. 53. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
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SUMMARY: Provides that a qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provider, as defined, is a mandated reporter of known or suspected child abuse and neglect for the purposes of the Child Abuse and Neglect Reporting Act (CANRA).

EXISTING LAW:

1) Establishes the CANRA and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Pen. Code, § 11164.)

2) Defines "mandated reporter" under CANRA as any of the following: a teacher; an instructional aide; a teacher's aide or teacher's assistant employed by any public or private school; a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance; or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensing worker or licensing evaluator employed by a licensing agency as defined; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed to represent a minor; a peace officer, as defined, who is not otherwise described in this section; a firefighter, except for volunteer firefighters; a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed as a health care professional as specified; any emergency medical technician I or II, paramedic, or other person certified to provide emergency medical services; a registered psychological assistant; a marriage and family therapist trainee, as defined; a registered unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor, as defined; a
child visitation monitor, as defined; an animal control officer or humane society officer, as defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriffs department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7 subd. (a).)

3) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)

4) Provides that volunteers of public or private organizations, except a volunteer of a Court Appointed Special Advocate program, whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to a specified agency. (Pen. Code, § 11165.7, subd. (b).)

5) Strongly encourages employers to provide their employees who are mandated reporters with training in the duties imposed by CANRA. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with a statement that informs the employee that he or she is a mandated reporter and informs the employee of his or her reporting obligations and of his or her confidentiality rights. (Pen. Code, § 11165.7, subd. (c).)

6) Encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect. (Pen. Code, § 11165.7, subd. (f).)

7) Requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)

8) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by
both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

9) Defines "child" under CANRA to mean a person under the age of 18 years. (Pen. Code, § 11165.)

10) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The Child Abuse and Neglect Reporting Act (CANRA) does not explicitly require Qualified Autism Service Professionals (QASPs) and their employees to report suspected cases of abuse or neglect, even though studies suggest that individuals with developmental disabilities (autism spectrum disorder, intellectual disabilities and emotional disturbances) are at a much higher level of risk of abuse than their peers. Mandated reporter laws are in place to prevent children, along with at-risk individuals, from being abused and to end possible abuse or neglect at the earliest possible stage. Adding qualified autism service providers to the list of individuals who are mandated reporters under CANRA will help to protect children on the autism spectrum from abuse."

2) **Background**: California's existing mandated reporter law, CANRA, does not explicitly require a Qualified Autism Service Professional (QASP) and their employees to report suspected cases of abuse or neglect.

Mandated reporter laws are in place to prevent children, along with at-risk individuals, from being abused and to end any possible abuse or neglect at the earliest possible stage. Further, studies suggest that individuals with developmental disabilities (autism spectrum disorder, intellectual disabilities and emotional disturbances) are at a much higher level risk of abuse than their peers. The providers who regularly work with these individuals are known as a QASP.

QASPs include a variety of provider types, some of whom are licensed and are mandated reporters (physicians, physical therapists, occupational therapists, psychologists, social workers etc.). However, the QASP designation also includes unlicensed providers who meet specified educational and professional or work experience qualifications like Board Certified Behavior Analysts (BCBAs), Board Certified Assistant Behavior Analysts (BCaBAs), Behavior Analysts, Behavior Management Assistants and paraprofessionals. These
unlicensed providers are not covered by current mandated reporter laws.

Per contractual agreements, unlicensed QASPs may be mandated reporters based upon the nexus of service or funding source. For example, if working in a program funded by a school district or through a state agency, a QASP may be a mandated reporter; but if their services are reimbursed by a health plan or insurance company, they may not be. The lack of statutory clarity causes confusion among the unlicensed providers as to when they have a duty to report.

QASPs, regardless of provider type, serve the same patient population. In the interest of protecting for this vulnerable population, AB 189 clarifies that all QASP provider are mandated reporters.

3) Argument in Support: According to Kaiser Permanente, “Making autism providers, professionals, and paraprofessionals mandated reporters of child abuse or neglect is an appropriate step because children with developmental delay or autism are at higher risk of child abuse than typically developing children. Moreover, those who provide autism services, and who would be mandated reporters through this legislation, are often in the home and have frequent contact with families.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association for Behavior Analysis (Co-Sponsor)
Center for Autism and Related Disorders (Co-Sponsor)
American Academy of Pediatrics
Applied Behavior Consultants, Inc.
Kaiser Permanente

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
Date of Hearing: February 26, 2019
Counsel: David Billingsley

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

AB 215 (Mathis) – As Introduced January 15, 2019
As Proposed to be Amended in Committee

SUMMARY: Creates a new misdemeanor crime by specifying that the fourth violation of illegal dumping on private property is punishable by up to 30 days in county jail and a fine of not less than $750 nor more than $3,000. Specifically, this bill:

1) Specifies that the fourth violation of illegal dumping (less than one cubic yard) on private property shall be a misdemeanor punishable by up to 30 days in the county jail and by a fine of not less than $750 nor more than $3,000.

2) Specifies that for the fourth or subsequent misdemeanor violation, each day that waste placed, deposited, or dumped remains shall not result in the accrual of a separate fine or violation for the purposes of punishment.

3) Provides that for the fourth or subsequent violation, if the prosecuting attorney pleads and proves the waste matter placed, deposited, or dumped includes used tires, the fine prescribed in this subdivision shall be doubled.

4) States that a separate fine in the same amount as initially imposed shall accumulate for each day that dumped waste remains unabated, but no additional conviction shall result for the same act of illegal dumping on private property which is an infraction (less than one cubic yard, 1st-3rd offense).

EXISTING LAW:

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

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

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

4) Provides these provisions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (Pen. Code, § 374.3, subd. (d).)

5) Specifies a person convicted of dumping shall be punished by a mandatory fine of not less than $250 nor more than $1,000 upon a first conviction, by a mandatory fine of not less than $500 nor more than $1,500 upon a second conviction, and by a mandatory fine of not less than $750 nor more than $3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (Pen. Code, § 374.3, subd. (e).)

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "This bill will protect our public and private lands and ensure the health of our environment and people. AB 215 is the next step in
preserving our state’s environment and supporting our agricultural businesses.”

2) **AB 144 (Mathis), of the 2015-2016 Legislative Session:** AB 144 contained the same provisions as this bill. AB 144 was vetoed by Governor Brown. In his veto message (which applied to a total of nine bills), Governor Brown stated that:

“Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

Over the last several decades, California’s criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.”

3) **This Bill Creates a New Misdemeanor:** This bill creates a new misdemeanor for conduct that is currently punished as an infraction. The provisions of this bill, would make a fourth or subsequent violation of dumping waste on private property in non-commercial amounts punishable by a misdemeanor penalty of up to 30 days in the county jail and a fine of not less than $750 and up to $3,000. As a result of imposing a misdemeanor penalty, this legislation would permit persons accused of dumping non-commercial amounts on private property to apply for the aid of a public defender. Additionally, persons charged with misdemeanor offenses may demand a jury trial in Superior Court.

Under current law, dumping in commercial amounts (more than a cubic yard) is punished as a misdemeanor, while dumping at less than commercial amounts, is an infraction punishable with graduated fines. The existing fines for illegal, non-commercial, dumping are significant. The fines are on a graduated scale that increases for repeated violations of the law and include mandatory minimums. Currently, a fine for a 3rd or subsequent violation as an infraction is a fine not less than $750 and up to $3000.

4) **Penalty Assessments:** The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. Assuming a defendant is fined the maximum fine of $3,000 under Penal Code Section 374.3 (illegal dumping non-commercial) for a 3rd offense infraction, the following penalty assessments would be imposed pursuant to the Government and Penal codes:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Fine</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>Penal Code § 1464 assessment ($10 for every $10):</td>
<td>$3,000.00</td>
</tr>
</tbody>
</table>
Penal Code § 1465.7 assessment (20% surcharge): $600.00
Penal Code § 1465.8 assessment ($40 per criminal offense): $40.00
Government Code § 70372 assessment ($5 for every $10): $1,500.00
Government Code § 70373 assessment ($35 for infraction offense): $35.00
Government Code § 76000 assessment ($7 for every $10): $2,100.00
Government Code § 76000.5 assessment ($2 for every $10): $600.00
Government Code § 76104.6 assessment ($1 for every $10): $300.00
Government Code § 76104.7 assessment ($4 for every $10): $1,200.00

Fine with Assessments: $12,375.00

5) **This Bill Would Punish Dumping on Private Land More Harshly Than Dumping on Public Land:** This bill seeks to make a fourth, or subsequent, offense of dumping (non-commercial amounts) on private land a misdemeanor. A fourth, or subsequent, offense of dumping (non-commercial amounts) on public land is an infraction. Such disparate treatment raises the question as to whether there exists a policy rational to justify that distinction.

6) **Argument in Support:** According to the *California Farm Bureau Federation (Farm Bureau)*, “Farm Bureau represents nearly 40,000 members, many in rural California counties, who strive to protect and improve the ability to provide a reliable and affordable supply of food. The dumping of illegal waste within these rural communities, and specifically on private land, is not a rarity—mattresses, used tires, household items, hazardous waste and construction debris are often left or drift onto private lands. In response, counties and individual landholders invest significant funds to remediate. A 2006 survey conducted jointly by the California State Association of Counties, the California Integrated Waste Management Board and the League of California Cities found that 33 counties spent a combined $17,425,824 annually to combat illegal dumping. Beyond financing the clean-up, illegal dumping threatens the ability for farmers and ranchers to maintain appropriate food safety and by extension, public health. Contaminated fields essentially mean crop loss, and for organic growers, contamination may lead to lost certification that achieves over three years and thousands of dollars to obtain. The drift of waste, such as used tires in waterways within or adjacent to agricultural operation, has even broader, long-term consequences.

“While some counties have taken proactive steps to address the issue by free cleanup, waste disposal amnesty days, or vigorous public education campaigns. Often, however, the existing suite of enforcement tools are not strong enough to truly address the growing problem. AB 215 responds, by explicitly specifying the criminality of illegal dumping on private property
and details the associated, mandatory fines."

7) **Related Legislation:** SB 409 (Wilk), would increase fines for the crime of dumping and make all dumping violations misdemeanors. SB 409 is awaiting referral in the Senate Rules Committee.

8) **Prior Legislation:**

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

   b) AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, imposed the graduated penalties and increased fines for second and third violations of illegal dumping offenses. AB 1992 went through the Assembly Committee on Natural Resources Committee and was not heard in the Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Farm Bureau Federation  
Tulare County Board of Supervisors

**Opposition**

None

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

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped waste matter in or upon a public highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

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

(c) A person violating subdivision (a) or (b) is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of subdivision (a) or (b) remains unabated is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of subdivision (a) or (b) shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.
(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

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

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

(2) “Commercial quantities” means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person’s residence.

(i) (1) A person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter upon private property, including on any private highway or road, without the consent of the owner shall be punished by a fine. The fine is mandatory and shall amount to not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) upon a second conviction, and not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000) upon a third conviction. Upon a fourth or subsequent conviction, the person is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 30 days and by a fine of not less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000).

(2) *Except as provided in (4)*. If the court finds that the waste matter placed, deposited, or dumped includes used tires, the fine prescribed in this subdivision shall be doubled. A separate fine in the same amount as initially imposed shall accrue for each day that waste placed, deposited, or dumped remains unabated, but no additional conviction for the purposes of punishments in paragraph (1) shall arise for the same act.

(3) For the fourth or subsequent violation, each day that waste placed, deposited, or dumped remains shall not result in the accrual of a separate fine or violation for the purposes of punishments in paragraph (1).
(4) For the fourth or subsequent violation, if the prosecuting attorney pleads and proves the waste matter placed, deposited, or dumped includes used tires, the fine prescribed in this subdivision shall be doubled.

(j) For purposes of this section, “person” means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(k) Except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines provided by this section shall not be waived or reduced.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
SUMMARY: Permits the court to waive specified mandatory fines and assessments if it determines that a defendant does not have the ability to pay. Specifically, this bill:

1) Requires the court to impose a restitution fine unless it finds that the defendant does not have the ability to pay, or that there are other compelling and extraordinary reasons for not doing so.

2) Allows the court to waive the court facilities assessment if it finds that the defendant does not have the ability to pay.

3) Allows the court to waive the court operations assessment if it finds that the defendant does not have the ability to pay.

EXISTING STATE LAW:

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

2) States that, in addition to any other penalty provided or imposed under the law, the court shall order the defendant to pay both a restitution fine and restitution to the victim or victims, if any. (Pen. Code, § 1202.4, subd. (a)(3).)

3) Requires the court to impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. (Pen. Code § 1202.4, subd. (c).)

4) States that inability to pay is not a compelling reason for declining to impose the fine, but that inability to pay may be considered as a factor in setting the fine above the statutory minimum. (Pen. Code § 1202.4, (c).)

5) Requires the court to assess an additional probation-revocation restitution fine in the same amount as that imposed for the restitution fine. This additional fine becomes effective upon the revocation of probation, and shall not be waived or reduced by the court, absent compelling and extraordinary reasons stated on record. (Pen. Code § 1202.44.)

6) Requires the court to assess an additional parole-revocation restitution fine, post-release community-supervision (PRCS) revocation fine, or mandatory-supervision revocation fine in the same amount as that imposed for the restitution fine. This additional fine is suspended unless parole, PRCS, or mandatory supervision is revoked. (Pen. Code § 1202.45.)
7) Requires the court to impose a $40 assessment on every conviction for a criminal offense in order to assist in funding court operations. (Pen. Code, § 1465.8, subd. (a).)

8) Requires the court to impose a $30 assessment on every misdemeanor or felony criminal conviction and a $35 assessment on every infraction conviction, in order to maintain adequate funding for court facilities. (Gov. Code, § 70373, subd. (a).)

EXISTING FEDERAL LAW:

1) Prohibits the imposition of excessive fines. (U.S. Const., 8th Amend.)

2) Provides that no one shall be “deprived of life, liberty or property without due process of law.” (U.S. Const., 5th Amend.)

3) Prohibits the states from depriving any person of life, liberty, or property, without due process of law; or denying to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author’s Statement**: According to the author, “Individuals convicted of criminal offenses, including traffic violations, are often required to pay a number of fines and fees as part of their punishment. Concern has been expressed over the amount of these fees and the general policy of funding local services on the backs of low-income defendants. The net effect of this policy has been to ensure cycles of poverty and recidivism; effectively punishing the poor for being poor. This bill is a step in the right direction by codifying into law the appellate court decision that acknowledges the mandatory imposition of these fines, without a determination of a defendant’s ability to pay, is a violation of a defendant’s civil rights.”

2) **People v. Duenas (2019) 30 Cal.App.5th 1157**: The Second District Court of Appeal recently held in *People v. Duenas* that imposing court fines and assessments on indigent defendants who lack the ability to pay violates the Due Process Clauses of both the United States and California Constitutions. *(Id. at p. 1168.)*

In *Duenas*, the trial court imposed $220 in fines and fees when an indigent, homeless mother of three children pleaded no contest to driving a suspended license.¹ *(People v. Duenas, supra, 30 Cal.App.5th at p. 1160.)* The court ordered that any outstanding debt at the end of Ms. Duenas’s probation would go to collections without further court order. *(Ibid.)* Ms. Duenas argued on appeal that the failure to consider her ability to make pay before imposition of these charges violates due process.² *(Ibid.)* Specifically, Duenas argued that

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¹ The suspended license was the result of the inability to pay over $1000 arising from three juvenile citations. *(People v. Duenas, supra, 30 Cal.App.5th at p. 1161.)*
laws imposing mandatory fines on people who are too poor to pay essential punish these persons for their poverty. (Id. at p. 1164.)

The Court of Appeal agreed. The court noted that """"Raising money for government through law enforcement, whatever the source ... can law a debt trap for the poor. When a minor offense produces a debt, that debt, along with attendant court appearances, can lead to a loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden - a cycle as predictable and counterproductive as it is intractable."""" (People v. Duenas, supra, 30 Cal.App.5th at p. 1163.) The court relied on well-established case law holding that the State cannot inflict punishment on an indigent criminal defendant solely based on his or her poverty. (Id. at pp. 1166-1167, citing In re Antazo (1970) 3 Cal.3d 100; Bearden v. Georgia (1983) 461 U.S. 660 [103 S.Ct. 2064]; and Tate v. Short (1971) 401 U.S. 395 [91 S.Ct. 668].) The court rejected the prosecution's argument that imposition of fines on people who cannot pay them is not punishment because such people do not face imprisonment for failure to pay, noting that punishment is not restricted to incarceration. (People v. Duenas, supra, 30 Cal.App.5th at pp. 1167-1168.) The court reversed the fees for court facilities and court operations, and stayed the restitution fine. The court remanded the case with directions that the charges be stayed until and unless prosecution establishes the defendant has the ability to pay them. (Id. at pp. 1172-1173.)

The court invited the Legislature to consider whether the statutes should be amended to direct a trial court to consider the defendant's ability to pay. (People v. Duenas, supra, 30 Cal.App.5th at p. 1172.) This bill would amend the three statutes specifically addressed in the Duenas opinion by allowing the court to waive the charges if the court determines that the defendant is unable to pay them.

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

2 Amicus Curiae Los Angeles County Public Defender also argued that imposing a restitution fine without considering ability to pay also violates the prohibition on excessive fines. The Court of Appeal did not specifically address this claim, noting that the due process and excessive fines analysis are sufficiently similar that they reach the same result. (People v. Duenas, supra, 30 Cal.App.5th at 1171, fn. 8.)
4) **Growth of Uncollected Debt:** While criminal fines, fees, and penalties have climbed steadily, government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts. A San Francisco Daily Journal article from several years ago noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, 1/5/2015 by Paul Jones and Saul Sugarman.)

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

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

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

5) **Restitution Fine:** A convicted defendant must pay a restitution fine. (Pen. Code, § 1202.4, subd. (b).) The fine can only be waived if the court finds compelling and extraordinary reasons not to impose it, and inability to pay is specifically singled out as not qualifying as a compelling and extraordinary reason to waive the fine. (Pen. Code, § 1202.4, subd. (c).)

The amount of the fine varies in the trial court’s discretion, ranging from a minimum of $300 up to $10,000 for felony convictions, and $150 to $1,000 for misdemeanor convictions. The court may determine the amount of the fine by multiplying the minimum fine by the number of years of imprisonment to which the defendant is sentenced, and then by the number of convictions. (Pen. Code, § 1202.4, subd. (b).) In this calculation, the court is permitted to consider the defendant’s ability to pay. (Pen. Code, § 1202.4, subd. (c).)
Imposition of the restitution fine actual results in the automatic imposition of two fines. If a court grants a defendant probation, the court is required to impose and suspend a probation-revocation fine in the same amount as the restitution fine. This amount becomes due if the defendant’s probation is revoked. (Pen. Code, § 1202.44.) If the court sentences a defendant to county jail for a realigned felony and that sentence contains a period of mandatory supervision (See Pen. Code, § 1170, subd. (h)), then the court must impose and suspend a mandatory-supervision-revocation fine, which becomes due upon revocation of supervision. (Pen. Code, § 1202.45.) Likewise, when a defendant is sentenced to prison, the court is mandated to impose and suspend either a parole-revocation restitution fine or a PRCS-revocation restitution fine in the same amount as the restitution fine. This stayed fine becomes due if the person violates parole or PRCS. (Ibid.)

A restitution fine is not paid by the defendant directly to the victim. Instead, the fine is deposited in the Restitution Fund from which crime victims may obtain compensation. (Pen. Code, § 1202.4, subd. (e).)

6) **Court Facilities and Court Operations Assessments**: Government Code section 70373, and Penal Code section 1465.8 were both enacted as part of more comprehensive legislation intended to raise money for the courts at times of budget shortfalls. (See AB 1759 (Committee on Budget) Chapter 159, Statutes of 2003 [Pen. Code, § 1465.8]; SB 1407 (Perata) Chapter 311, Statutes of 2008.)

Government Code section 70373, the court facilities assessment, requires the court to impose an assessment of $30 for each misdemeanor or felony conviction, $35 per infraction.

Penal Code section 1465.8, the court operations assessment, also known as the court security fee, requires the court to impose an assessment of $40 on every conviction for a criminal offense.

Both assessments are mandatory; the court lacks discretion to either not impose them or to stay them under Penal Code section 654. In fact, if the court fails to impose them, the error may be corrected on appeal. (See People v. Woods (2010) 191 Cal.App.4th 269, 274; People v. Crabtree (2009) 169 Cal.App.4th 1293, 1327–1328; People v. Brooks (2009) 175 Cal.App.4th Supp. 1, 5–7.)

Additionally, both assessments are to be imposed for each of defendant’s counts of conviction. (People v. Sencion (2012), 211 Cal.App.4th 480, 483-484; People v. Castillo (2010) 182 Cal.App.4th 1410, 1415, fn. 3 [court facilities assessment]; People v. Schoeb (2005), 132 Cal.App.4th 861, 865-866 [court security fee].) Because these charges are not considered punishment, they may be imposed even if the sentence on the counts to which they attach are stayed. (People v. Sencion, **supra**, 211 Cal.App.4th at p. 484.) Thus, while both charges may appear small on their face, they can quickly add up.

This bill allows the court to waive the fees due to a defendant’s inability to pay so as not to violate an indigent defendant’s due process rights.

7) **Argument in Support**: According to the California Public Defenders Association, “AB 227... serves to bring our criminal fine and assessment statutes into alignment with the state and federal constitutions. Indeed, in the recently published opinion in People v. Duenas
(2019) 30 Cal.App.5th 1157, the Court of Appeal found that imposition of court fines and fees on a defendant without inquiring into the defendant’s ability to pay violated state and federal constitutional guarantees. (Id. at p. 270.) As the Duenas court put it: “Because the only reason [the defendant] cannot pay the fine and fees is her poverty, using the criminal process to collect a fine she cannot pay is unconstitutional.” (Ibid.) AB 227 will help ensure that people are not penalized specifically for being poor. “Whatever hardship poverty may cause in the society generally; the judicial process must make itself available to the indigent; it must free itself of sanctions born of financial inability.” (Preston v. Municipal Court (1961) 188 Cal.App.2d 76, 87-88.) AB 227 requires courts to take into account a defendant’s ability to pay the restitution fine and court assessments, and in doing so frees our system from one sanction on the impoverished.”

8) Argument in Opposition: According to the Southwest California Legislative Council, which is a coalition of members of some Chambers of Commerce, “[U]nder existing law, courts are already required to consider a defendant’s inability to pay restitution and court operations fines but it is not automatic and is not a compelling or extraordinary consideration. AB 53 [sic] is both unnecessary and an additional mandate prohibiting the court from due process consideration.”

9) Related Legislation: SB 144 (Mitchell) states intent to enact legislation to eliminate the range of administrative fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, and to eliminate all outstanding debt incurred as a result of the administrative fees.

10) Prior Legislation:

a) AB 898 (Alejo), Chapter 358, Statutes of 2011, increased the minimum restitution fine incrementally over a three year period from $200 to $300 for a felony conviction and from $100 to $150 for a misdemeanor conviction.

b) SB 13 X4 (Ducheny), Chapter 22, Statutes of 2009, increased the court security fee from $20 to $30 on each criminal conviction.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

Southwest California Legislative Council

Analysis Prepared by:  Sandy Uribe / PUB. S. / (916) 319-3744
Summary: Urges Congress to swiftly enact legislation that would require background checks for all firearms sales and transfers. Specifically, this resolution:

1) Finds that according to the federal Centers for Disease Control and Prevention, nearly 40,000 Americans were killed by firearms last year, including homicides, suicides, and accidental deaths.

2) Finds that incidents of school shootings, mass shootings, ambushes of police officers, and other senseless gun violence have become far too commonplace.

3) Finds that Californians have demanded action to end the tragedy of gun violence that impacts the lives of too many Americans each day.

4) Finds that California has led the way in common sense firearm policy, requiring that all sales and transfers in the state be made through a licensed dealer, thus facilitating a background check of the purchaser or recipient in each such transaction.

5) Finds that when background checks are used, they keep firearms out of the hands of felons, domestic abusers, and the dangerously mentally ill.

6) Finds that loopholes in current federal law allow these individuals to obtain firearms without undergoing a background check.

7) Finds that these lenient federal laws weaken the effectiveness of California’s sound firearm policy by allowing restricted persons to purchase firearms out of state and bring them into California.

8) Finds that a group of Democrat and Republican Members of Congress have authored the Bipartisan Background Checks Act of 2019 in the form of House Resolution 8, which will require background checks on all firearm sales.

9) Resolves that the Assembly and the Senate of the State of California, jointly urge Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019, and help reduce the tragedy of gun violence by bringing effective, common sense firearm policy to the whole country.

10) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Minority Leader of the House of Representatives, to the Majority
Leader of the Senate, to the Minority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

EXISTING LAW:

1) Prohibits private party transfers of firearms without conducting such a transfer through a licensed firearms dealer. (Pen. Code, § 27545.)

2) Requires that the seller or transferor or the person loaning the firearm shall deliver the firearm to the licensed dealer who shall retain possession of that firearm. (Pen. Code, § 28050 subd. (b).)

3) Requires a 10 day waiting period prior to the delivery of a firearm. (Pen. Code, § 27540 subd. (a).)

4) Requires the licensed dealer to deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited. (Pen. Code, § 28050 subd. (c).)

5) Requires that on the date of receipt, a licensed dealer shall report to the Department of Justice (DOJ) the acquisition of any firearm. (Pen. Code, § 26905, subd. (a).)

6) Requires that the DOJ, upon submission of firearm purchaser information, examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals, in order to determine if the purchaser is a person prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, § 28220, subd. (a).)

7) Requires the DOJ to participate in the National Instant Criminal Background Check System (NICS), and notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Pen. Code, § 28220, subd. (b).)

8) States that if DOJ determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is attempting to purchase more than one handgun in a 30 day period, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Pen. Code, § 28220, subd. (c).)

9) Requires DOJ to immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in NICS, indicates that the purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period. (Pen. Code, § 28220, subd. (f).)
10) Requires licensed firearms dealers to maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearm transaction record. (Pen. Code, § 26895.)

EXISTING FEDERAL LAW:

1) Prohibits any person from "engaging in the business" of dealing in firearms or ammunition in interstate or foreign commerce without a license. (18 U.S.C. § 922 subd. (a)(1).)

2) Prohibits any licensed importer, dealer, manufacturer or collector from transporting in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, with specified exceptions. (18 U.S.C. § 922 subd. (a)(2).)

3) Requires a licensed importer, licensed manufacturer, or licensed dealer in firearms to conduct a background check using the National Instant Criminal Background Check System (NICS) prior to transferring a firearm to an unlicensed individual. (U.S.C. § 922 subd. (t).)

4) Defines the term "dealer" as:
   a) Any person "engaged in the business" of selling firearms at wholesale or retail;
   b) Any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or,
   c) Any person who is a pawnbroker. (18 U.S.C. § 921 subd. (a)(11).)

5) Defines "engaged in the business" of dealing firearms as a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. (18 U.S.C. § 921 subd. (a)(21)(C).)

6) Prohibits the following persons from receiving or possessing firearms:
   a) A person convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
   b) A fugitive of justice;
   c) A person who is an unlawful user of, or addicted to any controlled substance;
   d) A person who has been adjudicated as a mental defective or has been committed to any mental institution;
   e) A person who is "an illegal alien;"
f) A person who has been discharged from the Armed Forces under dishonorable conditions;

g) A person who has renounced his or her United States citizenship;

h) A person who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; and

i) A person who has been convicted of a misdemeanor crime of domestic violence. (18 U.S.C. § 922(g)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AJR 4 makes clear, officially and formally, that California urges Congress to pass H.R. 8, the 'Bipartisan Background Checks Act of 2019.' Although federal law requires licensed firearm dealers to perform background checks on prospective purchasers, it does not require unlicensed sellers to do so. This loophole means that people prohibited from possessing a firearm can easily obtain one by going through a private transaction or transfer. No matter how tight the laws are in California, if the background check loophole exists federally and in other states, people who are prohibited from having guns in California can easily obtain them illegally online or from other states."

2) **California Is a Point of Contact State for the National Instant Criminal Background Check System (NICS) and Enforces Federal Prohibitions on Firearm Purchase**: California law requires any prospective purchaser of (or transferee or person being loaned) a firearm to submit an application to purchase the firearm (also known as a "Dealer Record of Sale" or "DROS" form) through a licensed dealer to DOJ. The dealer must submit firearm purchaser information to DOJ on the date of the application through electronic transfer, unless DOJ makes an exception allowing a different format. The purchaser must present "clear evidence" of his or her identity and age to the dealer (either a valid California driver's license or a valid California identification card issued by the Department of Motor Vehicles). Dealers must obtain the purchaser's name, date of birth, and driver's license or identification number electronically from the magnetic strip on the license or ID card. This information cannot be supplied by any other means except as authorized by DOJ. Once this information is submitted, DOJ will check available and authorized records, including the federal NICS database, in order to determine whether the person is prohibited from possessing, receiving, owning, or purchasing a firearm by state or federal law. (http://lawcenter.giffords.org/background-checks-in-california/)

California is a state that acts as a "Point of Contact" for all firearm transactions. Prior to passage of Proposition 63 in 2016, California authorized, but did not require, the DOJ to act as a point of contact for firearm background checks. Effective July 1, 2017, Proposition 63 required the California DOJ to continue to serve as the point of contact for firearm purchaser background checks. Firearms dealers must therefore initiate the background check required by federal law by contacting the California DOJ. (http://lawcenter.giffords.org/background-checks-in-california/) When California DOJ runs the background check they also check whether the person is federally eligible to purchase a firearm. Federal law prohibits
possession of a firearm for life by an individual convicted of a misdemeanor crime of domestic violence. (18 U.S.C. 922, subd. (g)(9).) California DOJ will flag a misdemeanor domestic violence conviction as a federal prohibition on purchase of a firearm, regardless of when the conviction took place.

Those point of contact requirements are codified in Penal Code Section 28220, which requires that California DOJ to participate in the National Instant Criminal Background Check System (NICS), and notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

In addition to checking the federal NICS database, DOJ is required to examine its own records, as well as those records that it is authorized to request from the State Department of State Hospitals. If the person is prohibited from possessing firearms under state or federal law, DOJ must immediately notify the dealer and the local sheriff or chief of police in the city and/or county where the sale was made. Licensed dealers are prohibited from delivering a firearm to a purchaser or transferee if the dealer has been notified by DOJ that the person is prohibited from possessing firearms. If the person is prohibited from possessing firearms, the dealer must make available to the prohibited person a DOJ “Prohibited Notice and Transfer” form, stating that the person is prohibited from owning or possessing a firearm and that the person may obtain from DOJ the reason for the prohibition. (Id.)

3) **Federal Laws Do Not Require Background Checks for Private Party Transfers of Firearms:** Under Federal law, any person may sell a firearm to an unlicensed resident of the State where he resides as long as he does not know or have reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. A transfer of this kind does not require any type of application or form or NICS background check. The ATF encourages, but does not require, individuals to transfer firearms through an FFL so that the FFL will then be responsible for conducting a background check on the person acquiring the firearm.

HR 8 (Thompson) 116th Congress (2019-2020) would require a background check on every gun sale or transfer, including private party transfers with a few narrowly defined exceptions. Federal law currently requires licensed dealers to conduct background checks prior to a sale or transfer, HR 8 would require the same for unlicensed sales and transfers.

4) **Argument in Support:** According to Giffords Law Center to Prevent Gun Violence, “This Resolution would call upon the US Congress to swiftly enact House Resolution 8, the Bipartisan Background Checks Act of 2019. This federal legislation seeks to close one of them most glaring and dangerous gaps in federal gun laws by requiring purchasers to pass a background check before taking ownership of a weapon designed to take human life.

“This gap exists because current federal law only requires people to undergo a background check if they are acquiring a firearm from a licensed gun dealer. In most states, this means that a person with a significant history of criminal violence, domestic abuse, or severely impairing mental illness would still be able to acquire unlimited quantities of nearly any type of firearm from a stranger at a yard sale, at a gun show, or through an online classified ad, with no background check and no questions asked.
“A 2017 study estimated that 22% of US gun owners acquired their most recent firearm without a background check. Unsurprisingly, this was a particularly attractive source of weapons for people who could not legally acquire weapons. About 80% of all firearms acquired for criminal purposes are obtained from unlicensed sellers.

“Background checks impose almost no burden on law-abiding gun purchasers and help to keep guns from falling into the hands of people with known histories of violence, domestic abuse, and other risky behaviors. While federal background checks legislation will not prevent every shooting tragedy, it is a logical and responsible first step toward national gun safety reform and a future in which Americans in every state and community can feel safe and free from the scourge of violence.”

5) **Argument in Opposition**: According to *Gun Owners of California*, “Our organization has a history of fighting for effective crime control and opposing ineffective gun control for over 42 years, and the safety of all Californians is at the very foundation of our mission. We do not believe, however, that AJR 4 will further protect the citizens of our state. Given recent tragedies – both in California and across the nation – background checks for all gun sales have proven to be a thoroughly unsuccessful tool in curbing such horrific violence. We have universal background checks here in California, which failed to stop the November 7, 2018, Borderline Bar & Grill shooting, the December 2, 2015, San Bernardino shooting, and the May 23, 2014, Santa Barbara attack. And, just last week, 45-year-old Gary Martin shot and killed five people at the Henry Pratt Company despite Illinois’ universal background checks, red flag laws, 72-hour waiting period, and gun licensing requirements.

“While universal background checks may sound like a good idea in theory, they fall far short of their intended goal, which is to keep firearms out of the hands of dangerous individuals. Our current laws are not working, because penalizing the lawful for the misdeeds of the unlawful will never have its anticipated resolution. It’s important to note that our state already has many of the gun control proposals currently being pushed in Congress (waiting periods, firearm registration, increased minimum age for long gun purchases, ban on “assault weapons”) – yet from 2014-2016 we experienced an 18% increase in firearm related homicides, according to the Department of Corrections and Rehabilitation (see AB 18/Levine).”

6) **Related Legislation**: AJR 5 (Jones-Sawyer) would resolve to urge that the federal government to use California as an example for firearm safety and for stronger firearm laws and to pass legislation that would provide universal firearm safety regulation throughout the United States. AJR 5 is pending in the Assembly Public Safety Committee.

7) **Related Federal Legislation**: HR 8 (Thompson) 116th Congress (2019-2020) would require a background check for every gun sale or transfer with limited exceptions including gifts to family members, hunting, target shooting, and self-defense. HR 8 is currently pending in the House Judiciary Committee.

8) **Prior Legislation**:

a) AB 3129 (Rubio) Chapter 883, Statutes of 2018, prohibited a person who is convicted of specified misdemeanors relating to domestic violence from ever possessing a firearm.
b) AB 785 (Jones-Sawyer), Chapter 784, Statutes of 2017, added two hate crimes to the list of misdemeanors that result in a ban on the right to possess a firearm for 10 years.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Student Activists
California Chapters of the Brady Campaign to Prevent Gun Violence
Giffords Law Center to Prevent Gun Violence

Oppose

Gun Owners of California, Inc.

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