AGENDA

9:00 a.m. – June 25, 2019
State Capitol, Room 126

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18. SB 393 (Stone) Ms. Uribe Vessels: impoundment.
20. SB 409 (Wilk) Mr. Billingsley PULLED BY AUTHOR.
22. SB 591 (Galgiani) Mr. Billingsley Incarcerated persons: health records.
23. SB 620 (Portantino) Ms. Uribe Criminal offender record information: referral of persons on supervised release.
24. SB 651 (Glazer) Mr. Fleming Discovery: postconviction.

Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.
SUMMARY: Creates a new and separate crime of forcibly entering a vehicle with the intent to commit a theft inside. Specifically, this bill:

1) Creates a new crime of forcibly entering a vehicle with the intent to commit theft.

2) Punishes this offense either as a misdemeanor with incarceration not to exceed one year in the county jail, or as a felony with imprisonment in the county jail for 16 months, or two, or three years under criminal justice realignment.

3) Defines “forcible entry” as entry accomplished through either of the following means:
   a) Force that damages the exterior of the vehicle, including, but not limited to, breaking a window, cutting a convertible top, punching a lock, or prying open a door; or
   b) Use of a tool or device that manipulates the locking mechanism, including, without limitation, a slim jim or other lockout tool, a shaved key, jiggler key, or lock pick, or an electronic device such as a signal extender.

4) Prohibits a person from being convicted both under this provision and the existing auto burglary statute.

EXISTING LAW:

1) States that any person who enters any house, room, apartment,...shop, warehouse, store, outhouse or other building, tent, vessel,...vehicle when the doors are locked, aircraft ... or mine ... with the intent to commit grand or petit larceny or any other felony is guilty or burglary. (Pen. Code, § 459, emphasis added.)

2) States that burglary of an inhabited dwelling is first degree burglary, and that all other kinds of burglary are of the second degree. (Pen. Code, § 460.)

3) Provides that the punishment for first degree burglary is imprisonment in the state prison for two, four, or six years.

4) Provides that the punishment for second degree burglary is either confinement of up to one year in the county jail, or confinement in the county jail for 16 months, two, or three years pursuant to criminal justice realignment. (Pen. Code, §§ 18, subd. (a) & 461.)
5) Provides that no person shall willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. (Veh. Code, § 10852.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, “SB 23 clarifies that ‘forcible, unlawful entry’ of a vehicle is in fact auto burglary. This narrow change means that breaking a window of a vehicle by use of forcible entry with the intent to steal something therein amounts to an auto burglary. Under current law, one of the elements prosecutors must prove beyond a reasonable doubt to establish the crime of auto burglary is that the vehicle was locked. While it defies logic, the fact that a victim’s window was broken does not by itself establish that the vehicle was locked.

“In order to prove that the door was locked, and that an offender broke the window in order to gain entry, victims are often asked to testify that their vehicle was locked when they left their car. But securing such testimony is extremely difficult when the victim doesn’t live locally, and this problem is exacerbated by the fact that auto burglars disproportionately target tourists who often leave passports, cameras and other valuables in their vehicles that locals may not.

“This change is needed in my district and others with high rates of tourism, as prosecutors struggle to get out-of-state victims to return and testify to establish that they left their doors locked – something seemingly obvious and inconsequential when there’s clear evidence that the thief broke their window to gain entry. SB 23 closes this logic defying loophole by enabling prosecutors to prove auto burglary by showing either that the doors were locked OR that forced entry was used - that a window was broken.”

2) **Elements Required for Auto Burglary Prosecutions:** In order to convict a person under the current auto burglary statute, Penal Code section 459, the prosecutor must prove that (1) the defendant entered a locked vehicle, and (2) when the defendant entered the locked vehicle he or she intended to commit theft (or any other felony). (See CALCRIM No. 1700, see also People v. Teamer (1993) 20 Cal.App.4th 1454, 1457–1461.)

The common law element of “breaking” has never been an essential element of statutory burglary in California. The only exception is auto burglary, which requires that the doors of a vehicle be locked. In fact, that is the key element of auto burglary. While locked doors is an element, forced entry or use of burglary tools is not. (In re James B. (2003) 109 Cal.App.4th 862, 868.)

The element of “locked doors” has been interpreted to mean that the defendant must unlawfully alter the vehicle’s locked state in some manner. (In re James B., supra, 109 Cal.App.4th at 868.) On one end of the spectrum this could be accomplished by unlocking the vehicle without consent of the owner. At the opposite end, auto burglary could be committed by smashing a window. (Ibid.)

Some prosecutors argue that, particularly in cases where a victim is unavailable, such as with
tourists who cannot return to court, while there may be concrete evidence of a break in, it may prove difficult to establish that a vehicle was locked. And yet, convictions have been upheld based on circumstantial evidence to prove the requisite element of locking. For example, in People v. Rivera (2003) 109 Cal.App.4th 1241, the court upheld a conviction where there was evidence of forced entry even though there was no evidence that the doors were locked or sealed. Circumstantial evidence that the car’s doors were locked was based on the car’s windows being broken. (Id. at p. 1245.)

This bill seeks to create a new and separate crime of unlawful entry of a vehicle, the elements of which are forcible entry into the car, and the intent to steal property inside. In doing so, it would present an alternate theory of liability for the prosecutor to present. This bill would eliminate the prosecutor’s duty to establish that a vehicle is locked, and instead require the prosecutor to prove forcible entry.

3) **Dual Convictions:** While this bill creates a new crime of unlawful entry of a vehicle with intent to steal, it does not repeal the current auto burglary statute, Penal Code section 459. Having two statutes involving similar conduct presents the possibility of double convictions for a single entry into a car. For example, when there is evidence that a person breaks into a locked car in a forcible manner, (i.e. smashing a window), if this bill is enacted, the prosecutor really has established the elements for both crimes. Convictions for two crimes for a singular act raises fairness concerns.

The concern is best illustrated with the crimes of theft and receiving stolen property. Common law principles prohibit dual convictions for both stealing and receiving the same property. This rule is based on the notion that a person who has stolen property cannot buy or receive that property from himself. (People v. Ceja (2010) 49 Cal.4th 1, 4-5, citing People v. Allen (1999) 21 Cal.4th 846, 850.) “The common law rule has also been applied ‘when the record permits an inference which cannot be rebutted’ that the jury might have predicated its conviction of theft on a finding that the defendant stole the same property that it convicted him of receiving.” (People v. Allen, supra, 21 Cal.4th at p. 851.) The Legislature codified this rule in 1992. (People v. Ceja, supra, 49 Cal.4th at p. 3.) Penal Code section 496 was amended to state, “No person may be convicted pursuant to this section and of the theft of the same property.” (Pen. Code, §496, subd. (a).)

Similarly to the language contained in the receiving stolen property statute, the proposed committee amendments specify that a person cannot be convicted of both this new crime and of auto burglary based on the act of breaking into a single car. A prosecutor will have discretion to charge a defendant with both crimes and will be able to present alternative theories of liability; however, the defendant may only be convicted of one crime or the other.

4) **Argument in Support:** According to the San Francisco District Attorney, the sponsor of this bill, “Senate Bill 23 … will close a loophole in current law that enables some individuals committing auto burglary to escape accountability. When a vehicle’s window has been broken into and items have been stolen, it is evident that another (sic) auto burglary has occurred. However, due to a loophole in California law, the fact that a window was broken to gain access and steal items inside the vehicle does not establish that the car door was locked. Therefore, if prosecutors cannot prove that the vehicle was locked at the time the car window was broken, it is less likely that a defendant will be held accountable for a felony auto burglary.”
Prosecutors often establish the required locked element in court through testimony from the victim that they locked their vehicle when they left their car. However, with over 55 of all auto burglaries in San Francisco targeting tourists, getting victims to return to court from out of town is difficult. And the fact that we need them to come back to San Francisco to testify to the fact that their car door was locked, especially when their window was broken, defies logic. Ultimately, the state’s current auto burglary statute does not account for basic common sense and it enables defenses that violate the spirit and intent of the law in a manner that disproportionately harms California visitors."

5) **Argument in Opposition:** According to the *San Francisco Public Defender’s Office*, "Existing law makes it a felony or misdemeanor to enter a vehicle when the doors are locked if the entry is made with the intent to commit a theft therein. SB 23 would make it a felony or misdemeanor to ‘forcibly’ enter a vehicle with the intent to commit theft and remove the requirement the car door be locked.

“SB 23’s proposals to change the Penal Code’s operative language to ‘forcibly’ entering a vehicle and to eliminate the requirement that the vehicle was locked at the time of entry would drastically expand the definition of vehicle burglary. This would expose many people to prosecution and punishment who simply opened an unlocked car.”

6) **Prior Legislation:**

a) SB 916 (Wiener), of the 2017-2018 Legislative Session, also would have created a new crime of unlawful entry of a vehicle. SB 916 was held in the Senate Appropriations Committee.

b) AB 476 (Kuykendall), of the 1997-1998 Legislative Session, would have expanded the crime of burglary to include entry into a vehicle, regardless of if the doors are locked, to commit a felony or theft. AB 476 failed passage in this committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

San Francisco District Attorney (Sponsor)
Bandago Van Rental
California Academy of Sciences
California District Attorneys Association
California Downtown Association
California Hotel & Lodging Association
California Police Chiefs Association
California State Sheriffs’ Association
California Statewide Law Enforcement Association
California Travel Association
City and County of San Francisco, Board of Supervisors
City of Downey
City of Thousand Oaks
Cole Valley Improvement Association
Enterprise Holdings
Golden Gate Restaurant Association
League of California Cities
Los Angeles County Sheriff
Miraloma Park Improvement Club
National Insurance Crime Bureau
Peace Officers Research Association Of California
Riverside Sheriffs' Association
San Francisco Travel Association
StateVan Rental
Zeeba Company Inc.

Opposition

California Public Defenders Association
San Francisco Public Defender's Office

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

SECTION 1. Section 465 is added to the Penal Code, to read:

465. (a) A person who forcibly enters a vehicle, as defined in Section 670 of the Vehicle Code, with the intent to commit a theft therein is guilty of unlawful entry of a vehicle.

(b) Unlawful entry of a vehicle is punishable by imprisonment in a county jail for a period not to exceed one year or imprisonment pursuant to subdivision (h) of Section 1170.

(c) As used in this section, forcible entry of a vehicle means the entry of a vehicle accomplished through either of the following means:

1) Force that damages the exterior of the vehicle, including, but not limited to, breaking a window, cutting a convertible top, punching a lock, or prying open a door.

2) Use of a tool or device that manipulates the locking mechanism, including, without limitation, a slim jim or other lockout tool, a shaved key, jiggler key, or lock pick, or an electronic device such as a signal extender.

(d) The provisions of this section do not restrict the application of any other law. However, an act or omission punishable pursuant to multiple provisions of law shall not be punished under more than one provision. No person may be convicted both pursuant to this section and pursuant to section 459.

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.

Sandy Uribe
Assembly Public Safety Committee
06/20/2019
Page 1 of 1
SUMMARY: Reestablishes the California Alliance to Combat Trafficking and Slavery (California ACTS) for the purpose of gathering data on the nature and extent of human trafficking in California. Specifically, this bill:

1) Re-establishes California ACTS in order to do all of the following:

   a) Collect and organize data on the nature and extent of trafficking of persons in California, and prepare and deliver a report to the Legislature by March 31, 2023, that details recommendations for all of the following:

      i) The cost of a prevalence study for the State of California that addresses types of trafficking, including both sex and labor trafficking, and the dynamics of whom is being trafficked, including citizenship, gender, age, race, and additional characteristics as identified by the task force as essential to the understanding of the scope and severity of trafficking of persons in California;

      ii) The best entity to conduct such a study for California; and,

      iii) How often such a study should be conducted in California to best support early identification of human trafficking victims and prevent future human trafficking in California.

   b) Examine collaborative models between governmental and nongovernmental organizations for protecting victims of trafficking; and,

   c) Measure and evaluate the progress of the state in preventing trafficking, protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in trafficking.

2) Provides that the task force shall be comprised of the following representatives or their designees:

   a) The Attorney General;

   b) The Secretary of Labor and Workforce Development;

   c) The Director of Social Services;
d) The Director of Health Care Services;

e) The Director of Emergency Services;

f) The State Public Health Officer;

g) A representative of the California Child Welfare Council;

h) One mental health professional with expertise on human trafficking;

i) The Speaker of the Assembly shall appoint one representative from law enforcement with experience in human trafficking;

j) The Senate Committee on Rules shall appoint one representative from an organization that provides services to victims of human trafficking; and,

k) The Governor shall appoint a survivor of human trafficking.

3) States that whenever possible, members of the task force shall have experience providing services to trafficked persons or have knowledge of human trafficking issues.

4) Provides that the member of the task force shall serve at the pleasure of the respective appointing authority. Reimbursement of necessary expenses may be provided at the discretion of the respective appointing authority or agency participating in the task force.

5) Requires the task force to meet at least four times. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public. The first meeting of the task force shall be held no later than July 1, 2020.

6) Requires on or before July 1, 2023 the task force to report its findings and recommendations to the Governor, the Attorney General, and the Legislature. At the request of any member, the report may include minority findings and recommendations.

7) Defines “trafficking” to mean “all acts involved in the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labor or services, including forced prostitution or sexual services, domestic servitude, bonded sweat shop labor, or other debt bondage.”

8) States that this title shall remain in effect only until January 1, 2024, and as of that is repealed.

EXISTING LAW:

1) States that a person who deprives or violates the personal liberty of another with the intent to commit specified crimes including pimping, pandering, or child pornography, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (b).)
2) Specifies that a person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to commit specified crimes including pimping, pandering, or child pornography, is guilty of human trafficking. States that such a violation is punishable by imprisonment in the state prison as follows:

a) Five, 8, or 12 years and a fine of not more than $500,000; or

b) Fifteen years to life and a fine of not more than $500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c).)

3) Establishes that cases involving minor victims of human trafficking shall be provided with assistance from the local county Victim Witness Assistance Center, if the minor so desires. However, this section does not require local agency’s to operate a Victim Witness Assistance Center (Pen. Code § 236.13 (a).)

4) Establishes in the State Treasury the Human Trafficking Victims Assistance Fund. Moneys in the fund shall only be expended to support programs for victims of human trafficking. (Gov. Code § 8590.7 (a).)

5) Requires the Office of Emergency Services (OES) to publish procedures for organizations applying for grants from the Human Trafficking Victims Assistance Fund, and to award grants based on all of the following:

a) The capability of the qualified nonprofit organization to provide comprehensive services;

b) The stated goals and objectives of the qualified nonprofit organization;

c) The number of people served and needs of the community;

d) Evidence of community support; and,

e) Any other criteria deemed appropriate. (Gov. Code, § 8590.7, subd. (b).)

6) Provides that the Department of Fair Employment and Housing can receive, investigate, and prosecute claims that are brought under the state’s Trafficking Victims Protection Act on behalf of victims of human trafficking. (Gov. Code § 12930 (f)(1)(2)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “The crime of human trafficking is prevalent in California. According to the National Human Trafficking Resource Center, during the period 2012-2018, California has consistently ranked at the top of its hotline calls. In 2017, the hotline received nearly 4,000 calls from California, resulting in just over 1,300 human trafficking cases reported. That number represents a nearly 265% increase in reported cases since 2012.
"California is particularly vulnerable to human trafficking because of factors such as a large runaway and homeless youth populations, proximity to international borders, the number of ports and airports, a substantial immigrant population, and the fifth largest economy in the world.

"The scourge of human trafficking impacts all races, ethnicities, gender and age. It cuts at the very fiber of civil society and challenges the resources of law enforcement, the courts, and social service providers to respond to the needs of these vulnerable populations.

"Nearly 15 years ago, California enacted its first anti-trafficking law, which established the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force. Its final report laid the groundwork for a coordinated, collaborative response to ending sex and laboring trafficking in California, providing help and hope to its many victims.

"It has been a number of years since the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force has convened and there is still a great deal of work to be done to protect victims and prevent human trafficking. SB 35 will reconvene the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force to help recalibrate the state's human trafficking suppression strategy as well as measure the size and scope of the growing criminal enterprise."

2) Argument in Support: According to the San Diego County District Attorney's Office, "The San Diego County District Attorney's Office is pleased to support Senate Bill 35, which reconvenes the California Alliance to Combat Trafficking and Slavery (CA ACTS) Task Force to help recalibrate the state's human trafficking suppression strategy and measure the size and scope of the issue today. This is a critical issue, and we know first-hand the impact that can be made by bringing together stakeholders to attack the growing crime.

"In 2015, our office spearheaded the formation of the San Diego County Human Trafficking Task Force, which is comprised of federal, state and local law enforcement agencies. Since that time we have conducted coordinated sweeps resulting in the prosecution of numerous traffickers. In addition, our office launched the Disrupt Sex Trafficking campaign to bring attention to the seriousness of this crime. This was done in the partnership with an antihuman trafficking organization, Abolitionist Mom, and San Diego County's Health and Human Services Agency. The series of ads depict the methods sex traffickers use to recruit victims and practical steps that can interrupt child exploitation.

"Human trafficking is a form of modern-day slavery that involves the use of force, fraud, or coercion to recruit, harbor, transport, provide, or obtain a person for the purposes of labor or sexual exploitation. In San Diego County, human trafficking is the second largest underground economy after drug trafficking. The FBI recently identified our city as one of the top 13 high-intensity child prostitution areas in the nation. California and, in particular, San Diego, is particularly vulnerable to human trafficking because of factors such as a large runaway and homeless youth population, the proximity to international borders, the number of ports and airports, the substantial immigrant population and the strong growing economy. Unfortunately, human trafficking is on the rise, and new strategies are needed to respond to this scourge on our society."
"The CA ACTS Task Force brings a coordinated and collaborative response to sex and laboring in California and has been convened several times since its creation in 2005, but the last time it convened was in 2012. Since then, there is new awareness throughout the state of sex and labor trafficking and the harm that they cause a new attitude towards its victims. By bringing them together representatives from the government and private sectors, including survivors, first responders, and human services provides to identify new legislative policy, civil and criminal justice strategies, and support for social services, it provides help and hope to the many victims of human trafficking. It is time to reconvene the CA ACTS Task Force."

3) Prior Legislation:

a) AB 2216 (Patterson), of the 2017-18 Legislative Session, appropriated $15 million annually from the General Fund and allocated it to the Human Trafficking Assistance Fund for the purpose of supporting programs for victims of human trafficking, and conducting a study on the prevalence of human trafficking in California. SB 35 was held on the Assembly Appropriations Committee suspense file.

b) SB 180 (Kuehl), Chapter 239, Statutes of 2005, established the California ACTS task force to collect data on human trafficking, and required the development of a course of instruction for law enforcement officers in California in responding to human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California Alliance of Child and Family Services
California Catholic Conference
California District Attorneys Association
California Massage Therapy Council
California Partnership to End Domestic Violence
California Police Chiefs Association
California Public Defenders Association
California State Sheriffs' Association
Coalition to Abolish Slavery & Trafficking
Dignity Health
Junior League of San Diego
Junior Leagues of California State Public Affairs Committee
Motivating Inspiring Supporting and Serving Sexually Exploited Youth
National Council of Jewish Women CA
Religious Sisters of Charity
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Barbara Women's Political Committee

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Establishes the Getting Home Safe Act which mandates that all county jails follow specified procedures for releasing a person from jail to ensure that person’s safety, including providing a safe place for the person to wait after release during evening hours.
Specifically, this bill:

1) States that it is the intent of the Legislature to ensure that people are released with expediency from county jails with conditions that protect their health and maximize the likelihood of their success in preventing rearrest by establishing a statewide release standard for county jails to follow.

2) Establishes the Getting Home Safe Act, which counties must comply with when releasing a person from jail. Applies to persons including those who have completed a sentence served, who have been ordered by the court to be released, who have been released on their own recognizance, who have been released because the charges have been dismissed by the court, who are acquitted by a jury, who is cited and released on a misdemeanor charge, who have posted bail, who have complied with pretrial release conditions, and who have had the charges dropped by the prosecutor.

3) Requires the sheriff to make the release standards, release processes, and release schedules of a county jail available to a person when the person is booked into a county jail and while incarcerated in a county jail.

4) Requires that the release standards provided to a prisoner include the list of rights enumerating that a person has to be safely released from county jail, including the timeframe for the expedient release of a person following the determination to release that person by a judge, jury, or appropriate county staff member.

5) Gives a person being released from county jail the right to request that, upon release, they be assisted in entering a drug or alcohol rehabilitation program; the request may be made at the time of, or after, being booked into a county jail. Provides that if a person chooses to enter a drug or alcohol rehabilitation program upon release from jail, the county jail shall assist, when feasible, in arranging transportation directly to a rehabilitation program or hospital free of charge immediately upon release.

6) Requires a county jail to provide to a person incarcerated in or recently released from county jail up to three free telephone calls from a telephone in the county jail to plan for a safe and successful release.
7) Requires the sheriff to offer to a person scheduled to be released from jail after 5 p.m. or sundown, whichever is later, or before 8 a.m., the option to voluntarily stay in jail for up to 16 additional hours or until normal business hours, whichever is shorter, in order to offer the person the ability to be discharged during daytime hours. Requires, in the event a person chooses to voluntarily stay in jail, that the person provide written consent to remain in custody, which may be revoked at any time, in which event, the sheriff shall discharge the person from jail as soon as possible and practicable.

8) Provides that if a person is scheduled to be released after 5 p.m. or sundown, whichever is later, or before 8 a.m., and that person chooses to leave, that the person shall be provided with the opportunity to have a safe place to wait for transportation, which provides adequate and sufficient ability to charge a personal cell phone and access to a free public telephone.

9) Provides that a person scheduled to be released from county jail between the hours of 8 a.m. and 5 p.m. or sundown, whichever is later, shall be released during that time.

10) Provides that a person who is released from jail after being incarcerated for more than 30 days shall receive at least three days’ supply of any necessary medication that the person was receiving when they were incarcerated.

11) States that nothing prevents the early release of a person, as otherwise allowed by law, and nothing allows a county jail to retain a person any longer than otherwise required or allowed by law without the person’s express written consent.

12) States that a complaint regarding a violation of the rights established by this act may be submitted to the Board of State and Community Corrections, Ombudsman.

13) Requires the Board of State and Community Corrections to establish the Late-Night Release Prevention Task Force, which shall prepare all materials related to the implementation of the Getting Home Safe Act, and develop recommended requirements for county jails to maintain records that adequately document the implementation of the Act, including how these records will be maintained and made available to the public.

14) States that the task force shall submit a report on January 1, 2022, to the relevant policy and budget committees of the Legislature about the progress made by the task force in implementing this Act and make suggestions for any additional legislation necessary to prevent dangerous late-night releases at county jails throughout California.

EXISTING LAW:

1) States that the sheriff may discharge any person from the county jail at such time on the last day such person may be confined as the sheriff shall consider to be in the best interests of the person. (Pen. Code, § 4024.)

2) Provides that upon completion of a sentence served by a person or the release of a person ordered by the court to be effected the same day, including persons released on their own recognizance, have their charges dismissed by the court, are acquitted by a jury, are cited and released on a misdemeanor charge, have posted bail, or have the charges against them dropped by the prosecutor, the sheriff may offer a voluntary program to the person that
would allow that person to stay in the custody facility for up to 16 additional hours or until normal business hours, whichever is shorter, in order to offer the person the ability to be discharged to a treatment center or during daytime hours. The person may revoke their consent and be discharged as soon as possible and practicable. (Pen. Code, § 4024.)

3) States that offering this voluntary program is an act of discretion within the meaning of Section 820.2 of the Government Code. (Pen. Code, § 4024.)

4) Provides that if a person has posted bail and elects to participate in this program, they shall notify the bail agent as soon as possible and practicable of their decision to participate. (Pen. Code, § 4024.)

5) States that a sheriff offering this program shall, whenever possible, allow the person volunteering to participate in the program to make a telephone call to either arrange for transportation, or to notify the bail agent pursuant to paragraph (4), or both. (Pen. Code, § 4024.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “The practice of late night releases is especially dangerous for women, including transgender women, who become targets for physical abuse, sexual abuse, and sex trafficking from predators who are familiar with county jail late-night release practices. The release of people from a county jail during late-night hours is not only dangerous for the person being released but also for the public health and safety of the community at large. Persons who suffer from mental illness or substance addiction are far less likely to be able to access immediate treatment services following a late-night release from county jail. The death of Jessica St. Louis was avoidable and we look to prevent such an incident from occurring to the best of our ability. By requiring a safe place to wait, free phone calls and sufficient ability for a person to charge their cell-phone we look to reduce the amount of people who are victims of crime as a result of late night release from county jail.”

2) **Purpose of this Bill:** People become eligible to leave county jail every minute of the day. Sometimes, the time the person should be released is a dangerous time to be released: when it’s dark, when normal public services are not operating, when they are vulnerable to return to drug or alcohol use instead of attending a counseling meeting or treatment program, or when they can’t reach a family member. A person may be released with a dead cell phone and no ability to call for a ride. They may need to wait for a few hours before a friend can drive to provide a ride. A person may be released at a time when they need to take medication within the hour in order to maintain their health.

This bill seeks to protect those people by providing flexibility upon release: to provide a chance to charge a phone, arrange a ride, leave with proper medication, and leave in accordance with a treatment plan.

The bill’s intent language states that women; victims of physical abuse, sexual abuse, and sex trafficking; and people with mental illness and substance abuse issues are particularly at risk
when released during late night and early morning hours.

3) **Change from Discretionary to Mandatory Participation:** Current law permits, but does not require, county jails to provide a person released from jail a safe place to wait during evening and early morning hours. This discretionary framework was established in 2014. However, it is clear that not all counties participate in the program, nor do they always employ safe departure procedures. This bill would ensure that safe release procedures are followed by every county jail, that individuals are actively made aware of their rights upon release from jail to ensure that they know they may stay at the facility to wait for a ride, that they may use county telephones for free, and that they may have the opportunity to charge their cell phone, if practicable for the facility.

4) **Medical Supply of Three Days:** Current practice by the Department of Corrections and Rehabilitation (CDCR) is to provide persons released from their facilities with medication as necessary. Title 15 of the California Code of Regulations §3076.4(j) states that at the time of release from a CDCR facility, medical staff shall ensure the inmate has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole medication, and all property belonging to the individual. After discharge, any additional records shall be sent to the individual’s forwarding address.

According to CDCR, patients leaving CDCR’s health care system, if currently receiving medication(s), generally receive a 30-day supply of each medication(s) including medications prescribed to be taken as needed. At the time of release, CDCR custody staff ensures that the patient receives his/her parole medication(s), along with a list of the medications received. Medications provided are those identified as necessary to protect life, prevent significant illness or disability, or to alleviate severe pain, unless clinically contraindicated. Medications that are not provided include: over-the-counter medications for minor ailments such as seasonal allergies, dandruff, and acne or items such as shampoos, moisturizing lotions, antacids, and sunscreen.

While a 30-day supply is typical, all medications are continued for the period accepted as safe without follow up. For example, a supply of clozapine (an anti-psychotic medication) varies depending on a patient’s stage of monitoring. With respect to opioid medications prescribed for chronic pain, a 30-day supply is generally provided to assure uninterrupted access to stable dosing of medication until care can be obtained in the community. Where patients suffer from mental health conditions and/or substance use disorder, expedient transitional linkages to care in the community are crucial and medication supplies may be adjusted accordingly to mitigate risk of harm. Patients at high risk of opioid-related harm are provided Naloxone at the time of release.

This bill would impose a duty on county jails to make similar assessments in providing necessary medication to a person being released from jail after being incarcerated for at least 30 days. This bill would only require a county jail to provide three days of medication, and clarifies that the definition of “necessary” medication that shall be provided upon release is medication that the person was already receiving when they were incarcerated.

5) **Argument in Support:** According to the *Center on Juvenile and Criminal Justice*, “California counties currently operate 118 local jail facilities across the state, housing more than 70,000 people. Every quarter these facilities release over a thousand people who must
navigate complex release processes and find their way home. Many are released in the middle of the night without adequate transportation or supportive services that could prevent immediate recidivism or physical harm. Women are particularly vulnerable to the dangers of late-night releases, including exploitation by traffickers. Despite legislation passed and signed in 2014 that allowed county jails to voluntarily participate in a program that would reduce the number of late-night releases throughout California, few jails have changed their release policies and many continue to regularly release jailed persons during late-night hours.

“IT is difficult for individuals in jail or those who are being processed for release to contact a loved one and arrange a ride home. Jails typically do not provide access to a phone or a cell phone charger for those being released, and, for those with phone access, family members or friends may be unreachable in the middle of the night. Without the ability contact loved ones, many of those released in the middle of the night are forced to walk, wait for public transportation to begin service, or accept a ride with a stranger. In July 2018, Jessica St. Louis was released at 1:30am from Alameda County’s Santa Rita Jail, which is two miles from the nearest BART station and lacks 24-hour access to public transportation. Tragically, Ms. St. Louis died during her journey home.

“This bill would ensure the safety of individual released from jail by requiring that they be released at appropriate times of day, provided with the option of voluntarily staying in jail longer so they can be released during the day, or offered specified alternatives, such as free transportation to a location of the person’s choosing.

“In addition, the Getting Home Safe Act would:

- Require county sheriffs to make available to the public and upon booking, the release standards, processes and schedules of the county jail.

- Require that people who are being released from a long stay (30 days or more) in jail receive basic services, including at least three days safe shelter and food and at least one week’s supply of any necessary medication.

- Require those who are in jail or recently released to have free phone calls and access to a cell phone charging station.

“To ensure proper implementation of the Getting Home Safe Act, SB 42 establishes the Board of State and Community Corrections (BSCC) Office of the Ombudsman as the recipient of public complaints about local late-night release practices. Furthermore, the BSCC would establish the Late-night Release Prevention Taskforce, which would be responsible for creating, implementing, and monitoring protocols of the Getting Home Safe Act and would submit an annual report on the implementation of these provisions along with recommendations for any additional legislation necessary to prevent dangerous late-night releases. This taskforce would be comprised of relevant stakeholders, including formerly incarcerated women and men.

“Nothing in The Getting Home Safe Act would prevent the early release of those detained as allowed by law, or allow jails to retain those detained any longer than otherwise required without the individual’s express written consent. It also does not change existing law that authorizes a sheriff to offer a person the ability to voluntarily stay in jail for up to 16
additional hours or until normal business hours, whichever is shorter, in order to enter a treatment program or return home during daytime hours. Currently, California state law authorizes that a person can revoke his or her consent and be discharged as soon as is possible and practicable.”

6) **Argument in Opposition:** According to the *Rural County Representatives of California (RCRC)*, “Existing law permits the sheriff to offer a voluntary program to inmates that would allow them to stay in a county detention facility for up to 16 additional hours in order to offer inmates the ability to be discharged during daytime hours. Current law also permits a participating inmate to revoke his or her consent to stay longer and be discharged as soon as possible and practicable. While we understand the objective of the Getting Home Safe Act, we are concerned that, while well-intentioned, the new requirements represent a considerable new mandate, some very broad in nature, which would impose considerable costs on counties and potentially expose our members to liability.

“SB 42 would require the sheriff to allow the inmate to stay in jail or offer a safe place to stay if they decline release during the evening and early morning hours. As a practical matter, most detention facilities in our member counties do not have an appropriate space to offer a non-custodial waiting area to meet this new mandate. We believe these specific provisions in SB 42 would create space-management challenges as well as increased staffing responsibilities.

“In addition to the safe waiting place requirement for those who decline to voluntarily stay in jail, RCRC also is concerned about the broad requirement that every jail offer personal cell phone charging stations. There would be substantial costs – as well as practical challenges with establishing and maintaining the ability given to charge virtually any model of cell phone – associated with installation of this feature in our county jails.

“Finally, we are concerned about county liability created by this bill. Providing a released inmate with three days’ supply of any necessary medication creates risk to the released person and others since there is no limitation on the type of medication that must be given to the person (e.g. narcotics, opiate replacements, anti-psychotics) and no ability to supervise appropriate use thereof.”

7) **Prior Legislation:**

a) SB 833 (Liu), Statutes of 2014, Chapter 90, authorizes the sheriff to offer a voluntary program to a prisoner, upon completion of a sentence served or a release ordered by the court to be effected the same day, that would allow the prisoner to stay in the custody facility for up to 16 additional hours or until normal business hours, whichever is shorter, in order to offer the prisoner the ability to be discharged to a treatment center or during daytime hours, as specified

b) SB 153 (Liu), of the 2009-10 Legislative Session, would have provided that the sheriff shall discharge a prisoner upon the completion of their sentence between the hours of 6 a.m. and 6 p.m., with certain exceptions. SB 153 died in the Senate Committee on Public Safety.

**REGISTERED SUPPORT / OPPOSITION:**
Support

Alcohol Justice
Alliance for Boys and Men of Color
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
Center on Juvenile and Criminal Justice
Community Against Sexual Harm
Depression and Bipolar Support Alliance
Disability Rights California
Ella Baker Center for Human Rights
Having Our Say Coalition
Justice Now
Oakland Privacy
Root & Rebound
San Francisco Bay Area Rapid Transit District
Schott & Lites Advocates Llc
UDW/AFSCME Local 3930

Oppose

California State Sheriffs' Association
Rural County Representatives of California

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 SB-42 (Skinner (S))

Mock-up based on Version Number 98 - Amended Senate 5/17/19
Submitted by: Nikki Moore, Assembly Committee on Public Safety

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Women of color are more commonly criminalized for noncriminal behavior than other demographic groups and are treated like perpetrators when they call for help or are suffering a crisis.

(2) The overrepresentation of women of color in our county jails is evidence of these injustices and the disregard with which they are discharged from county jails only worsens the harm they experience as a result.

(3) Despite legislation passed and signed in 2014 that allowed county jails to voluntarily participate in a program that would reduce the number of late-night releases throughout California, few jails have changed their release policy and, instead, jails continue to regularly release jailed persons during late-night hours.

(4) The lack of free phone services available to people during detention and the inability to charge personal cell phones upon release exacerbates the danger of late-night releases.

(5) This practice is especially dangerous for women, including transgender women, who become targets for physical abuse, sexual abuse, and sex trafficking from predators who are familiar with county jail late-night release practices.

(6) The release of people from a county jail during late-night hours is not only dangerous for the person being released but also for the public health and safety of the community at large.

(7) Persons who suffer from mental illness or substance addiction are far less likely to be able to access immediate treatment services following a late-night release from county jail.

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(8) Intentional or not, these release policies are cruel and fail to acknowledge the often significant lived trauma that people, especially women, who are involved in the criminal justice system have experienced.

(9) There is no recidivism prevention or public safety purpose of county jail late-night release policies that would substantiate the need for counties to maintain them. In fact, the lack of access to essential reentry and family reunification services means these late-night release policies work contrary to crime-prevention goals.

(10) Throughout California, women impacted by these late-night release policies have been thwarted in their efforts to end this practice, indicating that a statewide solution is needed.

(b) It is the intent of the Legislature to ensure that people are released with expediency from county jails with conditions that protect their health and maximize the likelihood of their success in preventing re-arrest by establishing a statewide release standard for county jails to follow.

SEC. 2. Section 4024 of the Penal Code is amended to read:

4024. (a) The sheriff may discharge a prisoner from the county jail at the time on the last day the prisoner may be confined as the sheriff considers to be in the best interests of the prisoner.

(b) (1) Upon completion of a sentence served by a prisoner or the release of a prisoner ordered by the court to be effected the same day, including prisoners who are released on their own recognizance, have their charges dismissed by the court, are acquitted by a jury, are cited and released on a misdemeanor charge, have posted bail, or have the charges against them dropped by the prosecutor, the sheriff may offer a voluntary program to the prisoner that would allow that prisoner to stay in the custody facility for up to 16 additional hours or until normal business hours, whichever is shorter, in order to offer the prisoner the ability to be discharged to a treatment center or during daytime hours. The prisoner may revoke consent and be discharged as soon as possible and practicable.

(2) This subdivision does not prevent the early release of a prisoner as otherwise allowed by law or allow jails to retain a prisoner any longer than otherwise required by law without the prisoner’s express written consent.

(3) Offering this voluntary program is an act of discretion within the meaning of Section 820.2 of the Government Code.

(4) If a prisoner has posted bail and elects to participate in this program, the prisoner shall notify the bail agent as soon as possible and practicable of the decision to participate.

(5) A sheriff offering this program shall, whenever possible, allow the prisoner volunteering to participate in the program to make a telephone call to either arrange for transportation, or to notify the bail agent pursuant to paragraph (4), or both.

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(c) This section shall become inoperative on June 1, 2020, and as of January 1, 2021, is repealed.

SEC. 3. Section 4024.5 is added to the Penal Code, to read:

4024.5. (a) This section shall be known as the Getting Home Safe Act.

(b) The rights established in this section apply to any person being released from a county jail, including, but not limited to, a person who has completed a sentence served, been ordered by the court to be released, been released on the person’s own recognizance, been released because the charges have been dismissed by the court, is acquitted by a jury, is cited and released on a misdemeanor charge, has posted bail, has complied with pretrial release conditions, or has had the charges dropped by the prosecutor.

(c) (1) The sheriff shall make the release standards, release processes, and release schedules of a county jail available to a person when the person is booked into a county jail and while incarcerated in a county jail.

(2) The release standards shall include the list of rights enumerated in this section and the timeframe for the expedient release of a person following the determination to release that person by a judge, jury, or appropriate county staff member.

(3) The release standards shall include a notification that a complaint regarding a violation of the rights established by this act may be submitted to the Board of State and Community Corrections, Ombudsman. This section shall not limit that person’s rights in any other forum.

(4) (A) For purposes of developing protocols for receiving and responding to reports of violations of the rights established by this act, the board shall convene a stakeholder group that includes women and girls who have been incarcerated to aid in this effort.

(B) For purposes of this paragraph, “woman” means an individual who self-identifies her gender as a woman, without regard to her designated sex at birth.

(d) (1) A person shall have the right to request that, upon release from a county jail, the person be assisted in entering a drug or alcohol rehabilitation program. The person shall be allowed to make this request upon, or subsequent to, being booked into a county jail.

(2) If the person chooses to enter a drug or alcohol rehabilitation program upon release from jail, the county jail shall assist, when feasible, in arranging transportation directly to a rehabilitation program or hospital free of charge immediately upon release.

(e) A person incarcerated in or recently released from a county jail shall have access to up to three free telephone calls from a telephone in the county jail to plan for a safe and successful release.

(f) (1) A sheriff shall offer a person scheduled to be released from jail between the hours of 5 p.m. or sundown, whichever is later, and 8 a.m. the option to voluntarily stay in jail for up to 16

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additional hours or until normal business hours, whichever is shorter, in order to offer the person
the ability to be discharged during daytime hours.

(2) A person shall provide written consent before choosing to stay voluntarily in jail as described
in paragraph (1). However, a person may revoke written consent at any time and be discharged
from jail as soon as possible and practicable.

(3) If the person is scheduled to be released from jail between the hours of 5 p.m. or sundown,
whichever is later, and 8 a.m., and the person has declined the option described in paragraph (1),
the person shall be provided the opportunity to have a safe place to wait to be picked up with
adequate and sufficient ability to charge a personal cell phone and access to a free public telephone.

(g) A person scheduled to be released from county jail between the hours of 8 a.m. and 5 p.m. or
sundown, whichever is later, shall be released during that time.

(h) A person who is released from jail after being incarcerated for more than 30 days shall receive
at least three days’ supply of any necessary medication that was being provided to the person while
they were incarcerated. Necessary medication is medication identified as necessary to protect life,
prevent significant illness or disability, or to alleviate severe pain, unless clinically contraindicated.

(i) This section does not prevent the early release of a person as otherwise allowed by law or allow
a county jail to retain a person any longer than otherwise required or allowed by law without the
person’s express written consent.

(j) (1) The release standards shall include a notification that a complaint regarding a violation of
the rights established by this act may be submitted to the Board of State and Community
Corrections, Ombudsman. This section shall not limit that person’s rights in any other forum.

(2) (A) For purposes of developing protocols for receiving and responding to reports of violations
of the rights established by this act, the board shall convene a stakeholder group that includes
women and girls who have been incarcerated to aid in this effort.

(B) For purposes of this paragraph, “woman” means an individual who self-identifies her gender
as a woman, without regard to her designated sex at birth.

(k) This section shall become operative on June 1, 2020.

SEC. 4. Section 4024.6 is added to the Penal Code, to read:

4024.6. (a) (1) The Board of State and Community Corrections shall establish the Late-Night
Release Prevention Task Force.

(2) The task force shall be composed of relevant stakeholders, including women and children who
have been incarcerated.

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(b) The task force shall do both of the following:

(1) Prepare all materials related to the implementation of the Getting Home Safe Act.

(2) Develop recommended requirements for county jails to maintain records that adequately document the implementation of the Getting Home Safe Act, including how these records will be maintained and made available to the public.

(c) (1) The task force shall submit a report on January 1, 2022, to the relevant policy and budget committees of the Legislature about the progress made by the task force in implementing this section and make suggestions for any additional legislation necessary to prevent dangerous late-night releases at county jails throughout California.

(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2026, pursuant to Section 10231.5 of the Government Code.

(d) For purposes of this section, “woman” means an individual who self-identifies her gender as a woman, without regard to her designated sex at birth.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
SUMMARY: Makes it a crime to possess a firearm within 10 years of conviction of specified alcohol and drug related misdemeanors that occur within a designated time period. Specifically, this bill:

1) Imposes a 10-year prohibition on owning or possessing a firearm, ammunition, or reloaded ammunition to a person who has been convicted of the following:

   a) A second conviction for possession with the intent to sell specified controlled substances, including synthetic cannabanoids and ketamine, or vehicular manslaughter while intoxicated, in any combination, in a three-year period.

   b) A third or subsequent conviction for DUI related offenses, which occurs within 10 years of the first offense.

   c) Committing another of those misdemeanors listed above during the initial 10-year prohibition period.

2) Specifies a violation of this prohibition would be a misdemeanor punishable by imprisonment in a county jail for up to six months, a fine of up to $500, or both the fine and imprisonment.

3) Specifies that these prohibitions are not retroactive to the extent that, although the convictions that occurred prior to January 1, 2020 may be counted as priors, the conviction that ultimately results in the firearms prohibition must occur after January 1, 2020.

EXISTING LAW:

1) Provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession of firearms for a period of 10 years after a conviction for specified serious/violent misdemeanors and that a violation is punishable as a misdemeanor with imprisonment up to one year or as a state prison felony. (Pen. Code, § 29805, subd. (a).)

2) Includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, and threats of bodily injury or death. The list includes a number of other misdemeanor crimes as well. (Penal Code, § 29805, subd. (a).)
3) Provides that persons convicted of a felony are prohibited for their lifetimes from owning or possessing a firearm. (Pen. Code, § 29800, subd. (a)(1).)

4) Specifies that a felon in possession of a firearm is guilty of a felony with a maximum of three years in the state prison. (Pen. Code, § 29800, subd. (a)(1).)

5) Prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Pen. Code, § 29825.)

6) Specifies that any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of domestic violence, and who subsequently owns or has possession of a firearm is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year or guilty of a felony punishable by up to three years in the state prison. (Penal Code, § 29805, subd. (b).)

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

8) States that a person prohibited from possessing a firearm, as specified is prohibited from possessing ammunition. (Pen. Code, § 30305, subd. (a)(1).)

9) Provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is currently known as the Armed Prohibited Persons Systems (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. (Pen. Code, § 30000, et seq.)

10) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500 and 30306; and Welf. & Inst. Code, § 8101.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "California law seeks to remove firearms from the possession of people likely to misuse them. There are several classes of people prohibited from possessing firearms including felons, people addicted to narcotics, the mentally ill, and persons subject to a protective order. Included also are people who commit certain misdemeanors.

"While there is little evidence linking many of the above actions/behaviors to firearm abuse, a strong correlation has been shown between certain alcohol-/drug-related misdemeanor convictions and future gun violence. Among the most direct of these studies was performed..."
at the Violence Prevention Research Program (VPRP) at U.C. Davis which is part of the University of California Firearm Violence Research Center (UCFC) and which has for more than thirty years conducted firearm research and policy development.

"SB 55 adds several crimes which this research has shown to be linked to later firearm violence to the list of criminal convictions that result in a 10-year prohibition on firearm ownership. Multiple crimes must be committed within a certain time period to invoke the prohibition.

"Research by VPRP and others has shown that convictions for some non-violent crimes involving drugs and alcohol correlate strongly to a later conviction for a firearm-related crime -- in some instances a four-to-five-times greater chance of a future crime.

"In an effort to prevent future gun violence, this bill adds these research-correlated drug and alcohol convictions to the list of 10-year prohibitions. They are:

- Possession with intent to sell synthetic cannabinoid drugs;
- Possession with intent to sell certain tranquilizers;
- Possession with intent to sell ketamine;
- Vehicular manslaughter while intoxicated;
- Driving while under the influence of alcohol; and
- Causing an injury while driving under the influence of alcohol

"The prohibition applies when a person commits the above drug crimes or vehicular manslaughter two times within a three-year period, or is convicted of three DUIs within a ten-year period.

"The prohibition is for ten years because research indicates that persons who have not been convicted of any crimes within a ten-year period are almost as unlikely to commit a crime as persons who have never been convicted of a crime."

2) **Individuals Prohibited from Possessing Firearms in California:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the
person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Armed Prohibited Persons System (APPS) for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.)

This bill would make it a crime to possess a firearm within 10 years of conviction of specified alcohol and drug related misdemeanors that occur within a designated time period. From a logistical standpoint, it will be difficult for DOJ to determine whether a conviction for one of the offenses in this bill triggers a firearm prohibition. Because this bill does not require prohibition upon conviction for crimes specified in this bill unless it occurs within a certain time period of other convictions, DOJ would have to examine the conviction records in each case to determine if a prohibition was warranted. This would involve a significant amount of resources if the process could not be automated.

3) **California Prohibits Possession of Firearms for Specified Misdemeanor Convictions That Involve Violence or the Threat of Violence:** Existing law prohibits possession of a firearm for 10 years if a person is convicted of specified misdemeanors that involve violence or the threat of violence. The list of violent misdemeanors, conviction of which triggers the firearm prohibition, contains over 30 offenses. That list of misdemeanors includes the crimes of stalking, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, sexual battery, and threats of bodily injury or death, possession of prohibited ammunition, and various crimes involving misuse of a firearm. (Penal Code, § 29805.) The misdemeanors triggering firearm prohibition in this bill are not consistent with the nature of misdemeanors on the current list.

4) **APPS Backlog:** DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

DOJ has limited resources to investigate and seize firearms from persons on the list. Since
the early 2000s, DOJ has requested additional funding to decrease the backlog. The APPS has largely been funded by fees collected when an individual purchases a firearm, which is deposited in the Dealer’s Record of Sale (DROS) Special Account. However, the DROS Special Account has experienced operational shortfalls since 2012-13. In 2013, the Legislature appropriated $24 million with SB 140 (Leno), Chapter 2, Statutes of 2013, to aid the DOJ in reducing the backlog to its current levels, but the DOJ has been unable to eliminate it entirely. Adding new categories of prohibited person increases the number of people on the APPS list. This bill would increase the number of prohibited persons on the APPS list.

An AP article from March 2019, discussed the APPS backlog. The article pointed out that $24 million given to DOJ in 2013 provided with the intent that those funds would be sufficient to clear the backlog. But despite clearing a record 10,681 cases in 2018, the department still had about 9,400 active cases as of March 2019, about 800 fewer than it did a year ago. (https://www.apnews.com/d92903c08d52411fae595954896df659)

Attorney General Becerra was quoted in the article and stated “More cases are coming in than our 50 agents can process, and so if we don’t do something ... we will continue to see an incremental rise in the number of cases that we haven’t touched,” Becerra said. “No one wants that.” (Id.)

5) **Argument in Support:** According to the Los Angeles County Supervisors, “SB 55 also would apply that ten-year prohibition to individuals who have been convicted of two or more specified misdemeanors, or two or more convictions of a single specified misdemeanor in a three-year period, including misdemeanors related to possession of a controlled substance with intent to sell and driving under the influence of alcohol and/or drugs. Finally, this bill would make it a misdemeanor for an individual prohibited from owning or possessing a firearm pursuant to these provisions to own, possess, or have under their custody or control, any ammunition or reloaded ammunition.

“The County's Department of Public Health (DPH), and their Injury and Violence Prevention Program (IVPP) indicate that the Journal of the American Medical Association conducted a study analyzing purchasers of handguns in California and found that purchasers with at least one prior misdemeanor conviction were more than seven times as likely as those with no prior criminal history to be charged with a new offense after a handgun purchase. DPH-IVPP indicates that prohibitions for misdemeanors are grounded in research that shows low-level violent offenders are more likely than other groups to commit more serious violent crimes in the future. A 1998 study led by Dr. Garen Wintemute found that handgun purchasers who had more than one prior conviction for a violent offense were 10 times as likely to be charged with new criminal activity, and 15 times as likely to be charged with murder, rape, robbery, or aggravated assault, as were those with no prior criminal history. DPH-IVPP notes that the study also found nonviolent misdemeanor offenders to be at an increased — though substantially lower — risk for later violent offenses.”

6) **Argument in Opposition:** According to the Peace Officer Research Association of California, “Current law provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess, or have under their custody or control, any firearm. SB 55 would add possession with intent to sell synthetic cannabinoids drugs, possession with intent to sell certain tranquilizers, possession with intent to sell ketamine, vehicular manslaughter while intoxicated, public
intoxication such that the person 'is unable to exercise care for his or her own safety or the safety of others' or such that the person obstructs a public way, driving while under the influence of alcohol, and causing an injury while driving under the influence of alcohol to the list of misdemeanors, thus, a conviction would violate the 10-year prohibition on possessing a firearm.

"While PORAC agrees that guns need to be kept out of the hands of those who would abuse them, the Department of Justice cannot keep up with the over 20,000 people currently on the 'prohibited persons' list. Many of those on the list have been convicted of serious and/or violent felonies. Until California can reduce the serious backlog that currently exists, PORAC feels we should not be adding additional misdemeanants to the list."

7) Related Legislation:

a) SB 120 (Stern), would prohibit a person who is convicted of a misdemeanor violation of carrying a concealed firearm, carrying a loaded firearm, or openly carrying an unloaded handgun, from possessing a firearm for a period of 10 years. SB 120 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 701 (Jones), would lower the penalty to make it a misdemeanor for a person with an outstanding arrest warrant, as specified, to own or possess a firearm. AB 701 is awaiting hearing in the Assembly Appropriations Committee.

c) SB 172 (Portantino), would add criminal storage offenses to those offenses that can trigger a 10 year firearm prohibition. SB 172 is awaiting hearing in the Assembly Public Safety Committee.

d) AB 276 (Friedman), would prohibit any person convicted of specified firearm safe storage provisions preventing access to children or prohibited persons, on or after January 1, 2020, from possessing a firearm for 10 years. AB 276 is pending in the Assembly Public Safety Committee.

8) Prior Legislation:

a) AB 3129 (Rubio), Chapter 883, Statutes of 2018, prohibits a person who is convicted on or after January 1, 2019, of a misdemeanor domestic violence offense that currently results in a 10-year prohibition against possessing a firearm, from possessing a firearm for life.

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.

c) SB 347 (Jackson), of the 2015-2016 Legislative Session, would have added specified firearms and ammunition misdemeanor offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years. SB 347 was vetoed by the governor.

d) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have provided that any person convicted of a misdemeanor violation of two or more specified offenses
(including DUI) within a three-year period be prohibited from possessing a firearm for 10 years. SB 755 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
Alcohol Justice
Bay Area Student Activists
Brady California United Against Gun Violence
California Chapter of the American College of Emergency Physicians
California Police Chiefs Association
Coalition Against Gun Violence, A Santa Barbara County Coalition
Coalition to Stop Gun Violence
County of Los Angeles Board of Supervisors
Giffords Law Center to Prevent Gun Violence
Laguna Woods Democratic Club
Los Angeles City Attorney
Los Angeles County Board of Supervisors
Prosecutors Against Gun Violence
Riverside Sheriffs’ Association
Santa Barbara District Attorney
Santa Barbara Women’s Political Committee
Ventura County Board of Supervisors
Violence Prevention Coalition of Orange County
Women For: Orange County

Oppose

California Attorneys for Criminal Justice
California Sportsman's Lobby, Inc.
California Waterfowl
Gun Owners of California, Inc.
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California
Safari Club International - California Chapters

Analysis Prepared by:  David Billingsley / PUB. S. (/916) 319-3744
SUMMARY: Prohibits the sale of a semiautomatic centerfire rifle to any person under 21 years of age, and prohibits a person from making an application to purchase more than one long gun in any 30-day period, except as specified. Specifically, this bill:

1) Prohibits a person from making an application to purchase more than one firearm of any type within any 30-day period and makes conforming changes to the existing prohibition against the purchase of more than one handgun in any 30-day period. (Pen. Code, § 27535, subd. (a).)

2) Adds the following entities to the existing exemption to the 30-day prohibition relating to sale of handguns:

   a) The purchase of a firearm other than a handgun by a person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife;

   b) The acquisition of a firearm, other than a handgun, at an auction or similar event conducted by a nonprofit public benefit, or mutual benefit corporation to fund the activities of that corporation or local chapter of that corporation; and,

   c) Clarifies that for the purpose of the above exemption, the frame or receiver of a firearm is a handgun, unless the application to purchase and delivered to the recipient is equipped with, is attached to, or is currently accompanied by, a barrel of 16 inches or greater in length.

3) Provides that effective January 1, 2021 a licensed firearms dealer shall not sell, supply, deliver, or give a semiautomatic centerfire rifle to any person under 21 years of age. This provision shall not apply to any of the following persons 18 years of age or older:

   a) An active peace officer, who is authorized to carry a firearm in the course and scope of his or her employment;

   b) An active federal officer, or law enforcement agent, who is authorized to carry a firearm in the course and scope of his or her employment;

   c) A reserve peace officer, who is authorized to carry a firearm in the course and scope of his or her employment;

   d) An active member of the United States Armed Forces, the National Guard, the Air national Guard, or the active reserve components of the United States, where the
individuals in these organizations are properly identified. Proper identification includes the Armed Forces Identification Card or other written documentation certifying that the individual is an active or honorably retired member; and,

e) A person who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife and a certificate of eligibility issued by the Department of Justice (DOJ).

EXISTING LAW:

1) Prohibits a licensed firearms dealer from selling, supplying, or giving possession or control of a firearm to any person under 21 years of age. (Pen. Code, § 27510, subd. (a).)

2) Provides that the above prohibition does not apply to or affect the sale, supplying, or giving possession or control of a firearm to any person 18 years of age or older who possesses a valid, unexpired hunting license issued by the Department of Fish and Wildlife. (Pen. Code, § 27510, subd. (b)(1).)

3) Exempts the sale of a firearm, that is not a handgun, to the following persons that are 18 years of age or older:
   
a) An active peace officer, who is authorized to carry a firearm in the course and scope of his or her employment;

b) An active federal officer, or law enforcement agent, who is authorized to carry a firearm in the course and scope of his or her employment;

c) A reserve peace officer, who is authorized to carry a firearm in the course and scope of his or her employment; and,

d) An active member of the United States Armed Forces, the National Guard, the Air National Guard, or the active reserve components of the United States, where the individuals in these organizations are properly identified. Proper identification includes the Armed Forces Identification Card or other written documentation certifying that the individual is an active or honorably retired member. (Pen. Code, §27510, subd. (b)(2).)

4) Prohibits any person from making an application to purchase more than one handgun within any 30-day period. (Pen. Code, § 27535, subd. (a).)

5) Exempts from the above 30-day prohibition any of the following:
   
a) Any law enforcement agency;

b) Any agency duly authorized to perform law enforcement duties;

c) Any state or local correctional facility;

d) Any private security company licensed to do business in California;
e) Any person who is a peace officer, as specified, and is authorized to carry a firearm in the course and scope of employment;

f) Any motion picture, television, video production company or entertainment or theatrical company whose production by its nature involves a firearm;

g) Any authorized representative of a law enforcement agency, or a federally licensed firearms importer or manufacturer;

h) Any private party transaction conducted through a licensed firearms dealer;

i) Any person who is a licensed collector and has a current certificate of eligibility issued by the DOJ;

j) The exchange, replacement, or return of a handgun to a licensed dealer within the 30-day period; and,

k) A community college that is certified by the Commission on Peace Officer Standards and Training (POST) to present law enforcement academy basic course or other commission-certified training. (Pen. Code, § 27535, subd. (b).)

6) Provides that a person may request a certificate of eligibility form the DOJ, and requires the department to examine its records and records available to the department in the National Instant Criminal Background Check System (NICS) in order to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, § 26710, subds. (a) & (b).)

7) Requires DOJ to issue a certificate of eligibility to an applicant if the if the department’s records indicate that the person is not a person who is prohibited by state or federal law from possessing a firearm, and requires the department regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates. (Pen. Code, § 26710, subds. (e) & (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “More and more shootings are occurring with long guns so it is important that we treat the laws of both handguns and long guns the same. The law that passed last year requiring no one under the age of 21 to purchase a firearm has exemptions that we are strengthening and tightening when it comes to the purchase of semi-automatic center fire rifle by requiring the person to obtain a CEO with the DOJ as well.”

2) Governor’s Vetoes: AB 1174 (Santiago), of the 2015-2016 Legislative Session, and SB 1177 (Portantino), of the 2017-2018 Legislative Session, each prohibited any person from making more than one application to purchase a long gun within any 30 day period. Both AB 1174 and SB 1177 were vetoed by the Governor.
In regard to AB 1174, the Governor stated in his veto message, “This bill generally prohibits the purchase of more than one firearm within any 30 day period. It should be noted that California already bans the purchase of more than one handgun per month. While well intentioned, I believe this bill would have the effect of burdening lawful citizens who wish to sell certain firearms they no longer need. Given California’s restricting gun ownership, I do not believe this additional restriction is needed.”

In regard to SB 1177, the Governor stated in his veto message, “This bill prohibits a person from purchasing more than one long-gun per month. I vetoed a substantially similar bill in 2016, and my views have not changed.”

3) **Argument in Support**: According to the *Ventura County Board of Supervisors*, “As you know, Ventura County was the site of the November 2018 shooting at the Borderline bar, which tragically resulted in 12 deaths. This mass shooting has left our community shattered and in search of ways to prevent similar tragedies. We appreciate the Legislature’s multi-pronged effort to advance legislation in 2019 that reduces the likelihood that persons who pose a threat to themselves or others are restricted from possessing firearms. As a general policy, the County of Ventura supports legislation that reduces the likelihood of accidental or intentional homicides and, in particular, mass homicides.

“We believe SB 61 would be part of the solution in reducing gun violence. It would make long guns generally subject to the same purchasing restrictions as handguns. Limitations imposed on the purchase of handguns were enacted 20 years ago (AB 202, 1999). That legislation was intended to reduce the illegal flow of handguns by eliminating the opportunity to sell guns from bulk purchases on the black market. SB 61 would apply the law enacted under AB 202 to long guns, as specified. It would, however, include several narrow exceptions.”

4) **Argument in Opposition**: According to the California Rifle and Pistol Association “SB 61 would significantly reduce long gun sales in California. This translates into a loss of manufacturing jobs at both the state and national levels, and a significant loss of revenue for California businesses. Additionally, this bill will significantly impact the millions of dollars of Federal Pitman Roberson tax money that would be earmarked to develop and enhance habitat critical for California’s wildlife. The Department of Justice (DOJ), has estimated previous versions of this same bill's implementation alone will cost hundreds of thousands of dollars, and result in significant overtime hours for Department personal to perform the necessary analysis, development, testing, and implementation to various Department databases.

“SB 61 will also effectively prohibit the creation of new businesses in California involving hands on instruction in the safe handling of firearms. Should this bill become law, certified firearm instructors would no longer be able acquire the necessary firearms without having to wait months, if not years, to conduct classes for groups such as the Boy Scouts of America, Hunter Education, Youth shooting sports, and other clubs or organizations that wish to participate in firearm safety classes.

“You and your proponents argued in testimony there is no legitimate reason for anyone to need to purchase more than one firearm a month. There are, in fact, numerous legitimate
recreational and Second Amendment protected reasons why an individual might want, and need, to transfer more than one firearm a month. For example, someone new to the sport of recreational competitive shooting, ‘Three Gun’ competitions, may very well need to purchase a pistol, shotgun, and rifle without having to wait 30 days between each purchase. This bill would require someone wanting to acquire all three types of firearms to undergo a process that would take at least 70 days assuming everything goes smoothly. The procedure for purchasing these firearms is already very time and travel intensive. Each transaction requiring a trip to the licensed dealer.

“Currently individuals in California must go through the following steps to purchase a firearm; Obtain a firearm safety certificate; Go to a California licensed firearms dealer; Complete 4473 and (Dealer Record of Sales) DROS applications; Pass the required background check; Wait the required 10 days; Go back to dealer; Perform a safe handling demonstration; Pick up first firearm. Under SB 61 the individual would have to wait the required 30 days, then go back to dealer again; and repeat the process for each subsequent purchase.”

“Both California and Federal law already address your concerns regarding the trafficking of firearms by narrowly limiting the number of firearms an individual can sell. Rather than having the desired effect of targeting criminals, this bill will impact only the law abiding, thereby further limiting available funding to DOJ.”

5) Prior Legislation:

a) SB 1100 (Portantino), Chapter 894, Statutes of 2018, increased the age for which a person can purchase a long-gun from a licensed dealer from 18-21 years of age, except as specified.

b) SB 1177 (Portantino), of the 2017-2018 Legislative Session, prohibited any person from making more than one application to purchase more than one long one within any 30 day period. SB 1177 was vetoed by the Governor.

c) AB 1674 (Santiago), of the 2015-2016 Legislative Session, prohibited any person from making more than one application to purchase more than one long gun within any 30 day period. SB 1674 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support
Bay Area Student Activists
Brady California United Against Gun Violence
California Police Chiefs Association
Coalition Against Gun Violence, A Santa Barbara County Coalition
Laguna Woods Democratic Club
Los Angeles City Attorney
Los Angeles County Board of Supervisors
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Ventura County Board of Supervisors
Women For: Orange County

Oppose

California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute for Legislative Action
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters

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

SB 120 (Stern) – As Amended April 25, 2019

SUMMARY: Prohibits, as of January 1, 2020, a person convicted of a misdemeanor offense of carrying a concealed firearm, carrying a loaded firearm, or openly carrying an unloaded handgun, in a public place, from owning, purchasing, receiving, or possessing a firearm for a period of 10 years, and creates a new a misdemeanor offense for a violation of that prohibition.

EXISTING LAW:

1) Provides that the following persons are prohibited from owning, purchasing, receiving, or possessing a firearm for life:
   a) Anyone with a felony conviction;
   b) Anyone who has a conviction for an offense that constitutes “violent use of a firearm,” as specified;
   c) Anyone who is addicted to the use of any narcotic drug; or,
   d) Anyone who has a conviction for a misdemeanor domestic violence offense, as specified. (Pen. Code, §§ 29800, 23515, and 29805, subd. (b).)

2) Provides that it is a felony offense for anyone who has a prior felony conviction, a conviction for an offense that constitutes “violent use of a firearm,” or who is addicted to the use of any narcotic drug, to possess a firearm in violation of that lifetime prohibition. (Pen. Code § 29800.)

3) Provides that it is an alternate felony misdemeanor (a “wobbler”), for any person who has a conviction for a misdemeanor domestic violence offense, as specified, to possess a firearm in violation of the lifetime prohibition. (Pen. Code, § 29805, subd. (b).)

4) Provides that persons with specified misdemeanor offenses involving violence or threats of violence are prohibited from owning, purchasing, receiving, or possessing a firearm for a period of 10 years and punishes a violation of that prohibition as an alternate felony misdemeanor (a “wobbler.”) (Pen. Code, § 29805, subd. (a).)

5) Criminalizes the act of carrying, or causing to carry, a concealed pistol, revolver, or other firearm capable of being concealed upon the person in either a vehicle or upon the person. (Pen. Code, § 25400, subd. (a).)
6) Punishes the crime of carrying or causing to carry a concealed firearm as a felony, an alternate felony misdemeanor ("wobbler"), or a misdemeanor, depending on specified circumstances. (Pen. Code § 25400, subd. (c).)

7) Criminalizes the act of carrying a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. (Pen. Code § 25850, subd. (a).)

8) Punishes the crime of carrying a loaded firearm as a felony, an alternate felony misdemeanor ("wobbler"), or a misdemeanor, depending on specified circumstances. (Pen. Code § 25850, subd. (c).)

9) Criminalizes the act of openly carrying an unloaded handgun in a public place, as specified, and punishes that conduct as a misdemeanor. (Pen. Code § 26350, subd. (a).)

10) Makes is an alternate felony misdemeanor (a "wobbler") for any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and owns, purchases, receives, or has in possession or under custody or control, any firearm, as specified. (Pen. Code § 29815, subd. (a).)

11) Provides a county sheriff or municipal police chief may issue a license to carry a concealed weapon (CCW) upon proof that:

   a) The person applying is of good moral character;

   b) Good cause exists for the issuance;

   c) The person applying meets the appropriate residency requirements; and,

   d) The person has completed the appropriate training course (Pen. Code, §§ 26150 & 26155, subds. (a)(1) - (4)).

12) Provides that the license may either:

   a) Allow the person to carry a concealed firearm on his or her person; or

   b) Allow the person to carry a loaded and exposed firearm in a county whose population is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150 & 26155, subds. (b)(1) - (2).)

13) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Pen. Code, §§ 28160 - 28220.)

14) Requires that, upon receipt of the purchaser’s information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if
the purchaser is prohibited from purchasing a firearm. (Penal Code § 28220.)

15) Requires the Attorney General to establish and maintain an online database to be known as Armed Prohibited Persons System (APPS). The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System (CFIS), and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. The information contained in APPS shall only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code § 30000.)

EXISTING FEDERAL LAW:

Provides that the following people are prohibited from owning or possessing a firearm:

1) Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

2) Is a fugitive from justice;

3) Is an unlawful user of or addicted to any controlled substance, as defined;

4) Has been adjudicated as a mental defective or who has been committed to a mental institution;

5) Being an alien is illegally or unlawfully in the United States; or except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;

6) Has been discharged from the Armed Forces under dishonorable conditions;

7) Having been a citizen of the United States, has renounced his citizenship;

8) Is subject to a court order that:

   a) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

   b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and:

   i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

   ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to
cause bodily injury; or

iii) Has been convicted in any court of a misdemeanor crime of domestic violence. (18 U.S.C. § 922, subd. (g).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author’s Statement:** According to the author, “SB 120 strengthens our state’s commitment to firearm safety and further prevents guns from getting into the wrong hands without punishing responsible, law-abiding gun owners.

“Currently, adults convicted of specific serious misdemeanors are prohibited from possessing a firearm for a period 10 years. This bill would add to that list convictions for unlawfully carrying a concealed firearm without proper permit, carrying a loaded firearm in a public space, and openly carrying an unloaded handgun in public.

“We have a responsibility to ensure the safety and general wellbeing of the public-at-large while respecting the rights of gun owners who follow the rules.”

2) **Firearms Prohibitions for Specified Misdemeanor Offenses:** As detailed above, current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses, including those that involve violence, the threat or risk of violence, or the unlawful transfers of firearms. This bill would expand the existing 10-year firearms prohibition list by adding particular offenses related to carrying of firearms in public places. Specifically, this bill would add misdemeanor convictions for carrying a concealed firearm, carrying a loaded firearm, and openly carrying an unloaded handgun to the 10-year ban list.

3) **The Armed Prohibited Persons System (APPS), Backlog, and Budget Shortfalls:** Existing law requires the DOJ to maintain a “Prohibited Armed Persons File,” also known as the Armed and Prohibited Persons System (APPS) program. APPS went into effect in December 2006. APPS is maintained and enforced by the Bureau of Firearms (BOF) within DOJ. BOF is responsible for education, regulation, and enforcement actions regarding the manufacture, sales, ownership, safety training, and transfer of firearms. The purpose of APPS is to disarm individuals who are legally prohibited from possessing a firearm. These individuals include convicted felons, persons convicted of certain misdemeanor offenses, individuals suffering from mental illness, and others. APPS seeks to track subjects who lawfully purchased firearms, but then illegally retained their firearm(s) after falling into a prohibited category. APPS cross-references firearms owners across the state against criminal history records, mental health records, and restraining orders to identify individuals who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.

DOJ cross-references APPS with five other databases. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in
California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue.

SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated $24 million from the Dealers Record of Sale (DROS) Special Account to the DOJ to fund enforcement of illegal gun possession by relieving weapons from prohibited persons. At the time of SB 140’s enactment, the Legislature made the following finding and declaration:

“The list of armed prohibited persons in California grows by about 15 to 20 people per day. There are currently more than 19,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. Neither the Department of Justice nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.”

The approximately 20,000 cases on the APPS list at the time SB 140 was passed is referred to as the “APPS backlog.” SB 140 required the DOJ to address the backlog and issue an annual report to the legislature for five years in order to provide updates on DOJ’s progress in reducing the backlog. The most recent report was published on March 1, 2019. (APPS 2018 Annual Report to the Legislature, available at https://oag.ca.gov/system/files/attachments/press-docs/apps-2018.finaldocx.pdf, as of Jun. 20, 2019.)

According to the DOJ report, the original 2013 backlog was 20,721 cases. (Id. at 6.) Of those original 20,721 cases, there are still 8,373 in the APPS system, which are listed as “pending.” (Id. at 6.) “Pending” cases are those in which a prohibited person is still believed to have a firearm in their possession, but DOJ is either unable to locate the individual or DOJ has exhausted all investigative leads and will not pursue further action unless and until it receives new information. (Id. at 21.) In addition to the 8,373 pending cases, there are 538 cases from the original 2013 backlog which have yet to be fully investigated. DOJ explains in its report that “[t]he primary reason for the existence of those 538 cases is due to them being located in rural areas, far away from large population concentrations, and long distances from BOF offices.” (Id. at 6.)

An article from the Associated Press March 2019, discussed the persistence of the 2013 APPS backlog. The article pointed out that the $24 million given to DOJ in 2013 was provided with the intent that those funds would be sufficient to clear the backlog. But despite clearing a record 10,681 cases in 2018, the department still had about 9,400 active cases as of March 2019, about 800 fewer than it did a year ago. (Thompson, Unique California Program Still Has Backlog in Illegal Guns, AP News, mar. 1, 2019, available at: https://www.apnews.com/d92903c08d52411fae595954896d659, as of Jun. 6, 2019.) DOJ has long been working to seize the guns and ammunition of persons on the APPS list. However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm
whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

Budget shortfalls make clearing the APPS list difficult, as DOJ has limited resources to investigate and seize firearms from persons on the list. Since the early 2000s, DOJ has requested additional funding to decrease the backlog. The APPS has largely been funded by fees collected when an individual purchases a firearm, which is deposited in the Dealer’s Record of Sale (DROS) Special Account. However, the DROS Special Account has experienced operational shortfalls since 2012-13. As mentioned above, in 2013, the Legislature appropriated $24 million with SB 140 to aid the DOJ in reducing the backlog to its current levels, but the DOJ has been unable to eliminate it.

DOJ has anticipated that the APPS list will continue to grow as the Legislature adds new categories of persons to the list, and is awaiting the implementation of other mandates. The DOJ has requested $16.9 million be allocated from the state budget on an ongoing basis to support the existing APPS workload and continue addressing the backlog of cases. The Governor’s budget proposal for 2018-19 flagged this funding as a major program change for the DOJ: “The Budget includes a total of $16.9 million General Fund for APPS—$11.3 million to shift the existing APPS program from the Dealers’ Record of Sale Account to the General Fund and $5.6 million General Fund to support increased APPS workload. Shifting these costs to the General Fund provides a more stable fund source for APPS and allows the Dealers’ Record of Sale Account to maintain solvency to continue additional Bureau of Firearms workload.” The Legislative Analysis Office (LAO) has recommended an alternative to the Governor’s proposal to help the DROS Special Account avoid insolvency. LAO recommends providing $16.9 million from the General Fund to support existing and increased APPS workload, and approving 26 new positions requested to continue addressing the backlog. LAO notes that this funding will provide DOJ with the level of funding necessary for which there is “workload justification.” (The 2019-20 Budget: Analysis of Governor’s Criminal Justice Proposals, Legislative Analysts Office, Feb. 2019, available at https://lao.ca.gov/Publications/Report/3940, [as of Jun. 20, 2019].) Therefore, although DOJ currently faces operational shortfalls to address the existing backlog, it appears that 2018-19 budget will better fund DOJ’s APPS operations, allowing DOJ to hire additional individuals to work at eliminating outstanding APPS cases.

This bill would add additional individuals to APPS for a ten-year period as a result of misdemeanor convictions that relate to the carrying of a firearm in a public place. It will increase the DOJ’s workload by requiring additional initial reviews of new matches and, ultimately, requiring additional investigations and operations to seize firearms and ammunition. This may have the effect of drawing DOJ’s resources away from getting firearms out of the hands out of the hands of people who arguably present more serious cases, such as persons who have been convicted of violent felony offenses. According to DOJ’s most recent report, there are still over 500 APPS cases from 2013 that have yet to be investigated. Given the longstanding difficulty of clearing APPS cases, should the Legislature add new, non-violent, misdemeanor offenses to the APPS list for ten years?

4) California Gun Laws on Carrying Firearms in Public: In 2008, the Supreme Court of the United States held that in a Washington DC case, the Second Amendment to the United States Constitution guarantees an individual right to keep a handgun in one’s home for self-defense. (District of Columbia v. Heller (2008) 554 U.S. 570.) Two years later, the Supreme
Court held that the rule of *Heller* applied equally to the states as to the District of Columbia. (*McDonald v. City of Chicago* (2010) 561 U.S. 742.) California does not have a general prohibition on possessing a firearm in a person’s home, but California law does prohibit the carrying of firearms in “a public place,” whether the weapon is carried concealed or openly, and whether or not the weapon is loaded.

In order to be convicted of a firearm carry offense, the prosecutor must prove not only that the defendant carried the firearm in a proscribed manner, but that the defendant was in a “public place.” The meaning of the term “public place” has been subject to substantial litigation in the courts (*See People v. Strider* (2009) 177 Cal. App. 4th 1393, 1401 (citing seven cases interpreting the meaning of “public place” as used in the Penal Code).) Whether a location is considered to be a “public place” for purposes of the Penal Code depends on the totality of the facts of the individual case, and generally means a location that is accessible by all people who wish to go there. (*Ibid.*). The “key consideration” is whether a member of the public can access the area “without challenge.” (*Ibid.*).

In many instances, the fact that a specific location is a “public place” is obvious. (*People v. Belanger* (1966) 243 Cal.App.2d 654, 657–659 (public streets, highways, and sidewalks are clearly public places).) In others, the public nature of a location is less obvious. For example, the inside of a home has been considered to be a “public place,” under specified circumstances, for purposes of the public intoxication statute. (*People v. Olson* (1971) 18 Cal.App.3d 592.) In regards to the outside of a home, the courts have found that whether or not the front yard is considered a “public place” depends upon whether or not it is fenced in, or access to it is otherwise restricted. For example, in *People v. Yarbrough* (2008), 169 Cal. App. 4th 303, the court found that a privately-owned driveway was a public place for purposes of carrying a loaded firearm. By contrast, a front yard surrounded by a fence was found not to be a public place in for the same offense. (*Strider*, 177 Cal. App. 4th (supra)).

In addition to the “public place” requirement, it must be established that a person carried the firearm in a particular territorial area. Specifically, California’s carry laws prohibit the carrying of a loaded firearm in an incorporated city or in a prohibited area of an unincorporated territory. California also prohibits the open carry of an unloaded handgun in an incorporated city or city and county, in a prohibited area of an unincorporated area of a county or city and county, or in a prohibited area of a county or city and county. These territorial boundaries are not always obvious. Although it is probably clear to the general public that a person is not allowed to carry a firearm in the cities of Los Angeles or San Francisco, in rural areas of the state the territorial lines between prohibited and non-prohibited areas may not be well-delineated.

5) **Existing Law Allows a Court the Discretion to Impose a Firearm Prohibition of Up to Three Years for the Misdemeanor Offenses Identified in this Bill:** Under current law, the court has the discretion to impose probation for a misdemeanor violation of California’s carry laws, and, as a condition of probation, can prohibit the person from having a firearm for up to three years. The discretion to impose firearms prohibitions as a condition of probation allows the court the flexibility to avoid taking away a person’s rights if the conviction appears to be the result of mistake or ignorance of a geographical boundary or public location. For example, a person may be openly carrying an unloaded handgun in a private driveway or in an unfenced front yard and not believe that they are committing a crime; or a person may be carrying a firearm for protection from bears or other wildlife in a non-
prohibited part of a rural county and inadvertently crosses into a prohibited area. In such cases it may make sense that the person not automatically lose their gun rights for a ten-year period, and subsequently be subject to additional criminal liability for running afoul of that prohibition. Additionally, a three-year prohibition may be less likely to disrupt the overburdened APPS system.

6) **The Need for this Bill:** This bill would make a misdemeanor violation of both California’s concealed and open carry laws subject to a ten-year prohibition on having a firearm. It would also create a new misdemeanor offense for a violation of that prohibition. The bill’s proponents assert that the three-year probationary prohibition available in existing law is insufficient to capture the gravity of an unlawfully concealed or unlawfully carried firearm, and that this measure is necessary to prevent irresponsible owners from having access to guns. In support of this measure they cite an example of an unsecured, loaded firearm being carried in a vehicle in the parking lot of a fast food restaurant. (Los Angeles City Attorney Press Release, Jun. 11, 2019, available at: [https://www.lacityattorney.org/single-post/2019/06/11/CITY-ATTORNEY-MIKE-FEUER-SECURES-CONVICTION-JAIL-TIME-FOR-CARRYING-A-LOADED-FIREARM-IN-VEHICLE-FOLLOWING-AN-ALTERCATION-AT-A-WALLEY-FAST-FOOD-RESTAURANT, as of Jun. 21, 2019].) In that case, the defendant was sentenced to jail time and given a three year firearms prohibition. *(Id.)* Under the provisions of this bill he would have been prohibited from owning or possessing a firearm for ten years.

7) **Veto Messages for Other Legislative Attempts to Expand the Ten-Year Prohibition List:** Other attempts to expand the list of misdemeanors that trigger a ten-year firearm prohibition were vetoed by Governor Brown.

a) **SB 347:** SB 347 (Jackson), of the 2015-2016 Legislative Session, would have added specified firearms and ammunition related criminal offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years. These offenses included such things as dealing in handguns without a license, selling any ammunition to a person under 21 years of age, bringing or carrying ammunition onto school grounds, and petty theft if the property taken was a firearm. SB 347 was vetoed along with several other bills by Governor Brown. The governor issued the following message with his veto: "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."

b) **SB 755:** SB 755 (Wolk), of the 2013-2014 Legislative Session, would have added specified offenses to the list of misdemeanors that result in a ten year prohibition on firearms possession, and adds certain misdemeanors related to substance abuse for which a violation of two or more within a three-year period will result in a ten year prohibition on firearms possession. SB 755 was vetoed by Governor Brown. The governor issued the following message with his veto: "This bill adds substance-abuse offenses and court
orders to undergo mental health outpatient treatment to criteria that result in a ten year prohibition on firearms possession. I am not persuaded that it is necessary to bar gun ownership on the basis of crimes that are non-felonies, non-violent and do not involve misuse of a firearm."

8) **Argument in Support:** According to the bill’s sponsor, the *Los Angeles City Attorney*: “Under current law, persons convicted of these gun-related crimes only become prohibited from firearm possession if they are placed on probation and have an express condition of probation prohibiting firearm ownership or possession (Penal Code Section 29815). Such a prohibition lasts for the length of probation, which is typically two to three years. When probation is terminated, weapons restrictions are lifted.

“Given that the purpose of California’s prohibited person firearm statute is to prevent people from possessing guns whose crimes demonstrate a propensity to commit violence, the inability to act responsibly with firearms, or both, the prohibition created by PC 29805 should be expanded to include the crimes set forth in this bill.”

9) **Argument in Opposition:** According to the *National Rifle Association*: “California’s hundreds of gun laws can be difficult to navigate and already prescribe punishment for the unlawful transportation of firearms whether on a person or in a vehicle. Depending on the circumstances, these violations can carry felony penalties resulting in a lifetime firearm prohibition.

“Instead of assessing the circumstances of a violation, this legislation imposes harsh penalties for all violations including a 10 year prohibition on firearm ownership and up to a lifetime ban and felony penalties. This legislation negatively impacts individuals who may inadvertently violate the law while transporting a firearm not in association with an underlying crime or with ill intent.

“We encourage the author to explore proposals that focus on the criminal misuse of firearms and refrain from stripping an individual of their constitutional rights for non-violent compliance infractions.”

10) **Related Legislation:**

a) SB 701 (Jones) would reduce the penalty to make it a misdemeanor for a person with an outstanding arrest warrant, as specified, to own or possess a firearm. SB 701 is pending hearing in the Assembly Appropriations Committee.

b) SB 55 (Jackson) would add alcohol and drug crimes to the list of misdemeanors that result in a 10-year prohibition on firearms possession. SB 55 is pending hearing in the Assembly Public Safety Committee.

c) SB 172 (Portantino) among other provisions, would broaden the application of criminal storage crimes and add criminal storage offenses to those offenses that can trigger a 10-year firearms prohibition. SB 172 is pending hearing in the Assembly Public Safety Committee.
d) AB 276 (Friedman) among other provisions, would prohibit any person convicted of specified firearm safe storage provisions preventing access to children or prohibited persons, from possessing a firearm for 10 years. AB 276 is pending hearing in the Assembly Public Safety Committee.

11) Prior Legislation:

a) AB 3129 (Rubio) Chapter 883, Statutes of 2018 imposed a lifetime ban on possessing a firearm for persons convicted of specified misdemeanor domestic violence convictions.

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 ten years.

c) SB 347 (Jackson) of the 2015-2016 Legislative Session would have added numerous offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years, including the offense of carrying a concealed firearm if the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation. SB 347 was vetoed by Governor Brown.

d) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have added specified offenses to the list of misdemeanors that result in a ten year prohibition on firearms possession, and adds certain misdemeanors related to substance abuse for which a violation of two or more within a three-year period will result in a ten year prohibition on firearms possession. SB 755 was vetoed by the governor.

e) AB 144 (Portantino) Chapter 725, Statutes of 2011, made it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles City Attorney (Sponsor)
Bay Area Student Activists
Brady California United Against Gun Violence
Los Angeles City
Los Angeles County District Attorney's Office
Riverside Sheriffs' Association
San Diego City Attorney's Office

Oppose

California Waterfowl Association
Gun Owners of California, Inc.
National Rifle Association
SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to take into account an incarcerated person’s gender identity and perception of safety when determining where they will be housed. Specifically, this bill:

1) Finds that, nationwide, incarcerated transgender individuals experience exceptionally high rates of sexual victimization.

2) Requires CDCR to ask each individual entering into the custody of the department to specify their gender identity, sex assigned at birth, preferred first name, gender pronoun, and honorific.

3) Prohibits CDCR from disciplining an individual for refusing to answer or not disclosing complete information.

4) Requires that CDCR staff and contractors consistently use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding that individual.

5) Requires CDCR to issue identification to the person with a gender marker consistent with the gender identity the individual specified.

6) Authorizes a person under CDCR jurisdiction to update their gender identity at any time by informing facility staff, who shall promptly repeat the process of offering an opportunity to specify gender identity, pronoun and honorific.

7) Requires CDCR to only conduct a search of an individual who has a gender identity that differs from their sex assigned at birth by an officer of the individual’s preference.

8) Requires CDCR to house individuals in a correctional facility consistent with their gender identity, except as specified:

   a) The individual’s perception of their health and safety needs require a different placement; or

   b) There are significant security or management concerns regarding housing the individual based on their perception of safety.

9) Requires that, if there are significant security or management concerns regarding housing for a transgender inmate, the Secretary of the Department of Corrections and Rehabilitation, or
their designee, shall certify in writing a specific and articulable basis for why a particular placement would present significant security or management concerns before housing the individual in a manner contrary to the person's perception of health and safety.

10) Requires that an incarcerated individual's housing and placement be reassessed if they raise concerns for their health or safety at any time.

11) Defines "gender pronoun" as a third-person singular personal pronoun, such as "he", "she", or "they"; and "honorific" as a form of respectful address combined with an individual's surname, such as "Mr.", "Ms.", or "Mx."

EXISTING LAW:

1) Provides that transgender people can obtain state-issued identification documents that provide full legal recognition of their accurate gender identity. (Code Civ. Proc., § 1277.5, subd. (a).)

2) Provides that a person under the jurisdiction of CDCR or sentenced to county jail has the right to petition the court to obtain a name or gender change, as specified. (Code Civ. Proc., § 1279.5, subd. (b).)

3) Requires a person under the jurisdiction of CDCR to provide a copy of the petition for a name change to the department, in a manner prescribed by the department, at the time the petition is filed. Requires a person sentenced to county jail to provide a copy of the petition for name change to the sheriff's department, in a manner prescribed by the department, at the time the petition is filed. (Code Civ. Proc., § 1279.5, subd. (c).)

4) Requires that in all documentation of a person under the jurisdiction of CDCR or imprisoned within a county jail, the new name of a person who obtains a name change to be used, and prior names to be listed as an alias. (Code Civ. Proc., § 1279.5, subd. (d).)

5) Requires CDCR to consider available documentation and individual case factors in determining housing assignments in order to prevent violence and promote inmate safety. (Cal. Code Regs., tit. 15, § 3269, subd. (a).)

6) Requires CDCR to refer transgender inmates to a classification committee for a determination of appropriate housing. (Cal. Code Regs., tit. 15, § 3269, subd. (g).)

EXISTING FEDERAL LAW: The Prison Rape Elimination Act (PREA) establishes a zero-tolerance standard for the incidence of prison rape in prisons in the United States, provides for the development and implementation of national standards for the detection, prevention, reduction, and punishment of prison rape, and mandates the review and analysis of the incidence and effects of prison rape. (34 U.S.C. § 30301.)

FISCAL EFFECT: Unknown.
COMMENTS:

1) **Author's Statement:** According to the author, "SB 132 addresses a very real problem facing incarcerated transgender individuals, namely, transgender people being housed according to their birth-assigned gender, not their gender identity or their perception of safety, resulting in significant risk of violence. Transgender women housed in male facilities face particular risk of rape and assault. To house incarcerated transgender people in facilities that do not correspond with their gender identity or perception of safety puts these individuals at great risk of physical assault and sexual victimization, and reduces access to programming that creates a successful transition from prison back to their community. The risk of violence often leads to incarcerated transgender people being placed in isolation 'for their own protection,' resulting in loss of access to medical and rehabilitation services and leads to increased recidivism rates. SB 132 also allows CDCR, if specific security or management concerns exist regarding the incarcerated person's housing placement, to exercise their judgment and override the placement.”

2) **Transgender Prisoners and Sexual Assault/Abuse:** Transgender inmates are particularly vulnerable to abuse from staff and other prisoners. The PREA requires that decisions regarding housing for transgender inmates should be based on case-by-case assessment, not anatomy or gender at birth. According to the National Center for Transgender Equality, placing transgender inmates in facilities based on their anatomy puts them “at extremely high risk of violence and abuse”. (National Center for Transgender Equality, *LGBTQ People Behind Bars*, p.14, available at: [https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf](https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf)

In a 2011-2012 survey conducted by the Bureau of Justice Statistics, 40% of transgender inmates reported that they experienced at least one incident of sexual victimization in state or federal prison. (See *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-2012*, p. 17, available at: [https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf](https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf))

3) **Current CDCR Policies:** CDCR has multiple policies in place regarding transgender inmates.

Regarding CDCR housing of transgender inmates: “Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented by Strategic Offender Management System (SOMS) by medical or mental health personnel within a CDCR institution shall be referred to a classification committee for a determination of appropriate housing at a designated institution…” (Cal. Code Regs., tit. 15, § 3269, subd. (g))

Regarding clothing for transgender inmates: “Transgender inmates and inmates having symptoms of gender dysphoria as identified and documented in SOMS by medical or mental health personnel within a CDCR institution shall be allowed to possess the state-issued clothing that corresponds to their gender identities in place of the state-issued clothing that corresponds to their assigned sex at birth at designated institutions.” (Cal. Code Regs., tit. 15, § 3030, subd. (c))

Regarding lawful searches of transgender inmates: “In the event that there is an individual going through Receiving and Release (R&R) who self-identifies as transgender or self-identifies with a gender that seems not to match their biological sex, the search will be conducted by staff of the same biological sex as the inmate to be searched.” (DOM,
Unclothed and Clothed Body Searches of Transgender or Intersex Inmates, Section 52050.6.7)

Regarding individuals at high risk for sexual victimization: “Offenders at high risk for sexual victimization, as identified on the PREA Screening Form, shall not be placed in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers…. Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. If temporary segregation is required, the inmate shall be issued an Administrative Segregation Placement Notice, explaining the reason for segregation is the need to complete a housing assessment based on the high risk for sexual victimization. If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing and issued an Administrative Segregation Placement Notice, explaining the reason for retention. The assigned counseling staff shall schedule the offender for appearance before the Institution Classification Committee for discussion of his/her housing needs. The offender’s retention in segregation should not ordinarily exceed 30 days…” (DOM (Department of Operations Manual), Offender Housing, Section 54040.6)

Regarding PREA compliance: “On a bi-annual basis, Division of Adult Institutions (DAI) staff will send each PREA Compliance Manager (PCM) a list of identified transgender and intersex inmates, as known to the Department. This list will reflect the institution’s respective inmates, along with the month of the inmate’s next scheduled annual classification review. If an inmate is due to be seen for his/her annual classification review during the identified review period (August through January or February through July), the assigned caseworker will ask the inmate about any threats they have received during the pre-committee interview. In addition to interviewing the inmate, the assigned caseworker shall review the inmate’s case factors in SOMS and [Electronic Records Management System] ERMS for any additional information which may indicate the inmate has any placement or programming concerns….After the annual review is completed, the assigned caseworker will document his/her actions, as they relate to the PREA Biannual Assessment, in the Classification Committee Chrono.” (DOM, Transgender Biannual Reassessment for Safety in Placement and Programming, Section 54040.14.2)

SB 132 would eliminate the requirement that transgender inmates or inmates with gender dysphoria be identified or diagnosed by CDCR. Transgender inmates will be able to express their gender preference and perception of safety regarding their placement in housing, instead of being referred to a classification committee. This bill would also allow transgender inmates to express their preference as to the gender of the officer conducting a search; CDCR currently requires that a transgender inmate be searched by an officer of the same “biological sex”. And lastly, this bill seeks to recognize that transgender inmates are offenders at high risk for sexual victimization, therefore transgender inmates will not need to be classified as such via PREA Screening Forms. SB 132 would not impact CDCR’s current policies regarding PREA compliance.

4) **Prior Veto Message:** This bill is substantially similar to AB 633 (Ammiano) of the 2009-2010 Legislative Session, which was vetoed by Governor Schwarzenegger. The veto message said:
“This bill would add, among other provisions, the sexual orientation and gender identity of an inmate or ward to the list of risk factors considered as part of the [CDCR] inmate and ward classification assignment procedures. This bill is unnecessary because CDCR already considers these factors when determining where to house inmates.”

5) **Prison Rape Elimination Act:** PREA was passed by Congress in 2003. It applies to all correctional facilities, including prisons, jails, and juvenile facilities. Among the many stated purposes for PREA are: to establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase of the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape. (34 U.S.C. § 30301 et seq.) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape. Regarding transgender inmates, the PREA requires that decisions about where transgender inmates will be housed should be made on a case-by-case basis.

6) **Argument in Support:** According to *Equality California*, “Transgender incarcerated individuals face disproportionately high rates of violence, bias, and harassment. In a 2011-2012 survey, almost 40% of incarcerated transgender individuals reported experiencing sexual victimization while incarcerated, compared to four percent of all incarcerated individuals, and 38% reported being harassed by correctional officers or staff. In California, a study of the state’s prisons designated for men found that the rate of sexual assault for transgender women in those prisons was 13 times higher than for men in the same prisons.”

“SB 132 will help ensure both the safety of people in CDCR custody by requiring CDCR to house transgender incarcerated individuals according to the transgender person’s sense of health and safety. SB 132 would also require CDCR staff and contractors to consistently use the gender pronoun and honorific an individual has specified, to foster respect and preserve dignity.”

“SB 132 will help ensure both the safety and dignity of transgender people.”

7) **Argument in Opposition:** According to *Feminists in Struggle*, “…as a result of SB 179, any man may declare himself a woman and change his birth certificate, with no requirements or oversight and in total disregard of biological reality, opening the door for sexual predators of various types, from voyeurs to rapists, to reinvent themselves as female by taking on female names and identities. Add to this the reality that the majority of female prisoners have been molested, raped, sexually assaulted, trafficked, coerced or forced into pornography and/or prostitution, and the potential harm to incarcerated women and girls is greatly increased if SB 132 also passes.”

“Feminists in Struggle believes SB 132 poses a grave risk to actual women, who comprise 52% of the general population and a growing percentage of the prison population, and therefore to public safety…We urge that members of the Public Safety Committee oppose its going to the floor of the Assembly for a vote.
8) Prior Legislation:

   a) SB 990 (Wiener) of the 2017-2018 Legislative Session, was substantially similar to this bill, and would have required CDCR to consider sexual orientation and gender identity when classifying inmates in order to prevent sexual violence. SB 990 was held in the Assembly Appropriations Committee.

   b) SB 310 (Atkins), Chapter 856, Statutes of 2017, provides individuals under the jurisdiction of CDCR the ability to seek a name change without department approval.

   c) SB 179 (Atkins), Chapter 853, Statutes of 2017, improves the procedures that allow transgender and nonbinary individuals to change their name and/or gender marker to conform to their gender identity in several identity documents including birth certificates and driver’s licenses.

   d) AB 633 (Ammiano), of the 2010-2011 Legislative Session, would have required CDCR to consider self-reported safety concerns related to sexual orientation and gender identity when classifying inmates/wards in order to prevent sexual victimization. This bill was substantially similar to SB 132 and was vetoed by the Governor.

   e) AB 382 (Ammiano), of the 2009-2010 Legislative Session, would have required CDCR to consider sexual orientation and gender identity when classifying inmates in order to prevent sexual violence. AB 382 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
Equality California (Co-Sponsor)
Medina Orthwein LLP (Co-Sponsor)
ACCESS Women’s Health Justice
API Equality-LA
API Equality-Northern California
APLA Health
Bay Area Lawyers for Individual Freedom
Bienestar Human Services
California Public Defenders Association
California United for a Responsible Budget
California Women’s Law Center
Conference of California Bar Associations
Elia Baker Center for Human Rights
Empowering Pacific Islander Communities
Human Impact Partners
Initiate Justice
Lambda Legal
Latino Equality Alliance
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Lawyers Guild San Francisco Bay Area Chapter
Public Health Justice Collective
Root and Rebound Reentry Advocates
St James Infirmary
Stonewall Democratic Club
The LGBTQ Center Long Beach
The Women's Foundation of California
Tides Advocacy
Time for Change Foundation
Transgender Law Center

**Opposition**

Feminists in Struggle

**Analysis Prepared by:** Lorraine Black / PUB. S. / (916) 319-3744
Date of Hearing: June 25, 2019
Counsel: Matthew Fleming

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

SB 136 (Wiener) – As Introduced January 15, 2019

SUMMARY: Repeals the provision of law that requires the court to impose a one-year sentence enhancement upon a defendant with a new felony conviction, for each prior felony conviction the defendant has sustained and received a prison sentence or a sentence of imprisonment in county jail that was not suspended.

EXISTING LAW:

1) Imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code, § 667.5, subd. (a).)

2) Imposes a one-year sentence enhancement for each prior prison or county jail felony term if the new offense is a felony. (Pen. Code, § 667.5, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author’s Statement: According to the author, “Senate Bill 136 repeals a common and costly one-year enhancement that applies for each prior felony prison term or felony county jail term an individual has served. This one-year enhancement re-punishes offenders for previous jail time served – not the actual crime committed. For example, if an offender has multiple felony offenses on their record, but is sentenced to probation instead of prison or jail time, then they would not be eligible for this enhancement. However, a person who commits the exact same crimes, and is incarcerated for those offenses, would be eligible for this enhancement.

“Statistics show that an affluent white male is far more likely to be sentenced to probation, instead of go jail or prison, than a person of color or a low-income individual when convicted of the exact same crime. This tough on time served approach, but not the actual crime, is irrational and exacerbates existing racial and socio-economic disparities that persist within our criminal justice system. Beyond this absurd and unjust application of this one-year enhancement, wide-spread research concludes that enhancements are not effective at deterring crime and reducing recidivism. Research sponsored by the United States Department of Justice on deterring crime concludes that long sentences and enhancements do not reduce recidivism or increase public safety.

“Repealing this ineffective and costly one-year sentence enhancement will annually save our state over $1 billion dollars while simultaneously ensuring that each person is treated the
same under the law. SB 136 moves us away from our mass incarceration policies that we know are ineffective and that disproportionately hurts people of color and low-income populations."

2) **Sentencing Enhancements and Reform Efforts**: Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person’s sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person’s sentence, or doubling a person’s sentence or even converting a determinate sentence into a life sentence. There are literally hundreds of enhancements in the California criminal justice system. Perhaps the most recognizable sentencing enhancement is California’s Three Strikes law. As originally enacted, “Three Strikes” established a mandatory sentence of 25 years to life in prison for any defendant convicted of a third felony. The original Three Strikes law produced some appalling results. In one example, a man was given a third strike and a sentence of 25 years to life for possessing less than $10 worth of drugs. (Chinn, *Three Strikes of Injustice*, California Innocence Project, Oct. 11, 2012, available at: [https://californiainnocenceproject.org/2012/10/three-strikes-of-injustice/](https://californiainnocenceproject.org/2012/10/three-strikes-of-injustice/), [as of Jun. 18, 2019].)

In the past decade or so, Three Strikes, madatory sentencing schemes, and long prison sentences in general, have begun to fall out of favor. Beginning in 2011, with AB 109 (“Realignment”), California began a series of reforms aimed at reducing the state’s reliance on imprisonment as punishment for criminal offenses. Realignment, among other things, restructured the State’s sentencing procedure such that many felony offenses resulted in jail time rather than prison sentences. In 2012, Californians voted to enact Proposition 36, which revised the Three Strikes law so that mandatory life sentences would only be imposed for “violent” or “serious” felonies. In 2014, voters approved Proposition 47, which reclassified numerous drug and property crimes that had previously been felonies, as misdemeanors. In 2016, the people passed Proposition 57 which provided earlier parole dates for nonviolent felons and allowed judges, rather than prosecutors, to determine whether a juvenile should be tried in adult court.

Data from the Public Policy Institute of California (PPIC) indicates that crimes rates have continued to go down after these legislative reforms. (*Crime Trends in California: California’s violent crime rate rose in 2017—but it remains historically low*, PPIC, available at: [https://www.ppic.org/publication/crime-trends-in-california/](https://www.ppic.org/publication/crime-trends-in-california/) [as of Jun. 18, 2019].) Another recent PPIC publication on enhancements found that, “As of September 2016, 79.9% of prisoners in institutions operated by the California Department of Corrections and Rehabilitation (CDCR) had some kind of sentence enhancement; 25.5% had three or more. Aside from second and third strikes, the most common enhancement adds one year for each previous prison or jail term.” (Grattet, *Sentence Enhancements: Next Target of Corrections Reform?* PPIC (Sep. 27, 2017) [http://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform/](http://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform/) [as of Jun. 18, 2019].) This bill appears to be consistent with other California criminal justice reforms which have reduced lengthy prison terms, and, according to the PPIC, have not resulted in an increase of violent crime.

States, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.


In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy.” (National Research Council, supra, The Growth of Incarceration in the United States, p. 132.)

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not. (Id. at p. 133.)

The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (Id. at p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing: putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. The report also explains how California’s sentencing structure and enhancements contributed to a 20-year state prison building boom. (Sensible Sentencing for Safer California, Little Hoover Commission, Feb. 2014, available at: http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf [as of Jun. 18, 2019].)

4) Prison Overcrowding in California: 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.

The court also ordered California to implement the following population reduction measures in its prisons:

• Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
• Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
• Release inmates who have been granted parole by BPH but have future parole dates.
• Expand the CDCR’s medical parole program.
• Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
• Increase its use of reentry services and alternative custody programs.

(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).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court’s population cap in December 2015.

(Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 K JM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown.) The administration’s most recent status report states that as “of December 14, 2016, 114,031 inmates were housed in the State’s 34 adult institutions” which amounts to approximately 135.3% of design capacity, and 4,704 inmates were housed in out-of-state facilities.


While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “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).)

This bill would repeal the one-year enhancement, imposed at the time of a new felony offense, for each prior felony jail or prison term the defendant has served. The one year enhancement appears to be one of the most commonly used enhancements in California criminal courts today. According to data provided by CDCR, as of March 31, 2019, there were 10,995 offenders in CDCR facilities who had been assessed the one-year enhancement that this bill would repeal. At least some of the offenders who have been assessed the one-year enhancement will not serve that time due to proposition 57. Prop 57 allows parole consideration for non-violent offenders at the completion of their primary term, irrespective of sentencing enhancements. This bill would nevertheless result in numerous offenders being released earlier, further alleviating California’s prison overcrowding issues.
5) **Argument in Support:** According to the bill’s co-sponsor, the Drug Policy Alliance: “SB 136 will delete a sentencing enhancement in Penal Code 667.5 that adds an additional year of incarceration for each prior felony prison or jail term to any subsequent felony conviction—including common, nonviolent drug possession for sale and sale felonies. The bill would not change the base sentence for any offense or amend any other enhancements. This enhanced punishment, which is predicated on a conviction for which the person was already punished, is fundamentally unjust and ineffective as a crime prevention strategy.

“In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies and their positive and negative effects on crime rates and community safety. Among their conclusions were:

“‘Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should reexamine policies regarding mandatory prison sentences and long sentences.’

“Repealing ineffective sentencing enhancements will save millions of dollars in state and local taxes. It will give California the opportunity to divest from expensive and ineffective policies of mass incarceration and instead invest in our communities. In an editorial published by the New York Times in 2014, the editorial board summed up the research and ethics of the issue well: ‘The American experiment in mass incarceration has been a moral, legal, social, and economic disaster. It cannot end soon enough.’”

6) **Argument in Opposition:** According to the California District Attorneys Association: “These enhancements exist, in part, to allow sentences to appropriately reflect someone’s criminal conduct history. A person who has previously been sent to prison, only to commit a new felony upon their release, is subject to the one-year enhancement SB 136 seeks to eliminate. A person who has previously been sent to prison three times would potentially be subject to three one-year enhancements. That is, if the prosecutor alleged and proved the grounds for the enhancement, and a judge chose not to dismiss or strike the enhancement.

“The underlying premise of SB 136 is that a recalcitrant criminal should be sentenced the same as a first-time offender, despite a lengthy criminal history and a track record of disregard for the law. We reject that premise.”

7) **Related Legislation:** AB 484 (Jones-Sawyer), would eliminate the requirement that the judge make special findings to avoid an otherwise mandatory confinement period of 180 days in the county jail as a required condition for persons sentenced to probation for specified controlled substance offenses. AB 484 is pending hearing on the Senate Floor.

8) **Prior Legislation:**

a) SB 1392 (Mitchell), of the 2017-2018 Legislative Session, was identical to this bill. SB 1392 failed passage on the Senate Floor.

b) SB 1393 (Mitchell), Chapter 1013, Statutes of 2018, allowed a judge discretion to strike a prior serious felony conviction, in furtherance of justice, to avoid the imposition of a five-
year prison enhancement when the defendant has been convicted on a serious felony.

c) SB 620 (Bradford), Chapter 682, Statutes of 2017, allowed a court the discretion to strike or dismiss a firearm enhancement which otherwise added a state prison term of 3, 4, or 10 years, or 5, 6, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

d) SB 180 (Mitchell), Chapter 677, Statutes of 2017, repealed the enhancement for specified drug offenses under which a defendant received an additional three-year term for each prior conviction of any one of a number of specified drug offenses, except in cases where a minor was used in the commission of the prior offense.

e) AB 2492 (Jones-Sawyer), Chapter 819, Statutes of 2014 eliminated the requirement that a person convicted of using or being under the influence of specified controlled substances serve at least 90 days in a county jail.

f) SB 1010 (Mitchell), Chapter 749, Statutes of 2014, provided that the penalty for possession for sale of cocaine base shall be the same as that for possession for sale of cocaine hydrochloride powder cocaine.

g) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted criminal justice “realignment,” among other things, restructured the State’s sentencing procedure such that many felony offenses resulted in jail time rather than prison sentences.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
California United for a Responsible Budget (Co-Sponsor)
California Coalition for Women Prisoners (Co-Sponsor)
Coalition for Humane Immigrant Rights (Co-Sponsor)
Drug Policy Alliance (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Friends Committee on Legislation of California (Co-Sponsor)
Legal Services for Prisoners with Children (Co-Sponsor)
Pillars of the Community (Co-Sponsor)
Tides Advocacy (Co-Sponsor)

ACCESS Women’s Health Justice
All of Us or None
Alliance San Diego
Anti-Recidivism Coalition
Asian Americans Advancing Justice - California
Asian Prisoner Support Committee
Behavioral Health Services, Inc.
Bend the Arc: Jewish Action
Black American Political Association of California
California Attorneys for Criminal Justice
California Calls
California Church IMPACT
California for Safety and Justice
California Public Defenders Association
California State Council of Service Employees
California Voices for Progress
Center for Living and Learning
Center on Juvenile and Criminal Justice
Children's Defense Fund-California
Communities United for Restorative Youth Justice
Community Justice Action Fund
Community Works
Congregation Beth Israel Judea
Courage Campaign
End Solitary Santa Cruz County
Equal Justice Society
Fair Chance Project
Harm Reduction Coalition
Homeboy Industries
Human Impact Partners
Immigrant Legal Resource Center
Indivisible CA: Statestrong
Indivisible Sausalito
Initiate Justice
Justice Teams Network
JustLeadershipUSA
Law Enforcement Action Partnership
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Los Angeles Regional Reentry Partnership
Monterey County Public Defender
Motivating Individual Leadership for Public Advancement
National Association of Social Workers, California Chapter
National Center for Youth Law
NextGen California
Pangea Legal Services
Peninsula Progressives, AD 22
PolicyLink
Prison Law Office
Prison Policy Initiative
Public Health Justice Collective
Re:Store Justice
Resource Development Associates
Riverside Temple Beth El
San Francisco Peninsula People Power
San Francisco Public Defender's Office
Showing Up for Racial Justice, Bay Area
Showing Up for Racial Justice, Marin
Smart Justice California
South Bay People Power
Starting Over, Inc.
Success Stories
Survived and Punished
Tarzana Treatment Centers, Inc.
The Mass Liberation Project
The W. Haywood Burns Institute
Time for Change Foundation
Transgender, Gendervariant, Intersex Justice Project
UDW/AFSCME Local 3930
Uncommon Law
Underground Scholars Initiative
Unite the People
United Food and Commercial Workers, Western States Council
University of California Student Association
Voices for Progress
Young Women's Freedom Center
One private individual

Oppose

Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers' Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
Gun Owners of California, Inc.
Los Angeles County District Attorney's Office
Los Angeles County Professional Peace Officers Association
Los Angeles County Sheriff's Department
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs' Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Enacts provisions related to firearm storage. Specifically, this bill:

1) Broadens criminal storage crimes.

2) Adds criminal storage offenses to those offenses that can trigger a 10-year firearm ban.

3) Creates an exemption to firearm loan requirements for the purposes of preventing suicide.

4) Imposes on residential care facilities for the elderly rules related to firearm storage and reporting.

EXISTING LAW:

1) Provides that the following people are prohibited from owning or possessing a firearm, a person who:

   a) Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

   b) Is a fugitive from justice;

   c) Is an unlawful user of or addicted to any controlled substance, as defined;

   d) Has been adjudicated as a mental defective or who has been committed to a mental institution;

   e) Being an alien is illegally or unlawfully in the United States; or except as specified, has been admitted to the United States under a nonimmigrant visa, as defined;

   f) Has been discharged from the Armed Forces under dishonorable conditions;

   g) Having been a citizen of the United States, has renounced his citizenship;

   h) Is subject to a court order that:

      i) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
ii) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(1) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(2) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

i) Has been convicted in any court of a misdemeanor crime of domestic violence. (18 U.S.C. § 922, subd. (g).)

2) Provides that a person may be found guilty of criminal storage of a firearm in the first degree if all of the following conditions are satisfied:

a) The person keeps any loaded firearm within any premises that are under the person's custody or control;

b) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm is likely to gain access; and,

c) The child or prohibited person obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person. (Pen. Code, § 25100, subd. (a).)

3) Punishes criminal storage in the first degree by imprisonment under realignment for 16 months, or two or three years, by a fine not exceeding $10,000, or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding $1,000, or by both that imprisonment and fine. (Pen. Code, § 25110, subd. (a).)

4) Provides that a person commits the crime of criminal storage of a firearm in the second degree if all of the following conditions are satisfied:

a) The person keeps any loaded firearm within any premises that are under the person's custody or control;

b) The person knows or reasonably should know that a child or prohibited person is likely to gain access to the firearm; and,

c) The child or prohibited person obtains access to the firearm and causes injury, other than great bodily injury, to the child or any other person, or the child carries the firearm to a public place, or brandishes the firearm. (Pen. Code, § 25100, subd. (b).)

5) Punishes criminal storage in the second degree with imprisonment in a county jail not exceeding one year, by a fine not exceeding $1,000, or by both that imprisonment and fine.
(Pen. Code, § 25110, subd. (b).)

6) Provides that a person may be found guilty of criminal storage in the third degree if the following conditions are satisfied:

a) The person keeps a loaded firearm within a premises under his or her control; and

b) The person either negligently stores the firearm or leaves it in a place where the person knows, or reasonably should know, that a child is likely to gain access to it without the permission of the child's parent or legal guardian, unless reasonable action has been taken to prevent a child from securing the firearm. (Pen. Code, § 25110, subd. (c).)

7) Punishes criminal storage in the third degree as a misdemeanor. (Pen. Code, § 25110, subd. (c).)

8) Exempts a person from prosecution under the criminal storage laws meant to prevent access by children under any of the following conditions:

a) The child obtains the firearm as a result of an illegal entry to any premises by any person;

b) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure;

c) The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person;

d) The firearm is locked with a locking device which has rendered the firearm inoperable;

e) The person is a peace officer or a member of the Armed Forces or the National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties;

f) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person; and,

g) The person who keeps a loaded firearm on premises that are under the person's custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises. (Pen. Code, §§ 25105 & 25205.)

9) Imposes safe storage requirements when a person resides in a household with another person who is prohibited from possessing a firearm, and makes a violation a misdemeanor. (Pen. Code, § 25135.)

10) Requires every person who is leaving a handgun in an unattended vehicle to securely store it, as specified, and punishes a violation as an infraction with a fine of up to $1,000. (Pen. Code, § 25140.)

11) Imposes criminal liability on a person who keeps a loaded or unloaded concealable firearm on a premise under his or her custody or control, and he or she knows, or reasonably should
know, that a prohibited person or a child is likely to gain access to that firearm, and the prohibited person or child gains access to the firearm and carries it off-premises. This violation carries a punishment of imprisonment in a county jail not exceeding one year, a fine not exceeding $1,000, or both. (Pen. Code, § 25200, subd. (a).)

12) Imposes criminal liability on a person who keeps a firearm on premises under his or her custody or control, and he or she knows, or reasonably should know, that a prohibited person or a child is likely to gain access to that firearm, and the prohibited person or child gains access to that firearm and thereafter brings it to any school, or school-sponsored event, activity or performance, whether or not on school grounds. This violation carries a punishment of imprisonment in a county jail not exceeding one year, a fine not exceeding $5,000, or both. (Pen. Code, § 25200, subd. (b).)

13) Defines a “residential care facility for the elderly” as a housing arrangement chosen voluntarily by persons 60 years of age or older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (Health & Saf. Code, § 1569.2 (o).)

14) Requires an RCFE to store disinfectants, cleaning solutions, poisons, firearms and other items which could pose a danger if readily available to clients where inaccessible to clients. (22 Cal. Code Regs. 87309, subd. (a).)

15) Requires storage areas for poisons, firearms and other dangerous weapons be locked. (22 Cal. Code Regs. 87309, subd. (a)(1).)

16) Permits, in lieu of locked storage of firearms, the licensee may use trigger locks or remove the firing pin. (22 Cal. Code Regs. 87309, subd. (a) 2.).

17) Requires firing pins to be stored and locked separately from firearms. (22 Cal. Code Regs. 87309, subd. (a)(1)(A).)

18) Requires ammunition to be stored and locked separately from firearms. (22 Cal. Code Regs. 89309, subd. (a)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “It is important we insure that all firearms are properly stored and locked within a home, residential care facility or when handing over a firearm for safe storage when someone may be suicidal. It is imperative that violations be implemented for those who do not comply with firearm storage laws.”

2) Imposing Storage Rules on Residential Care Facilities for the Elderly (RCFE): Sometimes referred to as “assisted living facilities,” RCFEs are responsible for providing housing, care, supervision, and assistance with activities of daily living to individuals ages 60 and older, as well as individuals under the age of 60 with similar needs. California’s network of RCFEs consists of small homes serving a handful of residents to larger assisted living facilities that can house over 100 residents in communities across the state. Facilities provide
a special combination of housing, personalized supportive services, and 24-hour staff
designed to respond to the individual needs of those who require help with activities of daily
living.

Current RCFE regulations require firearms to be inaccessible to clients in storage areas that
are locked. In lieu of locked storage of firearms, the licensee may use trigger locks or
remove the firing pin. Ammunition and firing pins are required to be stored and locked
separately from firearms. However, it appears these regulations only apply to a firearm
owned by a licensee, not residents. Therefore, there are no current standards for storage of
firearms and weapons owned by residents of RCFEs.

This bill would enact the “Keep Our Seniors Safe Act.” The purpose of these provisions of
this bill are to require that RCFEs adopt rules for the storage, tracking, and reporting of
firearms in their facilities. The requirements of this bill are quite extensive. It appears that
most RCFE do not permit the possession of firearms on their premises; however, in the case
that a RCFE does permit guns on its premises, this bill will require them to safely store the
firearms.

3) **Effect of This Bill on Criminal Storage Offenses:** This bill would add additional
misdemeanor crimes to the list of those warranting a 10-year firearms prohibition.
Specifically, this bill would make any person convicted of a misdemeanor for failing to
properly store a firearm, as specified, a prohibited person for 10 years.

There are limited misdemeanor convictions that result in a ten year ban on firearms
possession. The predicate crimes are largely misdemeanors involving violence, the threat of
violence, or the unlawful transfer of a firearm. There are over 30 violent misdemeanors
which trigger the firearm prohibition. The list of crimes includes those that are likely to relate
to some risk of violence, including stalking, assault with a deadly weapon, battery on a peace
officer, sexual battery, and threats of bodily injury or death. The list of misdemeanors also
includes offenses related to the unlawful transfer of a firearm, including a transfer without
undergoing a background check, the unlawful transfer to a minor, the transfer to a prohibited
person, etc.

This bill would expand the existing firearms prohibitions by creating a class of misdemeanor
offenses related to criminal storage offenses that would result in a 10-year firearms
prohibition if a person were convicted of two or more of them within a three-year period. The
following offenses to the 10-year prohibition on possessing firearms that can trigger a
misdemeanor if the offender is found to possess a firearm:

   i) Criminal storage of a firearm, a misdemeanor.

   ii) Criminal storage of a firearm where a child obtains access and carries the firearm off
premises, a misdemeanor.

   iii) Criminal storage of a firearm when the occupant knows or should know that another
person residing in the residence is a prohibited person, a misdemeanor.

This bill would also make several changes to California’s criminal storage laws.
Specifically, this bill states that the crime of criminal storage of a firearm can be an unloaded
firearm. This bill would also expand the crime of storing a handgun where a child or prohibited person obtains access to include all firearms, not just handguns.

4) **Armed and Prohibited Persons System (APPS) Mandates on DOJ, Existing and Growing Backlog, and Budget Shortfalls**: By creating new misdemeanor triggers for placing a person on the APPS list, this bill implicates an ongoing issue: the list is ever-growing and Department of Justice (DOJ) has limited resources to clear the list by ensuring the removal of guns from prohibited persons that possess them.

The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. The *San Francisco Chronicle* recently reported that the Department has reduced the backlog of prohibited persons from over 20,000 in 2013 to less than 9,000 today.¹ However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on DOJ to clear the list is evergreen. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

Budget shortfalls make clearing the APPS list difficult, as DOJ has limited resources to investigate and seize firearms from persons on the list. DOJ anticipates that the list will continue to grow as the Legislature adds new categories of persons to the list. The Legislature has allocated more than $16 million from the state budget this year to support the existing APPS workload and continue addressing the backlog of cases. It also made a one-time appropriation of $3 million to fund local law enforcement efforts to clear the APPS list.

5) **Arguments in Support:**

a) According to the *Los Angeles County Board of Supervisors*, “The County’s Department of Public Health (DPH), and their Injury and Violence Prevention Program (IVPP) indicate that SB 1721 would strengthen safe storage laws and practices. DHP-IVPP notes that according to published research, safe storage laws promote responsible gun-owning practices by requiring gun owners to keep their firearms out of the reach of others, such

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as children or prohibited persons, who could use the weapon to deadly effect. These laws help prevent tragedies due to unintentional discharges, suicide, and gun theft by creating an environment helping to ensure that firearms are only used by their rightful owners.”

b) According to the Consumer Advocates for RCFE Reform, “The RCFE is a non-medical care setting, numbering about 7,300 facilities statewide, housing and providing care and supervision to approximately 200,000 residents. An estimated 70% of individuals placed into assisted living have some level of cognitive impairment including Alzheimer’s Disease and related dementias. Characteristics of dementia include disorientation, confusion, changes in mood or personality, aggressiveness, and impaired judgment. These characteristics, coupled with an untold number of unsecured weapons and ammunition in RCFEs pose unreasonable risk of harm to facility residents, caregivers, and third parties.

“The Department of Social Services, Community Care Licensing (CDSS/CCL) does not know the number of facilities that retain firearms, the number of firearms in RCFEs, and cannot assure family members of RCFE residents that weapons are securely stored. Neither California statute (H&SC 1569), nor Title 22, Division 6 Chapter 8 require or stipulate safe storage requirements for weapons brought into and retained by assisted living facilities. The facility has no duty to disclose to residents, families, employees or 3rd parties of the presence of firearms in the RCFE.

“This bill closes those statutory gaps, remedying the failures of the Health & Safety Code and Title 22 by mandating robust, secure storage requirements. SB172’s strength is that it holds accountable those who place our children and vulnerable elders in danger. Significantly, this bill neither impinges on an individual’s 2nd Amendment rights, nor does it prevent any person from owning, or prevent an assisted living facility from accepting or retaining firearms; it only requires firearms and ammunition be accounted for and securely stored.”

6) Argument in Opposition: According to the National Rifle Association - Institute For Legislative Action, “SB 172 imposes a new section to the California Residential Care Facilities for the Elderly Act, imposing onerous requirements for the storage of firearms and ammunition that carry criminal liabilities for non-compliance. This legislation appears to be more of a disincentive for facilities that currently offer such a service to continue to do so.

“Further, SB 172 expands upon California’s existing storage requirements imposing a one size fits all approach to firearm storage regardless of an individual’s particular situation. This type of legislation that could make firearms unavailable for self-defense.”

7) Related Legislation:

a) AB 688 (Chu), would revise the requirements on storing a firearm in a vehicle. AB 688 was held in the Assembly Appropriations Committee.

b) SB 701 (Jones), would reduce the penalty to make it a misdemeanor for a person with an outstanding arrest warrant, as specified, to own or possess a firearm. SB 701 is pending hearing in the Assembly Appropriations Committee.
c) SB 55 (Jackson), would add alcohol and drug crimes to the list of misdemeanors that result in a 10-year prohibition on firearms possession. SB 55 is pending hearing in the Assembly Public Safety Committee.

d) AB 276 (Friedman), would, among other provisions, prohibit any person convicted of specified firearm safe storage provisions preventing access to children or prohibited persons, from possessing a firearm for 10 years. AB 276 is pending hearing in the Assembly Public Safety Committee.

8) Prior Legislation:

a) AB 3129 (Rubio) Chapter 883, Statutes of 2018 imposed a lifetime ban on possessing a firearm for persons convicted of specified misdemeanor domestic violence convictions.

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 ten years.

c) SB 347 (Jackson), of the 2015-2016 Legislative Session, would have added numerous offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years, including the offense of carrying a concealed firearm if the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation. SB 347 was vetoed by Governor Brown.

d) AB 231 (Ting), Chapter 730, Statutes of 2013, creates the crime of criminal storage in the third degree, which imposes liability if a person negligently stores or leaves a loaded firearm in a place where he or she knows, or reasonably should know, that a child is likely to access it.

e) AB 500 (Ammiano), Chapter 737, Statutes of 2013, imposes safe storage requirements when prohibited persons reside in a household and make a violation a misdemeanor.

f) SB 108 (Yee), of the 2013-2014 Legislative Session, would have criminalized the failure of a firearm owner over 18 years of age to lock up his or her firearms as specified when he or she left the property. SB 108 was held in the Assembly Public Safety Committee.

g) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have added specified offenses to the list of misdemeanors that result in a ten year prohibition on firearms possession, and adds certain misdemeanors related to substance abuse for which a violation of two or more within a three-year period will result in a ten year prohibition on firearms possession. SB 755 was vetoed by the governor.

h) SB 9 (Soto), Chapter 126, Statutes of 2011, expanded the scope of the storage of firearm laws by changing the definition of a child from a person under the age of 16 to a person under the age of 18, and created a misdemeanor for any person who negligently allows a child to access a firearm if the child then takes the firearm to school.
REGISTERED SUPPORT / OPPOSITION:

Support

211 California
211 LA County
Bay Area Student Activists
Brady California United Against Gun Violence
California Academy of Family Physicians
Consumer Advocates for RCFE Reform
Drain the NRA
Los Angeles County Board of Supervisors

Oppose

California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute for Legislative Action
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters

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

SB 193 (Nielsen) – As Amended June 19, 2019

SUMMARY: Prohibits a retailer of tobacco or tobacco-related products from selling or offering to sell nitrous oxide. Specifically, this bill:

1) Provides that a retailer of tobacco or tobacco-related products that sells, or offers for sale, any device, canister, or receptacle either exclusively containing nitrous oxide or a chemical compound mixed with nitrous oxide is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed $1,000, or by both fine and imprisonment.

2) Requires the court to suspend the business license, for a period of up to one year, of a person who knowingly violates the above prohibition after having been previously convicted of a violation, unless the owner of the business license can demonstrate a good faith attempt to prevent violations by the owner or the owner’s employees.

3) States that the above prohibition does not apply to the sale, or offer for sale nitrous oxide contained in food products for use as a propellant.

4) Defines “retailer of tobacco or tobacco-related products” to include “any business that primarily engages in the in the retail sale to consumers of cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff or any liquid containing nicotine for use in an electronic vaporizing device, or any cigarette lighters, cigar cutters, rolling papers, smoking pipes, water pipes, hookahs, electronic cigarettes or electronic vaporizing device, or any other paraphernalia associated with the smoking or ingesting of a tobacco.”

EXISTING LAW:

1) Provides that any person that possesses nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, ingest for the purposes of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purposes of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes, or who knowingly with the intent to do so, is under the influence of nitrous oxide is a guilty of a misdemeanor punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed $1,000, or by both imprisonment and a fine. (Pen. Code, § 381b.)

2) States that every person who sells, furnishes, administers, distributes, or gives away, or offers to sell, furnish, distribute, or give away a device, canister, tank, or receptacle either exclusively containing nitrous oxide, or exclusively containing a chemical compound containing nitrous oxide to a person under 18 years of age is guilty of a misdemeanor
punishable by imprisonment in a county jail by a term not to exceed six months, by a fine not to exceed $1,000, or by both imprisonment and a fine. The court shall consider ordering community service as a condition of probation. (Pen. Code, § 381c, subd. (b).)

3) Provides that it is a defense to the crime of selling nitrous to a minor if the defendant honestly and reasonably believed that the minor involved in the offense was at least 18 years of age. The defendant bears the burden of establishing this defense by a preponderance of the evidence. (Pen. Code, § 381c, subd. (c)(1), (2).)

4) Makes it a misdemeanor punishable by a term of imprisonment not to exceed six months, by a fine not to exceed $1,000, or both, for any person to dispense or distribute nitrous oxide to a person knowing or having reason to believe that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, euphoria, dizziness, or stupefaction and that person proximately cause great bodily injury or death to himself, herself, or any other person. (Pen. Code, § 381d.)

5) Requires a person that distributes or dispenses nitrous to record each transaction involving nitrous oxide in a physical written document. The person dispensing or distribution the nitrous oxide shall require the purchaser to sign the document and provide a residential address and present a valid government issued photo identification card. The person dispensing or distributing the nitrous oxide shall sign and date the document and retain the document at the business address for one year from the date of the transaction, and shall make transaction records available during normal business hours for inspection and copying by officers and employees of the California State Board of Pharmacy, or of other law enforcement agencies of this state or of the United States upon presentation of a duly authorized search warrant. (Pen. Code, § 381e, subd. (a).)

6) Requires that the document used to record each nitrous oxide transaction shall inform the purchaser of all of the following:

a) The inhalation of nitrous oxide may be hazardous to your health;

b) That it is a violation of state law to possess nitrous oxide or any substance containing nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication;

c) That it is a violation of state law to knowingly distribute or dispense nitrous oxide or any substance containing nitrous oxide, to a person who intends to breathe, ingest, or inhale it for the purpose of intoxication.

d) States that these requirements shall not apply to any person that administers nitrous oxide for the purpose of providing medical or dental care if administered by a medical or dental provider licensed by this state or at the direction or under the supervision of a practitioner licensed in this state; and,

e) Provides that these requirements shall not apply to the sale of nitrous oxide contained in food products for use as a propellant. (Pen. Code, § 381e, subd. (b).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement:** According to the author, “In October of 2016, a constituent contacted my office upon learning that his 20-year-old son had been using nitrous oxide, also known as ‘whippits,’ which he legally purchased through a smoke shop. The substance abuse degraded his health to the point that he is unable to walk without assistance and was confined to a wheelchair. Although this case is the catalyst for SB 193, it is far from an isolated incident. In addition to the numerous people for whom nitrous oxide use has been fatal or caused long-lasting health problems, it has also been the cause of multiple recent drugged driving fatalities, claiming the innocent lives of Camille Rand, Christopher and Robert Ohlander, and others.

“Most Californians will encounter nitrous oxide at the dentist in the form of ‘laughing gas,’ or when using pre-made whipped cream (e.g., Reddi-Wip). Nitrous oxide cartridges are also sold with the intended use of aerating homemade whipped cream. These cartridges are often purchased in smoke shops or head shops for recreational use. Usually, the canisters will be dispensed into a balloon, from which the nitrous oxide is inhaled.

“Unlike the ‘laughing gas’ administered by dentists, who carefully control and monitor its use to ensure that there is a safe amount of oxygen mixed in with the gas, nitrous oxide abuse is dangerous. According to the National Institute on Drug Abuse, recreational use of nitrous oxide can lead to ‘death from lack of oxygen to the brain, altered perception and motor coordination, loss of sensation, limb spasms, blackouts caused by blood pressure changes, [and] depression of heart muscle functioning.’”

2) **Nitrous Oxide:** Nitrous oxide is a colorless and odorless to sweet-smelling inorganic gas. It has several uses, including managing pain and anxiety in dentistry, use in food preparation, and as an oxidizer in model rockets and motor vehicle racing. According to the American Dental Association, inhaled nitrous oxide-oxygen is the most used gaseous anesthetic in the world and a 2007 survey by the ADA estimated that 70% of dental practices using any form of sedation employed nitrous oxide-oxygen sedation. ([http://www.ada.org/en/member-center/oral-health-topics/nitrous-oxide](http://www.ada.org/en/member-center/oral-health-topics/nitrous-oxide) [as of Mar. 20, 2019].)

Household products such as solvents and aerosol sprays are commonly inhaled by young people for the purpose of intoxication. The National Institute for Drug Abuse (NIDA) website states:

Inhalants are various products easily bought and found in the home or workplace—such as spray paints, markers, glues, and cleaning fluids. They contain dangerous substances that have psychoactive (mind-altering) properties when inhaled. People don't typically think of these products as drugs because they're not intended for getting "high," but some people use them for that purpose. When these substances are used for getting high, they are called inhalants. Inhalants are mostly used by young kids and teens and are the only class of substance used more by younger than by older teens. ([https://www.drugabuse.gov/publications/drugfacts/inhalants](https://www.drugabuse.gov/publications/drugfacts/inhalants) [as of Mar. 20, 2019].)
Nitrous oxide is inhaled from balloons filled with the gas. The NIDA notes that “although the high that inhalants produce usually lasts just a few minutes, people often try to make it last by continuing to inhale again and again over several hours.” (Id.) Short-term effects of inhalant use include slurred or distorted speech, lack of coordination, euphoria, dizziness, light-headedness, hallucinations, delusions, vomiting, headaches, and drowsiness. Long-term effects of inhalant use include liver and kidney damage, hearing loss, bone marrow damage, loss of coordination and limb spasms from nerve damage, delayed behavioral development, and brain damage from a lack of oxygen. Inhalant abuse can also cause seizures, coma, and death.

The National Survey on Drug Use and Health (NSDUH) provides data on substance use, including inhalant use. The 2016 survey found that approximately 600,000 people aged 12 or older—or 0.2 percent of the population—were current users of inhalants, and inhalant use was more common among adolescents aged 12 to 17. (<https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.pdf> [as of Mar. 20, 2019].) The survey also found the following data regarding the percentages of people in different age groups who were current users of inhalants: 0.6 percent of adolescents, 0.4 percent of young adults aged 18 to 25, and 0.2 percent of adults aged 26 or older. (Id.)

3) **Prior Legislation:**

a) SB 631 (Nielsen), of the 2017-18 Legislative Session, was substantially similar to this bill, and would have prohibited a retailer of tobacco products or tobacco related products from selling or offering to sell nitrous oxide, and made a violation punishable by a civil penalty not to exceed $2,500. SB 631 was not set for hearing in the Assembly Judiciary Committee.

b) AB 1735 (Hall), Chapter 458, Statutes of 2014, made it a misdemeanor for any person to dispense or distribute nitrous oxide to a person knowing or having reason to believe that the nitrous oxide will be ingested or inhaled by the person for the purposes of causing intoxication, and that person proximately cause great bodily injury or death to himself, herself, or any other person.

c) AB 1015 (Torlakson), Chapter 266, Statutes of 2009, made it a misdemeanor to sell or furnish to a person under 18 years of age a canister or device containing nitrous oxide, or a chemical compound mixed with nitrous oxide.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California District Attorneys Association  
Los Angeles County Sheriff's Department

**Opposition**

None
Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Requires law enforcement agencies to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents. Specifically, this bill:

1) Makes enactment of this bill contingent upon the enactment of AB 392 (Weber).

2) Defines “deadly force” as force reasonably anticipated to create a substantial likelihood of causing death or great bodily injury.

3) Defines “feasible” as reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

4) Defines “law enforcement agency” as any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, and the Department of Justice.

5) Provides that each law enforcement agency shall maintain a policy that provides a minimum standard on the use of force. Each agency’s policy shall, without limitation, include all of the following:

a) A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

b) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

c) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is objectively reasonable under the circumstances based upon the totality of information actually known to the officer.

d) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
e) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

f) Procedures for disclosing public records of police misconduct in accordance with California law.

g) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.

h) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

i) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.

j) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.

k) Comprehensive and specific guidelines for the application of deadly force.

l) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice as specified.

m) The role of supervisors in the review of use of force applications.

n) A requirement that officers promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

o) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency’s use of force policy by officers, investigators, and supervisors.

p) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical and developmental disabilities.

q) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

r) Factors for evaluating and reviewing all use of force incidents.

s) Minimum entry level and annual hourly training and course titles required to meet the objectives in the use of force policy.

t) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.
6) Requires that each law enforcement agency shall make their use of force policy accessible to the public.

7) Requires the California Commission on Peace Officers Standards and Training (POST) to develop and implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force.

8) Provides that the POST guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of a use of force policy that the agency is encouraged to adopt and promulgate, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

9) Specifies that the POST course or courses of basic training for law enforcement officers and the guidelines shall include all of the following:

   a) Legal standards for use of force.

   b) Duty to intercede.

   c) The reasonable force doctrine.

   d) Supervisory responsibilities.

   e) Use of force review and analysis.

   f) Guidelines for the use of deadly force.

   g) State required reporting.

   h) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.

   i) Implicit and explicit bias and cultural competency.

   j) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.

   k) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don’t-shoot situations, and real-time force option decision making.

   l) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably practical, part of the decision making process leading up to the consideration of deadly force.
m) Mental health and policing, including bias and stigma.

n) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

10) Encourages law enforcement agencies to include, as part of their advanced officer training program, periodic updates and training on use of force. POST shall assist where possible.

11) Provides that the course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by POST in consultation with appropriate groups and individuals having an interest and expertise in the field on use of force. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public. POST, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which use of force training may be included as part of ongoing programs.

12) States that it is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency’s specific use of force policy that, at a minimum, complies with the guidelines developed herein.

13) Finds and declares the following on behalf of the California State Legislature:

a) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone;

b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely;

c) Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests;

d) The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity, and life.

e) The intent of this act is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies’ use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control;
f) No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision making when using force options;

g) A law enforcement agency’s use of force policies and training may be introduced as evidence in proceedings involving an officer’s use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training; and

h) Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

EXISTING LAW:

1) Provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. (Pen. Code, § 835a)

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

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

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

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

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

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

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

   b) When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein;
c) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he or she was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

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

5) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

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

7) Provides that POST must consult with appropriate local and state organizations that have expertise on mental disabilities in order to develop a training course relating to law enforcement interactions with persons with mental disabilities. The training course must consist of classroom instruction and interactive training methods on the following: cause and nature of mental disabilities, identifying indicators of mental disability, de-escalation techniques for possible dangerous situations involving the mentally disabled, and other specified subjects. (Pen. Code, §§ 13515.25 & 13515.27.)

8) Requires POST to review the training course relating to persons with mental disabilities and to identify areas where additional training may be needed to effectively address incidents involving mentally disabled persons and persons with substance use disorders. The training update shall include use of force options and alternatives, the perspectives of individuals or families who interact with mentally disabled persons, and other topics, as specified. (Pen. Code, § 13515.26.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 230 is a response to what we heard loud and clear—that there is a need to modernize the use of force law and training standards. This bill would place California at the forefront with legislation that fundamentally changes the culture in many law enforcement departments, and will protect both the public and police officers as they do their duties. SB 230 will build on California's rigorous officer training requirements by establishing a minimum standard on the use of force for all law enforcement agencies throughout the state. This bill requires new evidence-based policies and procedures for utilizing de-escalation techniques, implicit and explicit bias and cultural competency training, reasonable alternatives to deadly force, interacting with vulnerable populations, and"
a new duty for officers to intercede and report if the witness the use of excessive force. SB 230 makes fundamental changes to how law enforcement officers interact with the public and the tactics that they use to get cooperation. This culture shift will pave the way to restoring the public trust and mutual respect that is needed.”

2) **Final Report of the President’s Task Force on 21st Century Policing (2015):** The Task Force was Co-Chaired by Charles Ramsey, Commissioner, Philadelphia Police Department and Laurie Robinson, Professor, George Mason University. The nine members of the task force included individuals from law enforcement and civil rights communities. The stated goal of the task force was “... to strengthen community policing and trust among law enforcement officers and the communities they served, especially in light of recent events around the county that have underscored the need for and importance of lasting collaborative relationships between local police and the public.” (Final Report of the President’s Task Force on 21st Century Policing (2015), p. v.) Based on their investigation, the Task Force provided thoughts and recommendations for law enforcement to implement comprehensive policies on the use of force, including the following items:

2.2 Recommendation: Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection, and information sharing. These policies must be clear, concise, and openly available for public inspection. (Id.)

2.2.1 Action Item: Law enforcement agency policies for training on use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate. (Id.)

As Chuck Wexler, Executive Director, Police Executive Research Forum, noted in his testimony:

In traditional police culture, officers are taught never to back down from a confrontation, but instead to run toward the dangerous situation that everyone else is running away from. However, sometimes the best tactic for dealing with a confrontation is to step back, call for assistance, de-escalate, and perhaps plan a different enforcement action that can be taken more safely later.

3) **Law Enforcement Basic Training Course:** The POST-certified Regular Basic Course (basic academy) 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 academy 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.

Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a 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. ([https://post.ca.gov/peace-officer-basic-training](https://post.ca.gov/peace-officer-basic-training))
The basic academy is divided into 42 individual topics, called Learning Domains. The Learning Domains contain the minimum required foundational information for given subjects, which are detailed in the Training and Testing Specifications for Peace Officer Basic Courses. The training and testing specifications for a particular domain may also include information on required instructional activities and testing requirements. (Id.)

The basic academy provides hands-on experience, including weapons training, role-play scenarios, patrol procedures, emergency vehicle operations, and arrest and control techniques. The student must pass written, exercise, scenario, and physical abilities tests, to demonstrate readiness for entry into a department's standardized Field Training / Police Training Program. (Id.)

Learning Domain #20 concerns the use of force by peace officers. Learning Domain #20 includes instruction on the legal standards governing use of force, the importance of complete documentation when force has been used, and the need to intervene if another officer is using excessive force.

This bill would require the POST course on basic training for law enforcement officers to include the following, among other items:

- Legal standards for use of force.
- Duty to intercede when another officer uses force beyond what is lawful.
- Use of force review and analysis.
- De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.

4) **This Bill is Contingent on AB 392 (Weber).** This bill is contingent on the enactment of AB 392 (Weber), which would limit the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person, or necessary to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. AB 392 is pending on the Senate Floor.

If AB 392 is enacted, the legal standard for the use of force by peace officers will change. Those legal changes will need to be reflected in the policies of law enforcement agencies. The training the peace officers undergo also needs to address those changes.

This bill would require law enforcement agencies to have use of force policies which include certain elements. Use of force policies would be required to include the following, among other items:

a) De-escalation techniques, crisis intervention, and use of force alternatives;

b) Requirement of proportional use of force to the threat imposed;
c) Reporting requirements of officers to report excessive force, and potential excessive force, by fellow officers; and

d) Requirements that officers intercede when they observe another officer using excessive force.

5) **Argument in Support:** According to the *California Police Chiefs*, “The loss of life is always tragic, and an officer’s use of serious force must be a last resort. Unfortunately, our society has many dangerous threats, and just as our peace officers cannot anticipate what they will encounter on any given day, our policies governing their engagement must account for the dangerous scenarios we see too often confronting law enforcement. In those tense, life-threatening situations, our peace officers fall back on their training to make critical split-second decisions. Rigorous training programs and clear guidelines have effectively and significantly reduced uses of force in cities throughout California and across the nation, and SB 230 will bring these evidenced-based best practices to every law enforcement agency in our state.

“Under SB 230, California will lead the nation in use of force policing standards, policies, practices, training and reporting. Specifically, SB 230:

- Provides law enforcement with the training and resources needed to minimize the use of force; and

- Mandates that every department adopt modernized and comprehensive use of force policies.

“The California Law Enforcement Code of Ethics begins with, “As a law enforcement officer, my fundamental duty is to serve mankind.” In support of this promise, SB 230 builds upon California’s already rigorous crisis intervention and de-escalation training and policies with the goal of reducing use of force incidents – it is an effective approach based on collaboration, science and reason.”

6) **Argument in Opposition:** According to the *League of Women Voters*, “SB 230’s proposed guidelines are an insufficient response to a policing crisis that plagues this state and disproportionately impacts our communities of color. In 2017, officers killed 172 people in California, only half of whom had guns. Police kill more people in California than in any other state – and at a rate 37% higher than the national average per capita. And unarmed young black and Latino men are killed by police at significantly higher rates than white men.

“While training shapes the behavior of law enforcement, and policies that create a duty to intercede, de-escalate, and report excessive force are vital, minimum standards and guidelines designed to improve use of force training and policies are not enough. The reforms proposed by SB 230 are vague, toothless, and regurgitate what is already required by law and our current suboptimal practice.”

7) **Related Legislation:** AB 392 (Weber), would limit the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person, or necessary to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the
officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. AB 392 is pending on the Senate Floor.

8) **Prior Legislation:**

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

   b) AB 71 (Rodriguez), Chapter 462, Statutes of 2015, requires each law enforcement agency to annually furnish to the Department of Justice (DOJ), in a manner defined and prescribed by the Attorney General (AG), a report of specified instances when a peace officer employed by that agency is involved in a use of force incident.

   c) SB 29 (Beall), Chapter 469, Statutes of 2015, requires law enforcement field training officers to have training from the Commission on Police Officer Standards and Training (POST) regarding law enforcement interaction with persons with mental illness or intellectual disability.

   d) SB 11 (Beall), Chapter 468, Statutes of 2015, requires POST to establish a training course on law enforcement interaction with persons with mental illness as part of its basic training course that is at least 15 hours.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association for Los Angeles Deputy Sheriffs  
Association of Orange County Deputy Sheriff's  
California Fraternal Order of Police  
California Hawaii State Conference of the NAACP  
California Narcotic Officers' Association  
California Peace Officers Association  
California Police Chiefs Association  
California State Sheriffs' Association  
California Statewide Law Enforcement Association  
City of Camarillo  
City of Carlsbad  
City of Glendale  
City of La Palma  
City of Los Alamitos  
City of Salinas  
City of Thousand Oaks  
City of Vacaville  
League of California Cities  
Long Beach Police Officers Association  
Los Angeles County Professional Peace Officers Association  
Los Angeles County Sheriff's Department
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs Association
Shasta County Board of Supervisors

Oppose

Alliance San Diego
American Civil Liberties Union of California
Anti Police-Terror Project
Asian Americans Advancing Justice - California
Black Political Association of California
Change Begins WITH ME
Council on American-Islamic Relations, California
Courage Campaign
Feminists in Action
Indivisible CA-43
Indivisible CA: Statestrong
Indivisible Marin
Indivisible Project
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible: San Diego Central
Innercity Struggle
Justice Teams Network
League of Women Voters of California
Our Revolution Long Beach
People Power LA | West
San Francisco No Injunctions Coalition
San Jose/Silicon Valley Branch of the NAACP
Showing Up for Racial Justice, Santa Barbara
Social & Environmental Justice Committee of the Universalist Unitarian Church of Riverside
The Indivisibles of Sherman Oaks
The Resistance Northridge-Indivisible
Together We Will/Indivisible - Los Gatos
We the People - San Diego
White People 4 Black Lives
Youth ALIVE!
Youth Justice Coalition

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Provides that, notwithstanding any other statutes of limitations, for the crime of unauthorized access to computers, a criminal complaint may be filed within three years after the discovery of offense.

EXISTING LAW:

1) Defines numerous computer or electronic data offenses and imposes penalties ranging from an alternate felony/misdemeanor to an infraction based on the seriousness of the offense or based on the extent of harm caused by the defendant. These penalties apply where any person knowingly, among other things:

   a) Accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to devise or execute any scheme or artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data;

   b) Accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network;

   c) Accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network;

   d) Without permission, disrupts or causes the disruption of computer services or denies or causes the denial of computer services, to an authorized user of a computer, computer system, or computer network;

   e) Disrupts or improperly accesses a government or public safety computer system.

   f) Provides or assists, without permission a means of accessing a computer, computer system, or computer network; and,

   g) Introduces any computer contaminant. (Pen. Code, § 502.)

2) Provides that prosecution for crimes punishable by imprisonment for eight years or more must commence within six years after commission of the offense, unless otherwise provided
by law. (Pen. Code, § 800.)

3) Provides that prosecution for a felony punishable by imprisonment for less than eight years must commence within three years commission of the offense, except as specified. (Pen. Code, § 801.)

4) Provides that prosecution for crimes involving fraud, breach of a fiduciary duty, embezzlement of funds from an elder or dependent adult, or misconduct by a public official does not start to run until the discovery of the offense and prosecution must be commenced within four years after discovery of the crime or within four years after completion, whichever is later. (Pen. Code, §§ 801.5 & 803, subd. (c).)

5) Provides that the prosecution of a misdemeanor must commence within one year of the commission of the offense, unless otherwise provided by law. (Pen. Code, § 802 subd. (a).)

6) States that, unless otherwise provided by law, a statute of limitations is not tolled or extended for any reason. (Pen. Code, § 803, subd. (a).)

7) States that, for specified crimes, the statute of limitations does not begin to run until the offense has been discovered, or could have reasonably been discovered. (Pen. Code, § 803, subd. (c).)

8) Provides that if more than one statute of limitations period applies to a crime, the time for commencing an action shall be governed by the period that expires later in time. (Pen. Code § 803.6, subd. (a).)

9) States that a prosecution is commenced when one of the following occurs:

   a) An indictment or information is filed;

   b) A complaint charging a misdemeanor or infraction is filed;

   c) The defendant is arraigned on a complaint that charges him or her with a felony; or,

   d) An arrest warrant or bench warrant is issued. (Pen. Code, § 804.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “SB 239 would align the statute of limitations for felony computer hacking with similar forms of crimes by allowing for prosecution three years after the date of discovery, rather than the date of the offense. This bill would allow the same statute of limitations for a felony violation of Penal Code §502 as a civil prosecution for the same act, i.e. three years after the date of discovery rather than the date of the offense. Perpetrators of data breaches go to great lengths to conceal the effects of their crimes. Unlike victims of physical crimes, victims of computer hacking are often unaware of its occurrence. As a result, by the time the crimes are discovered, it can be too
late to prosecute them."

2) **Statute of Limitations:** The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.)

The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes. Additionally, the statute of limitations reflects society’s lack of desire to prosecute for crimes committed in the distant past. The interest in finality represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant’s right to a fair trial would be prejudiced. Such laws reflect legislative assessments of the relative interests of the state and the defendant in administering and receiving justice.

More recently, in *Stogner v. California* (2003) 539 U.S. 607, the Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

The amount of time in which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v.

The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provide predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (People v. Turner, supra, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

There are, however, some statutes of limitations not necessarily based on the seriousness of the offense. The Legislature has acknowledged that some crimes by their design are difficult to detect and may be immediately undiscoverable upon their completion. So for example, crimes involving fraud, breach of a fiduciary duty, bribes to a public official or employee, and those involving hidden recordings have statutes of limitations which begin to run upon discovery that the crime was committed. (See Pen. Code, § 803, subd. (c), see also Pen. Code, § 803, subd. (c).)

This bill would provide that a charge for the crime of computer hacking may be filed be up to three year after discovery of the crime.

3) Ex Post Facto: In Stogner v. United States, supra, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (Id. at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (Id. at pp. 618-619.)

Under these principles, the extended statute of limitations provided for in this bill could not be applied to cases in which the period has expired.

4) Argument in Support: According to the Conference of California Bar Associations, the sponsor of this bill, "SB 239 will align the statute of limitations for felony computer hacking with those of similar crimes by permitting prosecution three years after the date of discovery of the offense. Currently the statute of limitations runs from the date the offense occurred.

"Perpetrators of data breaches go to great lengths to conceal the effects of their crimes, and the victims often are unaware that a crime has been committed. For example, the 2013
Yahoo email hack that compromised over a billion accounts was not discovered until 2016, too late to prosecute under the current statute. As a result, under current law, by the time the crimes are discovered, it can be too late to prosecute them as felonies.

"The statute of limitations for 'white-collar' crimes that involve a breach of trust (e.g., grand theft, identity theft, fraud, forgery, perjury, etc.) is four years after discovery of the offense, or four years after its completion, whichever is later. (Pen. Code §§801.5, 803(c).) Similarly, the statute of limitations for computer hacking is three years after discovery, if prosecuted civilly. (Pen. Code, §502(e)(5).) But, the statute of limitations for computer hacking prosecuted as a felony commences from the date of the offense, not the date of discovery (See Pen. Code, §§502(d)(1), 801.). This is both inconsistent, counterintuitive, and impedes felony prosecution of major computer hacks because of the delay caused by difficulty in ascertaining that one has been hacked and determining the identity of the perpetrator.

"SB 239 will address this inconsistency by establishing the same statute of limitations for a felony violation of Penal Code section 502 as a civil prosecution for the same act, i.e. three years after the date of discovery rather than the date of the offense. This is a reasonable change in the law that will enhance public protection from large-scale hacking schemes."

5) **Related Legislation:** AB 814 (Chau), would clarify that existing law prohibits a person, business or government agency including a law enforcement agency, from hacking or otherwise accessing without authorization, computer data and computer systems in a motor vehicle. AB 814 is pending vote on the Senate Floor.

6) **Prior Legislation:** AB 32 (Waldron) Chapter 614, Statutes of 2015, increased the base fine for felony convictions of specified computer crimes from a maximum of $5,000 to a maximum of $10,000.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

AARP California  
California District Attorneys Association  
California State Sheriffs' Association  
Conference of California Bar Associations

**Opposition**

None

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744