SUMMARY: Requires, as of 2023, that the Department of Justice (DOJ) include statistics on lewd or lascivious felonies, as specified, in its annual report on statewide criminal statistics to the Governor and the Legislature. Specifically, this bill:

1) Requires that DOJ include in its annual statewide crime report, commencing with the report that includes data from 2023, statistics on “lewd or lascivious felonies” consistent with the statistics reported regarding rape, including the number of offenses reported and the rate per 100,000 people, to the extent such data is available.

2) Defines “lewd or lascivious felonies” by cross-referencing various sections and subdivisions of the Penal Code.

EXISTING LAW:

1) Requires DOJ to publish an annual report containing statewide statistical information pertaining to crime, as specified. (Pen. Code §§ 13010.)

2) Specifies that DOJ annual report contain statistics regarding the amount and types of offenses known to public authorities; the personal and social characteristics of criminals and delinquents; the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents; and the number of citizens' complaints received by law enforcement agencies, as specified. (Pen. Code, § 13012.)

3) Requires every person and agency that deals with crimes or criminals or with delinquency or delinquents to maintain specified records and report statistical data to the DOJ when requested by the Attorney General. (Pen. Code § 13020.)

4) States that a person who willfully and lewdly commits any lewd or lascivious act upon, or with the body, or any part or member, or a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a lewd or lascivious act against a child. (Pen. Code § 288 (a).)

5) States that any lewd or lascivious act, as specified, committed by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code § 288 (b).)
6) States that any lewd or lascivious act, as specified, where the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code § 288 (c).)

7) States that any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as specified, or three or more acts of lewd or lascivious conduct, as specified, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years. (Pen. Code § 288.5 (a).)

8) States that any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or another specified violation, shall be punished by imprisonment in the state prison for two, four, or six years. (Pen. Code, § 220, subd. (a)(1).)

9) States that any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or another specified violation, shall be punished by imprisonment in the state prison for five, seven, or nine years. (Pen. Code, § 220, subd. (a)(2).)

10) States that any person who, in the commission of a burglary of the first degree, as specified, assaults another with intent to commit rape, sodomy, oral copulation, or another specified violation, shall be punished by imprisonment in the state prison for life with the possibility of parole. (Pen. Code, § 220, subd. (b).)

11) States that any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as specified, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars ($15,000).

**Fiscal Effect:** Unknown.

**Comments:**

1) **Author's Statement:** According to the author, "Each year, California law enforcement agencies report the incidence of as many as one million crimes, which are reflected in the annual Crime in California report. This includes hundreds of thousands of larcenies, yet sex crimes against children, a vulnerable population, is not yet included. While the number of reported child molestations (lewd or lascivious offenses) is currently unknown, it is anticipated that it will be a small percentage of the number of reported under categories like vehicle theft or larceny, making it a reasonable act to include child molestations in this report.

"Accurate information is necessary to effectively allocate resources and funding. SB 259 will
give sex crimes against children (lewd or lascivious offenses) the same scrutiny as rape, robbery, and vehicle theft and provide policymakers and law enforcement with much needed data to address and combat this sensitive issue."

2) **Uniform Crime Reporting (UCR) Program:** The UCR program’s objective is to generate reliable information for use in law enforcement administration, operation, and management. (FBI website, https://www.fbi.gov/services/cjis/ucr/ [as of Jun. 18, 2019]) The program was conceived in 1929 by the International Association of Chiefs of Police to meet the need for reliable uniform crime statistics for the nation. *(Id.)* In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. *(Id.)*

According to the FBI website, the UCR Program consists of four data collections. Two of those collections are pertinent to the analysis of this bill, the National Incident-Based Reporting System (NIBRS), and the Summary Reporting System (SRS). *(Id.)* The UCR is currently in the process of phasing out the Summary Reporting System (SRS) in favor of NIBRS, which collects more robust information than the SRS. *(Id.)* In the traditional SRS, there are eight crimes, 1) murder and non-negligent homicide, 2) rape, 3) robbery, 4) aggravated assault, 5) burglary, 6) motor vehicle theft, 7) larceny-theft, and 8) arson. (https://www.ucrdatatool.gov/offenses.cfm.) These eight crimes are referred to as “index crimes” or “part I offenses.” *(Id.)* These offenses were specifically chosen because they are serious crimes, they occur with regularity in all areas of the country, and they are likely to be reported to police. *(Id.)* By contrast, NIBRS contains the following categories: arson, assault, bribery, burglary/breaking and entering, counterfeiting/forgery, destruction/damage/vandalism of property, drug/narcotics, embezzlement, extortion/blackmail, fraud, gambling, homicide, human trafficking, kidnapping/abduction, larceny/theft offenses, motor vehicle theft, pornography/obscene material, prostitution, robbery, sex offenses, sex offenses (non-forcible), stolen property, and weapon law violations. (https://ucr.fbi.gov/nibrs/2013/resources/a-guide-to-understanding-nibrs/view.)

3) **DOJ’s Annual Report on Crime in California:** DOJ publishes an annual report on crime statistics in California and submits that report to the Governor and the Legislature. The report is also published on DOJ’s Open Justice Web Portal. According to DOJ, the annual report is based upon the FBI’s Uniform Crime Reporting Program, and therefore prioritizes the same eight index crimes, or “part I offenses” as are contained in the SRS. Lewd and Lascivious felonies, as defined by this bill, do not fit into any of the eight index crime categories. DOJ provides arrest information and a variety of other statistics for lewd and lascivious acts, but not the total number of incidents reported or the rate of report per 100,000 population.

This bill seeks to add the same statistical data for Lewd and Lascivious felonies to the annual report, as are currently being collected for the eight index crimes of the SRS. This bill defines lewd and lascivious felonies by referencing a variety of penal code sections. As part of the transition to the NIBRS system, DOJ will be required to “map” specific sections of the California penal code to the categories listed in NIBRS, meaning that the specific penal code sections will have to be listed as falling under one of the particular categories in NIBRS. (https://www.fbi.gov/services/cjis/ucr/nibrs/) This bill contains a delayed implementation date to allow NIBRS to be implemented prior to these provisions taking effect.
4) **Argument in Support**: None submitted.

5) **Prior Legislation**: SB 1075 (Runner) was substantially similar to this bill. SB 1075 died in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Crime Victims United

**Opposition**

None

**Analysis Prepared by**: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Eliminates the Integrated Services for Mentally Ill Parolees (ISMIP) and replaces it with the Supportive Housing Program for Persons on Parole to be administered by the Department of Housing and Community Development (HCD). Specifically, this bill:

1) Instructs the California Department of Corrections and Rehabilitation (CDCR) to transfer all funds appropriated from the General Fund to the ISMIP program to the HCD on an annual basis, and requires CDCR to work with the HCD to establish a process for referral of eligible participants into the program, including participants from the ISMIP program upon the repeal of the ISMIP program.

2) States that HCD shall create a program to provide grants to counties to fund permanent supportive housing and wraparound services to people on parole experiencing mental illness and homelessness or risk of homelessness upon release from prison, using funding currently used for the ISMIP program.

3) Requires HCD to issue guidelines establishing the grant program and a notice of funding availability or request for proposals for five-year renewable grants to counties. Requires applicants for the grants to demonstrate viable plans to provide permanent supportive housing, mental health treatment, and services to participants.

4) Requires HCD to establish criteria to score counties applying for grant funds competitively.

5) Makes eligible in the program a person on parole if all of the following are applicable: (1) the person has a serious mental disorder, as defined; (2) the individual voluntarily chooses to participate; (3) either of the following applies: (i) the individual has been assigned a date of release within 60 to 180 days and is likely to become homeless upon release, or (ii) the person is currently experiencing homelessness as a person on parole.

6) States that a participant shall continue to receive housing and services funded under the program after discharge from parole, so long as the participant needs this assistance.

7) States that applicants for the program funds shall use them for activities including rental assistance, subsidies for new and existing affordable housing, housing navigation services, and incentives to landlords such as security deposits. Other funded activities include coordinating with state prisons to obtain information about, and prepare to provide housing to persons who will be released.

8) States that providers shall identify and locate supportive housing opportunities for participants prior to release from state prison or as quickly upon release from state prison as
possible, or as quickly as possible when participants are identified during parole.

9) Requires HCD to distribute funds by executing contracts with awarded entities for a term of five years, subject to renewal. After a contract has expired pursuant to this subdivision, any funds not expended for eligible activities shall revert to the department for use for the program.

10) Requires a recipient of the program to submit to HCD an annual report on a form issued by the department, pertaining to the recipient’s program or project selection process, contract expenditures, and progress toward meeting state and local goals, as demonstrated by the performance measures set forth in the application.

11) States that this chapter shall become operative upon a determination by the Department of Finance, in consultation with the Legislative Analyst’s Office, that sufficient funding has been appropriated by the Legislature to the department for the purposes of this chapter. Upon making a determination that sufficient funding has been appropriated, the Department of Finance shall notify the Joint Legislative Budget Committee.

12) Defines “housing navigation” to mean “services provided prior to release or in the community that assist program participants with all of the following: (1) Locating permanent housing with private market landlords or property managers who are willing to accept rental assistance or operating subsidies for the program participants; (2) Assisting participants in obtaining local, state, or federal rental assistance or subsidies; (3) Completing housing applications for permanent housing and, when applicable, rental assistance or subsidies; (4) Move-in assistance; (5) Obtaining documentation needed to access permanent housing and rental assistance or subsidies.”

13) Defines “permanent housing” to mean “a structure or set of structures with subsidized or unsubsidized rental housing units subject to applicable landlord-tenant law, without a limit on the length of stay and without a requirement to participate in supportive services as a condition of access to or continued occupancy of the housing.”

14) Defines “permanent supportive housing” to mean “permanent housing without a limit on the length of stay that is linked to onsite or offsite services that assist the supportive housing residents in retaining the housing, improving the participant’s health status, and maximizing the participant’s ability to live and, when possible, work in the community.”

EXISTING STATE LAW:

1) Authorizes CDCR to obtain day treatment, and to contract for crisis care services, for parolees with mental health problems. States that day treatment and crisis care services should be designed to reduce parolee recidivism. Requires CDCR to work with counties to obtain day treatment and crisis care services for parolees with the goal of extending the services upon completion of the offender’s period of parole, if needed. (Pen. Code, § 3073.)

2) Defines “serious mental disorder” as “a mental disorder that is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a
long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders.” (Welf. & Inst. Code, § 5600.3, subd. (b)(1).)

3) Declares that it is the intent of the Legislature to provide evidence-based, comprehensive mental health and supportive services, including housing subsidies, to parolees who suffer from mental illness and are at risk of homelessness, in order to successfully reintegrate the parolees into the community, increase public safety, and reduce state costs of recidivism. Establishes the supportive housing program for mentally ill parolees who are at risk of homelessness. (Pen. Code, § 2985 et seq.)

EXISTING FEDERAL LAW:

1) Defines “homeless” as follows: an individual or family who lacks a fixed, regular, and adequate nighttime residence, as specified; an individual or family who will imminently lose their primary nighttime residence, as specified; an unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, as specified; and any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence, has no other residence, and, lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing. (Housing and Urban Development, 24 C.F.R. § 91.5):

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, “There is a strong link between incarceration and homelessness. People on parole who are homeless are seven times more likely to reoffend than those housed. This leads to a cycle of incarceration and homelessness. Stable housing reduces recidivism, strengthens our communities, and promotes equity. Formerly incarcerated individuals are almost 10 times more likely to experience homelessness. An Ohio program demonstrates formerly homeless parolees living in supportive housing have a 60% lower recidivism rate than those who are homeless. New York supportive housing programs show lower recidivism rates, lower Medicaid costs, and lower arrest rates among supportive housing tenants than those still homeless. Lastly, California data indicates supportive housing tenants are able to decrease their days incarcerated by over 60%.

“The Legislature established the Integrated Services for Mentally Ill Parolees (ISMIP) program in California’s 2007-08 budget to address this pressing crisis. However, the current program is not in line with the Legislature’s intent. A 2017 UCLA study found ISMIP fails to significantly reduce recidivism. CDCR uses ISMIP funds to pay one-hundred percent of the cost of mental health treatment to a small number of parolees, instead of enrolling them into Medi-Cal where they can draw down a federal match of 50-90%.
"SB 282 seeks to reduce recidivism rates by addressing the pressing need of supportive housing and wrap-around services for individuals on parole with mental health needs. The bill redirects ISMIP funding toward the Supportive Housing Program for Persons on Parole Program, and requires the Department of Housing and Community Development (HCD) to administer grants to counties working to break the cycle of incarceration and homelessness using evidence-based, culturally competent models, and ensuring participants access mental health and substance use disorder treatment through Medi-Cal."

2) **Background**: According to the author, "Supportive housing is the combination of affordable housing that does not limit length of stay, and services that promote housing stability. It is an evidence-based intervention proven to reduce recidivism significantly.

"The Legislature appropriated funding that led to the establishment of the Integrated Services for Mentally Ill Parolees (ISMIP) program in California’s 2007-08 budget to address this pressing crisis. The program receives annual funding intended to provide supportive housing and intensive case management for homeless parolees with mental health needs, and the Governor’s budget presents $16 million in 2019-20 toward ISMIP.

"As administered, the current program is not in line with the Legislature’s intent. CDCR uses ISMIP funds to pay one-hundred percent of the cost of mental health treatment to a small number of parolees, instead of enrolling them into Medi-Cal where they can draw down a federal match of 50-90%. Additionally, only a small number of ISMIP participants are homeless, and the housing provided is temporary and not consistent with evidence-based housing practices (see attached spreadsheet for CDCR’s most recent ISMIP spending).

"A UCLA study found ISMIP fails to significantly reduce recidivism, and that participants receive only 10 months of mental health treatment on average, before dropping out of the program.

“SB 282 redirects ISMIP funding toward the Supportive Housing Program for Persons on Parole. It would do the following:

- Administer funds through the Department of Housing & Community Development (HCD) using evidence-based, culturally competent housing models;
- Require CDCR to refer parolees to the program created within HCD;
- Offer grants to counties working to break the cycle of incarceration and homelessness to fund supportive housing for people on parole with serious mental illness; and
- Require county grantees ensure participants can access mental health and substance use disorder treatment through Medi-Cal.

"This bill seeks to reduce recidivism rates by using funding more effectively to address the pressing need of supportive housing and wrap-around services for individuals on parole with mental health needs."
3) **Eliminating and Replacing the ISMIP**: ISMIP was established in 2007 with AB 900 (Solorio) which authorized CDCR to obtain day treatment and to contract for crisis care services for parolees with mental health problems in order to reduce recidivism. In 2012, SB 1021 (Com. on Budget) expanded the ISMIP program. An analysis of SB 1021 described the program as “a supportive housing program that provides wraparound services to mentally ill parolees who are at risk of homelessness” and summarized the provisions of SB 1021 pertaining to the program as “improv[ing] the program by strengthening the housing component and prioritizing contracts with providers that can help provide a continuum of care after the offender is off of parole.” (Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of Sen. Bill 1021 (2011-2012 Reg. Sess.), as amended Jun. 25, 2012, p. 4.)

The proponents of this bill argue the ISMIP funds have not been used as the Legislature intended, citing to a 2017 UCLA study. Specifically, they assert that ISMIP funds have been used to serve a small number of parolees, and that the program is not focused on parolees who are homeless or at risk of homelessness.

This bill would eliminate ISMIP, and redirect its funds to the Supportive Housing Program for Persons on Parole to be administered by HDC. CDCR would refer eligible parolees to the program, and the program’s funds would be administered by HCD as grants to the counties. This bill would establish the duties of HCD in creating and operationalizing the program, delineates eligibility criteria for participation in the program, specifies appropriate uses of program funds, and enumerates services that must be provided to program participants. This bill would also include various reporting requirements, evaluations, and monitoring of grant recipients for compliance with program requirements.

4) **Funding**: This bill would provide that its provisions are not operable until a determination by the Department of Finance (DOF), in consultation with the Legislative Analysts Office, that sufficient funding has been appropriated by the Legislature to HCD, and upon making that determination, DOF is required to notify the Joint Legislative Budget Committee. However, there has been no appropriation specifically made in the 2019-2020 budget. In the 2019-2020 budget, the Legislature has allocated $16,475,000—the cost for implementing the program established by this bill—to the Board of State and Community Corrections, a sub-entity of CDCR. The money was allocated in AB 74 (Committee on Budget) which was enrolled on June 13. The budget item states that the money is intended for rental assistance, with a directive that priority shall be given to individuals released to state parole. There appears to be no budget allocation to HCD for a similar purpose. Thus, it appears that SB 282, if passed, would not take effect unless future funding is appropriated specifically to the HCD by the Legislature for purposes of funding a program to support parolee housing. According to the author’s office, this issue may be addressed in the next committee; the bill is double referred to the Assembly Committee on Housing and Community Development.

5) **Argument in Support**: According to *Housing California*, “SB 282 seeks to reduce recidivism by addressing the pressing needs of people on parole experiencing homelessness and serious mental illness. Homelessness and incarceration are linked. Formerly incarcerated people are almost 10 times more likely to experience homelessness as the general public. Further, people on parole are seven times more likely to recidivate when homeless than when housed. And people released from prison face enormous obstacles in security housing stability. Similarly, people experiencing homelessness suffer higher rates of chronic health conditions. As a result of this ‘perfect storm’ among people on parole experiencing homelessness and serious mental illness, this population cycles between homelessness,
shelters, hospitals, and jails, with a likely return to prison (and need for mental health and medical care while incarcerated).

“This bill builds on the framework of the California Department of Corrections and Rehabilitation’s (CDCR) Integrated Services for the Mentally Ill Parolees (ISMIP) Program, which was established in 2007-08 to provide intensive case management and housing for homeless parolees living with mental illness. Currently, ISMIP is funding mental health treatment for several hundred people on parole. Though participants are eligible for Medi-Cal under the Affordable Care Act, which offers 50-93% federal reimbursement for Medi-Cal treatment, the State is covering 100% of treatment costs through ISMIP. Further, when ISMIP participants exit parole, they must reestablish treatment with their county Medi-Cal mental health program. The current program is not serving the intended purpose, as providers are not using the resources to serve people experiencing homelessness, and less than 15% of the funds pay for housing. Housing provided is time-limited and not evidence-based. Finally, the ISMIP program has resulted in poor outcomes. A UCLA study has found no significant reductions in arrests or convictions among program participants.

“SB 282 will redirect ISMIP funds to fulfill the intended purposes of dollars appropriated. As CDCR staff do not have housing expertise (nor should they), SB 282 will allocate funding instead to the state’s housing department, the Department of Housing and Community Development (HCD). HCD will provide grants to counties to fund evidence-based housing and housing-based services—supportive housing—for people on parole experiencing homelessness and serious mental illness, and require grantee counties to offer participants mental health treatment through Medi-Cal.

“Study after study shows supportive housing reduces recidivism among people on parole, while improving health outcomes. We are confident that this evidence-based approach will not only allow people on parole the chance to live healthy, productive lives, but will reduce the state’s costs of incarceration and mental health treatment.”

6) **Related Legislation:** AB 1405 (Gloria) Requires the Department of Corrections and Rehabilitation (CDCR) to contract for and fund permanent housing for parolees at risk of homelessness. AB 1405 was held in the Assembly Appropriations Committee on the suspense file.

7) **Prior Legislation:**

a) SB 1021 (Comm. on Budget) 2012, Chapter 41, Statutes of 2012, established the ISMIP program, a supportive housing program for people on parole experiencing mental illness and homelessness.

b) SB 1013 (Beall), of the 2015-2016 Legislative Session, would have required service providers in the ISMIP program to provide parolee participants with adequate housing and related assistance, including a path to permanent housing and independent living, as part of the Supportive Housing Program for Mentally Ill Prisoners. SB 1013 was held in the Senate Appropriations Committee Suspense file.

c) SB 1010 (Beall, 2018), of the 2017-2018 Legislative Session, would have established a supportive housing pilot program for mentally ill parolees who are homeless or at risk of
homelessness, using existing funding. SB 1010 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Corporation for Supportive Housing (Co-Sponsor)
Housing California (Co-Sponsor)
PolicyLink (Co-Sponsor)
Alliance for Boys And Men of Color
American Civil Liberties Union of California
Anti-Recidivism Coalition
CA Council of Community Behavioral Health Agencies
California Housing Partnership
California Public Defenders Association
California YIMBY
City of Santa Monica
County Behavioral Health Directors Association
County of Los Angeles Board of Supervisors
County of Sacramento
County of Santa Clara
Disability Rights California
East Bay Community Law Center
Ella Baker Center for Human Rights
Episcopal Community Services of San Francisco
Initiate Justice
Kings/Tulare Homeless Alliance
Legal Services for Prisoners with Children
Los Angeles Black Worker Center
Los Angeles Homeless Services Authority
National Association of Social Workers, California Chapter
National Housing Law Project
Non-Profit Housing Association of Northern California
PATH
Richmond Safe Return Project
Root & Rebound
Santa Cruz Barrios Unidos
Steinberg Institute
Time for Change Foundation
Western Center on Law and Poverty

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
SUMMARY: Allows specified elder and dependent adult abuse offenses that occur in different jurisdictions to be consolidated in a single trial if all district attorneys in the counties with jurisdiction agree. Specifically, this bill:

1) States that if more than one felonious theft, embezzlement, forgery, fraud, or identity theft occurs against an elder or dependent adult in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred.

2) Specifies that the consolidation of charges is subject to a hearing and other procedures established for the joinder of multiple offenses, within the jurisdiction of the proposed trial.

3) Specifies that at the hearing, the prosecution shall present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue, and that charged offenses from any jurisdiction where there is not a written agreement from the district attorney shall be returned to that jurisdiction.

4) Specifies that in determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses.

EXISTING LAW:

1) States that, except as otherwise provided by law, the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed. (Pen. Code, § 777.)

2) States that when a public offense is committed in part in one jurisdictional territory and in part in another, the jurisdiction of such offense is in any competent court within either jurisdiction. (Pen. Code, § 781.)

3) States that when a public offense is committed on the boundary of two or more jurisdictional territories, or within 500 yards thereof, the jurisdiction of such offense is in any competent court within either jurisdictional territory. (Pen. Code, § 782.)

4) States that when a public offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of its voyage, or on a railroad train or car, motor vehicle, common carrier transporting passengers or on an aircraft
prosecuting its trip, the jurisdiction is in any competent court, through, on, or over the jurisdictional territory of which the vessel, train, car, motor vehicle, common carrier or aircraft passes in the course of its voyage or trip, or in the jurisdictional territory of which the voyage or trip terminates. (Pen. Code § 783.)

5) States that when a public offense is committed in a park situated in more than one county, the jurisdiction over such an offense is in any competent court in any county in which any part of the park is situated. (Pen. Code § 783.5.)

6) States that if one or more violations of specified sex offenses occurs in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred, subject to the following conditions:

   a) Consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial court;

   b) The prosecution presents written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue; and,

   c) Charged offenses from jurisdictions in which there is no written agreement from the district attorney must be returned to that county. (Pen. Code, § 784.7, subd. (a.).)

7) States that if more than one violation of child abuse, domestic violence, or stalking, as specified, occurs in more than one jurisdictional territory, and the defendant and the victim are the same for all of the offenses, the jurisdiction of any of those offenses and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred. (Pen. Code, § 784.7, subd. (b.).)

8) States that if more than one violation of human trafficking, pimping, or pandering occurs in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred, subject to a hearing pursuant to a hearing, as specified, within the jurisdiction of the proposed trial, if all district attorneys in counties with jurisdiction of the offenses agree to the venue. In determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses. (Pen. Code, § 784.7, subd. (c.).)

9) Permits consolidation of different offenses which do not relate to the same transaction or event where there is common element of substantial importance in their commission, such as the same class of crimes, and establishes a procedure therefor. (Pen. Code, § 954.)

10) Provides that the court, in its discretion, may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code § 352.)
11) Provides that evidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion. (Evid. Code § 1101.)

12) Provides that in a criminal action in which the defendant is accused of an offense involving abuse of an elder or dependent person, evidence of the defendant’s commission of other abuse of an elder or dependent person is not subject to the prohibition on the use of evidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct). (Evid. Code § 1109, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author’s Statement:** According to the author, “Dependent adult and elder abuse is the fastest growing area of crime in the United States. California is the number one state in frequency of elder abuse cases, making up 11% of all cases within the United States. As the Baby Boomer generation ages, financial crimes against the elderly will only continue to increase. SB 304 will allow district attorneys to consolidate elderly and dependent adult financial fraud cases that span multiple counties into a single prosecution. Under this legislation, the burden is eased for victims by not requiring them to testify repeatedly in multiple locations as prosecutors try their case.”

2) **Territorial Jurisdiction:** The rule of jurisdiction is that “except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed.” Ordinarily, the territorial jurisdiction of a superior court is the county in which it sits. When the Legislature creates an exception to the rule of jurisdiction, the statute is remedial and is construed liberally to achieve the legislative purpose of expanding criminal jurisdiction. (*Price v. Superior Court* (2001), 25 Cal. 4th 1046, 1055.)

3) **The Right to a Jury of Peers, “Vicinage”:** Vicinage is the right to trial by a jury drawn from residents of the area where the offense was committed. Vicinage is not an absolute right guaranteed by the United States Constitution because it “does not serve the purpose of protecting a criminal defendant from government oppression and is not necessary to ensure a fair trial.” (*Price, supra*, 25 Cal. 4th 1046, 1065-1069.) According to the Supreme Court of California, the right to a trial by a jury of the vicinage – as guaranteed by the California Constitution – requires trial in a county that has a reasonable relationship to the offense or to other crimes committed by the defendant against the same victim. (*Id. at p. 1075.*) Therefore, the Legislature’s power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense. (*Ibid.*)

This bill would allow all felony-level, financial-type charges against elder or dependent adults to be consolidated into a single trial. It is possible that the provisions of this bill would challenged based on the right of vicinage, given that there does not appear to be a requirement that the consolidated crimes have a relationship to the place designated for trial
or to other crimes committed by the defendant against the same victim. Nonetheless, the Legislature has created several exceptions to the general rule that a case must be tried in the jurisdiction where the offense was committed if a defendant commits multiple offenses in different jurisdictions, which appear to have survived legal challenges. These exceptions include sex crimes, domestic violence, child abuse, and human trafficking cases. The sex offense exemptions were challenged in court, and survived legal scrutiny. For sex offense cases in particular, the court ruled that the cases that can be joined do not have to be violations of the same offense. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096.) Sex offenses currently subject to consolidation are of the same class of crimes and therefore any combination of the listed sex crimes may be properly joined. (*Id.* at 1113.)

4) **Trial Consolidation:** The benefits of trial consolidation include judicial economy and convenience to victims and witnesses who may have to testify in multiple trials. Attorneys and courts may save time resources as a result of consolidation. Specifically in the context of sex crimes and elder/dependent adult crimes, there exists an evidentiary rationale for the consolidation of a trial. In general, evidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion. However, that evidentiary rule does not apply in sex crimes and elder/dependent adult crimes. Therefore, allowing the consolidation of these offenses may be beneficial to victims and witnesses who may otherwise be called to testify regarding the defendant’s character, or “propensity,” in multiple trials in different counties.

There are also disadvantages to trial consolidation, including the potential prejudicial impact on the defendant because jurors may feel compelled to convict based on the sheer number of victims rather than the strength of the prosecution’s case. In other words, jurors can be swayed by the quantity of the evidence, rather than scrutinizing the quality of the evidence. As a result, some individual cases which may not even have gone to trial result in a conviction because the case is strengthened by the aggregate evidence of the other charges. In addition, convenience to some victims and witnesses may come at the cost of inconvenience to others. Law enforcement who live outside of the jurisdiction where the trial is held can be called away from their shift, meaning their department has to pay another officer overtime. In addition, elderly and dependent adult victims and witnesses are likely to have more difficulty with transportation from one part of the state to another. The rule in existing law that a case be tried in the county where the offense took place avoids these complications.

5) **Argument in Support:** According to the bill’s co-sponsor, the *San Mateo County District Attorney*, “My office is currently prosecuting a case involving a defendant who, with unknown co-conspirators, traveled through multiple counties perpetrating a fraud scheme where the defendants pretended to be immigrants in need of help and swindled elderly victims out of tens of thousands of dollars in cash and jewelry. They appealed to the victims’ vulnerability, diminishing capacity, and they at times invoked religion to ingratiate themselves with the victims. Our case involves three separate victims. Only one senior was victimized in San Mateo County. The other offenses occurred in Contra Costa and Alameda Counties. However, the fraud scheme perpetrated by the defendants was so unique and particularized that it was clearly all part of an ongoing conspiracy. The defendant was held to answer for all charges at the preliminary hearing and the case is awaiting trial.
“SB 304, by amending section 784.7 to add elder abuse, will be a much more direct and certain way to prosecute these important cases and would be our only option of the defendant acted alone and we could not charge conspiracy. Your bill will be extremely beneficial to law enforcement, especially because the perpetrators of elder financial abuse frequently travel to various jurisdictions, hit one city or county for a few days, and then move on to the next county. Furthermore, the evidence in the cases would be cross-admissible, so it makes sense from the perspective of judicial economy to prosecute them in the same jurisdiction. It would also make the judicial process less daunting for elderly victims, enabling them to only have to testify in one case and in one jurisdiction.”

6) Argument in Opposition: According to the California Public Defenders Association: “SB 304 would add another group of crimes, these involving multiple instances of elder and dependent adult abuse committed in different counties, to the already overlong list of crimes, mostly multiple instances of sex offenses, committed in different counties, to all, subject to a court hearing and certain criteria, may be brought in a single county.

“The jurisdictional statute involved, Penal Code section 784.7 has been expanded too rapidly to assess whether the benefits of consolidating in one county outweigh the problems to the prosecution and the defense, as well as victims, of bringing multiple prosecutions from different counties in one only of them. In less than five years PC section 784.7 has been expanded three times adding 6 crimes to the list. In 2014, effective January 1, 2015, SB 939 added three crimes to the list. In 2017, effective January 1, 2018, AB 368 added another crime to the list. And in 2018, effective January 1, 2019, A.B. 1746 added yet two more crimes.

“Before adding even more crimes, we all should pause and find out if the recent additions are helping or harming judicial economy, increasing or decreasing overall prosecution and defense expenses, how this is affecting convenience or hardship to victims and witnesses, and, most important, whether this is helping or harming public safety.

“Moreover, elder and dependent adult abuse crimes are often of a different nature than the sex offenses that make up most of the crimes already included in Penal Code section 784.7. For example, the former often involve financial, property, or health care issues, which sex offenses usually do not. That alone is enough reason to stop and assess first.”

7) Related Legislation: SB 496 (Moorlach), would provide that broker-dealers and investment advisers are mandated reporters of suspected financial abuse of an elder or dependent adult, and would allow these reporters to notify a trusted third party and delay disbursements or transactions. SB 496 is pending hearing in the Assembly Judiciary Committee.

8) Prior Legislation:

a) AB 1746 (Cervantes), Chapter 962, Statutes of 2018, added sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses.

a) AB 368 (Muratsuchi), Chapter 379, Statutes of 2017, added felony sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger
occurring in two or more jurisdictions to the list of applicable offenses that may be consolidated in a single trial.

b) SB 939 (Block), Chapter 246, Statutes of 2014, added felony human trafficking-related charges occurring in two or more jurisdictions to the list of applicable offenses that may be consolidated in a single trial.

c) AB 2252 (Cohn), Chapter 194, Statutes of 2002, added specified felony sex crimes to the list of applicable offenses that may be consolidated in a single trial, required the prosecution to present evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue, and deleted the requirement that the consolidated offenses involve the same victim.

d) AB 2734 (Pacheco), Chapter 302, Statutes of 1998, permitted jurisdiction for specified felony sex crimes occurring in two or more jurisdictions in any jurisdiction where at least one offense occurred, if the defendant and the victim were the same for all the offenses.

REGISTERED SUPPORT / OPPOSITION:

Support
California District Attorneys Association (Co-Sponsor)
San Mateo County District Attorney's Office (Co-Sponsor)
AARP
California Elder Justice Coalition
California Long-Term Care Ombudsman Association
California State Sheriffs' Association
Crime Victims United of California
Housing and Economic Rights Advocates
Institute on Aging
Monterey County Department of Social Services
Riverside Sheriffs' Association
San Francisco City and County District Attorney
San Mateo County Board of Supervisors
Ventura County District Attorney

Oppose
California Public Defenders Association

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

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

SB 375 (Durazo) – As Amended March 25, 2019

As Proposed to be Amended in Committee

SUMMARY: Extends the deadline for victims of crime to file an application for compensation under the California Victim Compensation Program (CalVCP) to ten years. Specifically, this bill:

1) Provides that an application shall be filed in accordance with the following time lines, whichever is later:
   a) Within ten years of the date of the crime;
   b) Ten years after the victim attains 21 year of age; or,
   c) Ten years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered than an injury or death had been sustained as a direct result of crime.

2) Eliminates the current deadline permitting minor victims of sex crimes to file an application until his or her 28th birthday.

EXISTING LAW:

1) Establishes the California Victim Compensation Claims Board (board) to operate the CalVCP. (Gov. Code, §§ 13950 et. seg.)

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

3) Requires that an application shall be filed in accordance with the following time lines:
   a) Within three years of the date of the crime;
   b) Three years after the victim attains 21 year of age;
   c) Three years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered than an injury or death had been sustained as a direct result of crime, whichever is later; or,
   d) If the application is based on one of the specified sex crimes against minors, the application may be filed any time prior to the victim's 28th birthday. (Gov. Code, § 13953, subd. (a).)
4) Allows the board to grant an extension of the applicable time period for good cause. In making this determination, the board shall consider all of the following:

a) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime;

b) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration; and,

c) Whether, until December 31, 2019, the victim or derivative victim incurs emotional harm, as defined, or pecuniary loss as a result of the identification of the “East Area Rapist,” also known as the “Golden State Killer,” a person suspected of committing a series of homicide and sexual assault crimes in California between 1974 and 1986. (Gov. Code, § 13953, subd. (b).)

5) States that the filing deadline by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime. (Gov. Code, § 13953, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "This bill will decrease barriers for crime survivors to access necessary trauma recovery resources, support, and counseling."

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

3) Timeliness of Application for Compensation: An application for compensation must be filed in a timely manner. Timeliness of the application is specified in statute requiring the application to be filed three years of the date of the crime, three years after the victim attains 21 years of age, or three years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. In addition, applications for compensation based certain sex crimes against minors may be filed any time prior to the victim's 28th birthday. (Gov. Code, § 13953, subd. (a).) The board may however, for good cause, grant an extension of the specified time periods under some circumstances. (Gov. Code, § 13953, subd. (b).)

The board has informed this committee it receives an average of 98 applications per year that are denied for late filing. Further, over the last three fiscal years 2015-16 to 2017-18, an average of 121 late applications were accepted. In the current fiscal year, 2018-19, through
May, 240 late applications have been allowed for good cause, although the number denied for lateness is similar to past years at 102. Finally, the board has informed this committee that, of the claims denied for late filing over the past three full fiscal years, the average claim was filed 4.9 years after the three-year filing deadline.

The proponents of this bill contend that crime victims cannot meet the current three year deadline for submitting a claim to the board because they are either unaware the program exists; they find out about the program much too late; or they may be dealing with on-going trauma. To address these concerns, this bill would extend the time limit for submitting an application for compensation under the CalVCP.

It should be noted that extension of the deadline will not resolve the issue of crime victims being unaware of the existence of the program. Should the extension of the deadline be coupled with outreach efforts?

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

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<tbody>
<tr>
<td>Adjusted Beginning Balance</td>
<td>85,759</td>
<td>86,789</td>
<td>78,614</td>
<td>64,692</td>
<td>41,023</td>
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<td>Revenues</td>
<td>50,000</td>
<td>47,749</td>
<td>49,964</td>
<td>50,000</td>
<td>50,000</td>
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<tr>
<td>Expenditures</td>
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<td>105,439</td>
<td>91,993</td>
<td>92,158</td>
<td>92,224</td>
</tr>
<tr>
<td>Net Revenue (in thousands)</td>
<td>($25,659)</td>
<td>($18,262)</td>
<td>($13,992)</td>
<td>($23,669)</td>
<td>($23,735)</td>
</tr>
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Should the Legislature extend filing deadlines while revenue is depleting and there are concerns about insolvency?

5) **Elimination of Deadline for Minor Victims of Sex Crimes:** This bill repeals the separate deadline extension permitting victims of specified sex crimes who were victimized as children to file a claim any time prior to the victim’s 28th birthday. In light of the fact that all persons who were victimized when they were a minor can now file a claim until the age of 31, this current provision of law becomes redundant.

6) **Argument in Support:** According to *Californians for Safety and Justice*, “Due to the current time limits survivors who are unaware of compensation, are not ready to apply, or who are dealing with their trauma years after their victimization are left out with no financial

¹ The figures are represented are in thousands. So, for example, the projected fund balance for FY 2019-2020 is $17,288,000.
support to access the resources they need. The current 3-year time limit three-year deadline has left many victims of crime without access to the victim compensation program that can provide them with the resources they need to attain recovery.

“According to a 2013 survey, nearly one in three victims reported that they were unaware of but interested in compensation. The same survey found that younger victims and Latino and African-American victims are more likely to be unaware of but interested in victims’ compensation assistance....

“The barriers to addressing these traumas, especially for youth and individuals from marginalized, low-income, minority, and immigrant communities are many and varied. Unfortunately, one of those barriers is that delay on the part of a person to become ready to seek victim compensation and address a trauma can mean that it is too late to receive this crucial assistance under current law. Even with exceptions for late applications, many victims may see the 3-year time limit as a barrier, and not apply for compensation when they learn about the program or when they need it. Unfortunately, no data exists showing how many victims of crime did not apply because they believed it was too late to apply.”

7) Related Legislation:

a) AB 415 (Maienschein), would allow the board to compensate for temporarily housing a pet. AB 415 is pending hearing in the Senate Public Safety Committee.

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

c) AB 629 (Smith), would authorize CalVCP to provide compensation equal to loss of income or support to human trafficking victims. AB 629 is pending hearing in the Senate Public Safety Committee.

d) AB 1449 (C. Garcia), would revise the standards for determining if a victim failed to cooperate with the board for purposes of compensation under the CalVCP. AB 1449 was held in the Assembly Appropriations Committee.

8) Prior Legislation:

a) SB 1232 (Bradford), Chapter 983, Statutes of 2018, extends the time limit for a minor victim to file an application for compensation under the CalVCP to within three years after the victim turns 21 years of age.

b) AB 1061 (Gloria), of the 2017-2018 Legislative Session, would have, in pertinent part, conformed the application deadline for victims of sex crimes to the statute of limitations for those crimes. AB 1061 was held on the Assembly Appropriations Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support
Californians for Safety and Justice (Sponsor)
Alliance for Boys and Men of Color
California Catholic Conference
Crime Victims United of California
Ella Baker Center for Human Rights

**Opposition**

None

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 SB-375 (Durazo (S))

Mock-up based on Version Number 98 - Amended Senate 3/25/19
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 13953 of the Government Code is repealed. amended to read:

(a) An application for compensation shall be filed within three ten years of the date of the crime, three ten years after the victim attains 21 years of age, or three ten years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. An application based on any crime eligible for prosecution under Section 801.1 of the Penal Code may be filed any time prior to the victim's 28th birthday.

(b) The board may for good cause grant an extension of the time period in subdivision (a). In making this determination, the board shall consider all of the following:

(1) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime.

(2) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration.

(3) Whether the victim or derivative victim incurs emotional harm or pecuniary loss as a result of the identification of the “East-Area Rapist,” also known as the “Golden State Killer,” a person suspected of committing a series of homicide and sexual assault crimes in California between 1974 and 1986. As used in this paragraph, “emotional harm” includes, but is not limited to, harm incurred while preparing to testify. This paragraph shall cease to be operative on December 31, 2019.

(c) The period prescribed in this section for filing an application by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime.

SEC. 2. Section 13953 is added to the Government Code, to read:

Sandy Uribe
Assembly Public Safety Committee
06/20/2019
Page 1 of 2
13953. (a) An application for compensation may be filed at any time following the qualifying crime.

(b) The date on which the board receives the application is the application filing date.
SUMMARY: Changes the definition of "infrequent" for purposes of specified firearms transfers. Specifically, this bill:

1) Redefines "infrequent" to mean "less than six firearm transactions per calendar year, regardless of the type of firearm, and no more than 50 total firearms within those transactions."

2) Exempts from the requirement that a person be a licensed dealer in order to transfer a firearm, specified transfers made by a formerly licensed dealer that is ceasing operations, transfers made to a specified government entity as part of a "gun-buyback" program, and transfers made by a person prohibited from possessing a firearm to a dealer for the purpose of storing that firearm.

3) Extends the exemption to the transfer of a firearm to a trust beneficiary, as specified.

4) Clarifies that specified exemptions to firearm laws which currently apply to certain charity auctions, also apply charity raffles.

5) Requires all firearms sold or otherwise transferred by charity auction or raffle to be delivered to a licensed dealer for delivery to the recipient and deletes language allowing for infrequent transfers without licensed dealer for those events.

6) Requires anybody manufacturing 50 or more firearms to be licensed as a manufacturer.

7) Repeals the exemption which allows a charitable auction to avoid the waiting period required by law before a person can take possession of a firearm.

8) Directs Department of Justice (DOJ) to maintain additional records regarding firearms.

9) Makes findings and declarations.

EXISTING LAW:

1) Defines "infrequent" for purposes of handgun transactions as "less than six per calendar year." Defines "infrequent" for purposes of long gun sales as "occasional and without regularity." The term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to
invoke the exemption notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events. Specifies that "transaction" means a single sale, lease, or transfer of any number of handguns. (Pen. Code § 16730.)

2) Requires that firearms transfers go through a licensed firearms dealer. (Cal. Penal Code § 27545.)

3) Exempts from the requirement that transfers go through a licensed dealer requirement, the transfer of a firearm by bequest or intestate succession, or to a surviving spouse. (Cal. Pen. Code § 26500.) Provides certain exemptions to prohibitions on openly carrying a firearm, storage of firearms, dealer processing requirements, and off-premises transactions by a licensed dealer, for specified charity auctions and similar events. (Cal. Pen. Code §§ 26384 & 26500.)

4) Requires a person manufacturing 100 or more firearms each year in the state to be licensed as a manufacturer. (Cal. Pen. Code § 29010.)

5) States that where neither party to a firearm transaction holds a dealer's license issued as specified, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer, as specified. (Pen. Code, § 27545.)

6) Specifies that the requirement that a firearm transaction go through a licensed firearms dealer, does not apply to the loan of a firearm to a parent, child, sibling, grandparent, or grandchild, if all of the following requirements are satisfied (Pen. Code, § 27880.):

a) The loan is infrequent, as specified;

b) The loan is for any lawful purpose;

c) The loan does not exceed 30 days in duration; and,

d) For any firearm, the individual being loaned the firearm shall have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

FISCAL EFFECT:

COMMENTS:

1) Author's Statement: According to the author, "Consistent with the United States Supreme Court's Heller-McDonald decisions, which upheld ministerial licensing and registration, California has enacted a comprehensive system addressing the public safety concern's associated with making, acquisition, distribution, and possession of firearms and ammunition.

"Because 'through dealer processing’ has been federal law since 1968 and private party transactions ["PPT’s"] as a practical matter have had to be processed through a licensed dealer since at least 1953 – as noted in People v. Bickston, (1979) 91 Cal. App. 3d Supp. 29,
the subsequent focus in the late 1980's had been on creating a clear regulatory structure that facilitates and regulates PPT transactions.

"Prior to 1990, California had minimal regulation of rifles and shotguns as compared to longstanding regulations of handguns. The transfer of long guns was not generally regulated by state law. Regulation began in 1988 with AB 1540 and AB 3707 (Klehs). The following year, AB 1756 (1989, T Friedman) subsequently defined the main term "infrequent" as to handguns to mean 5 separate sales, leases (rentals) or other transfers of ownership to less than 5 a year to discrete individuals or in 5 separate discreet transactions to the same individual. However, multiple guns transferred to the same individual at the same time counted as one transaction.

"After 1990, state law began to clarify that in order to sell, loan, or transfer a handgun the transaction typically had to be by or processed through a state licensed firearms dealer. In 1990, AB 497 (Connelly) was enacted which extended the same processing rules that had long existed to handguns to rifles and shotguns. In 1991, Assembly Bill 242 modified the requirements imposed by AB 497 by doing all of the following:

- Exempting from dealer licensure the infrequent sale or other transfer by an individual of a firearm, other than a handgun, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code by adding a discrete exemption for nonprofits and redefining the term "infrequent" as to those transactions.

- Exempting from dealer processing the transfer of a firearm other than a handgun, if the firearm is donated for an auction or similar event and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

"In late 1993, the Congress enacted the Brady Handgun Violence Prevention Act which contained both of the following components:

- Prior to the delivery of any firearm by a federal firearms licensee, a background check is required to be conducted by the National Instant Criminal Background Check System (NICS).

- The Federal Bureau of Investigation would conduct background checks, but a state could designate an agency to conduct electronic federal and state checks.

"In 1996, legislation was enacted to provide regulatory relief to federally licensed firearm collectors with Department of Justice certificates of eligibility. That legislation required all transactions to be processed through a state licensed firearms dealer but provided those individuals an exemption from the waiting period.

"In 1998, legislation was enacted to require state licensing of federal firearms manufacturers if they manufactured more than 100 firearms within this state.

"In 1998, to avoid the creation of duplicative reporting systems, legislation was enacted to require curio and relic rifles and shotguns to be processed through a state licensed firearms
dealer unless certain “infrequent transfers” were made by private parties as to certain curio and relic rifles. The auction waiting period exemption was made obsolete by the advent of NICS.

“At some point, the law that exempted from the licensure requirement, the infrequent sale or transfer of a firearm, other than a handgun, at charity auctions or similar events by adding a discrete exemption for nonprofits and redefining the term “infrequent” as to those transactions, was repealed.

“Moreover, as to auctions, prior to 2000, Section 19 of Article IV of the California Constitution barred raffles, which are a form of lottery. AB 497 was enacted during that time. In 2000, Senate Constitutional Amendment 4 was approved. It authorized the Legislature to allow private nonprofit organizations to conduct raffles as a funding mechanism to provide support for their own or others beneficial charitable works, as specified.

“In 2005, a reporting system was created to track the transfer of firearms between federal firearms licensees to ensure that state licensing requirements were followed. That legislation also exempted transactions involving certain curio and relic rifles and shotguns, creating an ambiguity as to which persons were to be included in, or could enroll in, the system.

“In 2009, legislation was enacted to clarify which persons were subject to licensing verification prior to the shipment of a firearm. That legislation did not resolve the ambiguity as to which persons were included in, or could enroll in, the reporting system. The Department of Justice decided that federally licensed collectors and federally licensed manufacturers and importers of ammunition who held no other federal firearms license were not part of the verification program.

“In 2011, Assembly Bill 809 was enacted to mandate the same reporting and record retention requirements for handguns and long guns. AB 809 required conforming changes to various statutory procedures relating to record retention. AB 809 did not make related conforming changes to sales of long guns at auctions. This was clearly an oversight.

“AB 809 also repealed the dealer processing exemption for curio and relic rifles and shotguns but continued the exemption for infrequent transactions by collectors involving curio and relic long guns if the transaction was reported to the Department of Justice. That exemption created its own ambiguities and also created cross-referencing issues.

“SB 376 puts in the same definition of “infrequent” for long guns as handguns and puts in a global cap of 50 guns a year. In addition, as to manufacturers it puts in a 50 gun threshold reduced from the 100 in code.

“Because the 50 gun cap could affect legitimate and other “1 shot” transactions and because the term “infrequent” is used in various code sections, SB 376 had to take a thorough review of where the term “infrequent” is used in code. Also, to accommodate the enactment of SCA modernize the auction language. This is really a continuation of prior efforts and has been done in close coordination with the G.O. Committee of both house.

“In doing so, SB 376 does the following in the way of conforming changes:
• Repeals the exemption from through dealer processing for the infrequent sale or transfer of a firearm other than a handgun, at charity auctions, raffles, or similar events, thus requiring that the transfer of a firearm to the purchaser be processed through a state licensed dealer. [Amendments to repeal Penal Code §§ 16520(d)(1) and 16730((b) and repeals current Penal Code § 27900]

• Adds a loan exemption from through dealer processing for loans of firearm other than a handgun, at charity auctions, raffles, or similar events if the gun stays on premises. [Rewrite of Penal Code § 27900]

• Modernize the dealer licensing exemption for infrequent sale or transfer of a firearm, other than a handgun, at charity auctions, raffles, or similar events by exempting the actual delivery of those firearms to a dealer for processing so that as long as they are doing transactions through a state licensed dealer, they need not worry about their own dealer licensure. This is what non-profits are doing now. [Amendments adding Penal Code § 26581.]

• Retain and modernize the exemption from dealer processing for the transfer of a firearm, other than a handgun, if the firearm is donated for the auction, raffle, or similar event and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auctions or similar event. Penal Code § 27905

• Not touch the references to “infrequent” in Penal Code § 27875 [intra-familial non sale transfers of ownership – self reporting to DOJ with background check and FSC] or intra-familial loans as clarified in AB 1511 enacted in 2016. See: Penal Code § 27880. [Issues related to loans which is 1511 related as to storage is addressed by addressing loan exemptions in SB 172]

• Retain provisions and modernizes the same that that allow a dealer to accept delivery of firearms, other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction, raffle, or similar event as well as other provisions to reflect SCA 3. See amendments to Penal Code §§ 26384, 26805 and 26890.

• Codify in statute certain existing Department of Justice practices regarding transactions involving curio or relic firearms, and firearm shipment verification procedures by eliminating a reference to “infrequent” in Penal Code § 27820 and rewriting the code section to reflect DOJ practices in settlement of a threatened lawsuit.

• Exempt from dealer licensure requirements certain other transactions by adding new exemptions to wit: (i) buybacks [new Penal Code § 26576]; (ii) relinquishments to dealers by prohibited persons [new Penal Code § 26577], adding new exemptions from dealer from dealer licensure relinquishments within a 60 day period by expanding the scope of existing Penal Code § 26515, and creating a ceasing operation exemption with reporting to DOJ by enacting Penal Code § 26556.

• On the Cease operation” exemption, SB 376 also makes via cross-references a PPT exemption, safe transport exemption, and AFS changes to reflect that as well as related
cross-referencing changes. See amendments to Penal Code §§s’ 11106, 25555, 26379, 26405, 27937, and 28230.

- Out of an abundance of caution apply the safe transport exemptions specifically to relinquishment of guns to a dealer per Penal Code § 29830 by amending Penal Code §§s’ 25555, 26379, and 26405 to reference Section 29830.

- Exempt via amendments to Penal Code § 27966 from dealer processing requirements all receipts of curios and relic long guns by licensed collectors who have a COE provided they register the same with DOJ under current law, but retain the requirement that those persons who transfer curio and relic long guns directly to licensed collectors be licensed as a dealer unless some specific exemption applies. [Under current law (Penal Code § 26585) there is an exemption from dealer licensure if Collector A with a COE transfers a gun to collector B with a COE if it is brokered through a dealer. There is also a waiting period exemption for licensed collectors with COE’s in current law. See: Penal Code §§s’ 26970 and 27670.]

- Correct drafting errors that were made in AB 809 by making specific cross-referencing insertions of Penal Code § 27966 into Penal Code §§s’ 11106 and 26405 to reflect the enactment of Penal Code § 27966.”

2) **Firearms Transfers Must Generally be Conducted Through a Licensed Dealer:** When both parties to a transaction are private parties, firearms transfers in California must be completed through a licensed California dealer. (Cal. Pen. Code § 27545.) To complete these transactions, the seller or transferor must provide the firearm to the dealer, who will deliver the firearm to the purchaser or transferee following a background check and expiration of the mandatory state waiting period, unless the transferee is prohibited from purchasing or possessing firearms, or the dealer is otherwise notified by the California Department of Justice (DOJ) that the sale or transfer may not proceed. (Cal. Pen. Code §§ 28050(a)-(c).) If the dealer cannot deliver the firearm to the purchaser or transferee, the dealer must determine whether the private seller or transferor is prohibited from possessing a firearm. If the seller or transferor does not fall into a prohibited class, the dealer must immediately return the firearm to that party. In the event the seller or transferor does fall into a prohibited class, the dealer cannot return the firearm to that party, and must deliver the firearm to the sheriff of the county or to the chief of police of any city in the county in which the dealer operates.

The following sales and transfers are exempt from the requirement that they be processed through a licensed dealer:

a) Certain government-sponsored transfers, including gun buybacks;

b) Certain transfers to nonprofit historical societies, museums, or institutional collections;

c) Transfers to licensed firearms manufacturers and importers;

d) Infrequent transfers between immediate family members;

e) Certain loans involving firearms;
f) Donations made to non-profit auctions;

g) Transfers by operation of law; and,

h) Certain transfers of curios or relics to licensed firearms collectors.

This bill would extend current exemptions regarding transfer and licensing requirements to additional circumstances which are consistent with existing law.

3) **Infrequent Firearms Transfers**: Current law exempts certain firearm transfers from the requirement that the transfer go through a licensed gun dealers when the transfer between people is "infrequent." The term "infrequent" is defined differently depending on whether the firearm is a handgun or a long gun. Existing law defines "infrequent" for purposes of handgun transactions as less than six per calendar year. Existing law defines "infrequent" for purposes of long gun sales as "occasional and without regularity." This bill would redefine "infrequent" to mean less than six firearm transactions per calendar year, regardless of the type of firearm, and no more than 50 total firearms within those transactions.

4) **Argument in Support**: According to *Brady United Against Gun Violence*, "Over the past thirty years, California has enacted and strengthened laws regulating handgun and assault weapon sales and possession. However, the regulation of long gun sales and possession has been either neglected or implemented far later. SB 376 brings the sell, lease, or transfer regulations of long guns in line with California’s regulations exempting infrequent transfers of handguns from licensed dealer processing requirements. Specifically, the bill provides that ‘infrequent’ firearm transfers (less than six firearm transactions per calendar year) refer to every type of firearm, not just handguns, and allows no more than 50 total firearms transfers within a calendar year. Additionally, SB 376 updates existing law by exempting gun buy-backs, trust beneficiaries and others, as specified, from requirements of transferring firearms through a licensed dealer and resolves issues regarding charity raffles and auctions. Finally, the bill requires anybody manufacturing 50 or more firearms to be licensed as a manufacturer, instead of the current threshold of 100 firearms.

“SB 376 will help the California Department of Justice enhance their oversight of firearm transfers and assist dealers and the general public in better understanding of firearm sales and transfer regulations. The bill furthers our goal to have most transfers of firearms conducted by regulated and licensed firearms dealers. As such, Brady California is in support of SB 376.”

5) **Argument in Opposition**: According to *California Sportsman’s Lobby*, “The bill would unnecessarily limit to less than six the number of firearms sales transactions a sportsmen or other lawful individual could engage in per year.

“Currently, less than six transactions per year is the cap for handguns and, for rifles and shotguns, it is specified as ‘infrequent’ (occasional and without regularity).

“All private party transactions are processed through a properly licensed firearms dealer, and there is a ten-day waiting period before a sale or transfer can be completed during which time the Department of Justice conducts a criminal and mental history background check to determine if the prospective buyer/transferee is eligible to possess a firearm.
“Sportsmen and others occasionally (and without regularity) engage in private party firearms transactions through licensed firearms dealers in order to upgrade the quality of their firearms or to make other changes that would improve the enjoyment of their outdoor experience.

“There is no problem with the existing law that would justify changing the current restrictions as proposed.”

6) Related Legislation:

a) AB 1009 (Gabriel), would allow the reports for various firearm transactions to be made via the California Firearms Application Reporting System (CFARS), and would, commencing January 1, 2025, require the report to be made via CFARS. AB 1009 is set for hearing on June 25, 2019, in the Senate Public Safety Committee.

b) AB 1292 (Bauer-Kahan), would specify circumstances following the death of a firearm owner which allow a firearm to be transferred from one person to another by operation of law without the need to go through a firearms dealer. AB 1292 is on the Senate Floor.

7) Prior Legislation:

a) SB 746 (Portantino), Chapter 780, Statutes of 2018, established procedures for return of ammunition that has been seized by law enforcement or has been transferred to a licensed firearms dealer because of a temporary prohibition on ammunition possession.

b) AB 1511 (Santiago), Chapter 41, Statutes of 2016, specified that the infrequent loan of a firearm may only be made to family members.

c) AB 1609 (Alejo), Chapter 878, Statutes of 2014, clarified the regulations for direct shipment requirements for transfer of ownership of firearms.

d) AB 740 (Alejo), of the 2013-2014 Legislative Session, would have clarified the definition of infrequent transactions as they apply to all firearms transactions. AB 740 was vetoed by the Governor.

e) SB 683 (Block), Chapter 761, Statutes of 2013, extended the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun.

REGISTERED SUPPORT / OPPOSITION:

Support

Department of Justice (Sponsor)
Bay Area Student Activists
Brady California United Against Gun Violence
Youth ALIVE!
Oppose

California Sportsman's Lobby, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
Date of Hearing: June 25, 2019
Counsel: Sandy Uribe

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

SB 393 (Stone) – As Introduced February 20, 2019

SUMMARY: Allows a court to impound a vessel after a conviction of boating under the influence (BUI) if the conduct resulted in the unlawful killing of a person. Specifically, this bill:

1) States that a vessel used in the commission of a BUI is subject to impoundment if the owner is convicted of the crime and the conduct resulted in the unlawful killing of a person.

2) Allows the court to impound the vessel at the registered owner's expense for up to 30 days.

3) Allows the court to consider factors in the interests of justice when making a determination on impoundment, including:
   a) Whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family;
   b) Whether impoundment would result in the loss of the vessel because of inability to pay impoundment fees;
   c) Whether impoundment would unfairly infringe upon community property rights; or,
   d) Any other facts the court finds relevant.

4) Defines “vessel” as “every watercraft used or capable of being used as a means of transportation on the waters of the state, including all boats, motorboats, personal watercraft, recreational vessels, and undocumented vessels, except foreign and domestic vessels engaged in interstate or foreign commerce upon the waters of the state.”

EXISTING LAW:

1) Prohibits a person from operating a vessel or manipulating water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harb. & Nav. Code, § 655, subd. (b)).

2) Prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (c).)

3) Prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harb. & Nav. Code, §
4) Provides that a motor vehicle used by the registered owner in driving under the influence (DUI) conviction may be impounded for up to 30 days upon conviction. (Veh. Code, § 23594, subd. (a).)

5) Provides that if the DUI offense occurred within five years of another offense the court shall, except in unusual cases where the interest of justice would not be served, impound the vehicle upon conviction for one to 30 days. (Veh. Code, § 23594, subd. (a).)

6) Provides that if the DUI offense occurred within five years of two or more offenses the court shall, except in unusual cases where the interest of justice would not be served impound the vehicle upon conviction for one to 90 days. (Veh. Code, § 23594, subd. (a).)

7) Lists examples of factors that the court may consider for purposes of determining whether the interests of justice would not be served by impoundment of the vehicle. (Veh. Code, § 23594, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “Existing California law provides that the court may order a vehicle registered to the defendant and used in the commission of a Driving under the Influence (DUI) to be impounded at the defendant’s expense for up to 30 days if the defendant has not had a prior conviction within the last five years.

“While the law is clear about the rules for impounding a vehicle that has been used in the commission of a DUI the law is less clear on the rules for a boat that has been used in a Boating under the Influence (BUI) incident.”

2) DUI and BUI: Existing law criminalizes the operations of both cars and water vessels when under the influence of alcohol, drugs, or both. As with driving under the influence, existing law prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (c).)

Existing law permits the impoundment of a vehicle upon the conviction of a DUI. It is discretionary upon the first conviction, but mandatory for repeat offenders if the second DUI occurs within five years of the first conviction.

This bill would allow a court to impound a boat or other recreational water vessel when its owner is convicted of BUI and the offense results in a fatality. The boat could be impounded for up to 30 days, and the owner would be liable for the costs.

3) Prior Veto Message: This bill is identical to SB 644 (Stone), of the 2016-2017 Legislative Session, which Governor Brown vetoed. The veto message said:

“This bill authorizes a court to impound a boat for up to 30 days in boating under the
influence cases if the owner is convicted and the conduct resulted in the unlawful killing of a person.

“Boating under the influence is a very troubling crime which exposes the public to grave danger. However, especially in cases where this conduct resulted in an unlawful killing, a defendant will be exposed to very serious criminal and civil liability, including potentially years in prison depending on the circumstances. I do not see the need, in these tragic but narrow instances, to additionally expand the powers of government to impound private property as an added punitive measure.

“Because this bill will not act as a deterrent, and existing criminal and civil penalties are sufficient to address the conduct contemplated, I am returning this measure without my signature.”

4) Boating Accident Statistics: According to a 2016 report by the California State Parks Division of Boating and Waterways, between 2012 and 2016, there were 229 boating-related fatalities. In those cases where testing for alcohol was conducted, 35% of the boating fatalities in the state involved alcohol. (See 2016 California Recreational Boating Accident Statistics, p. 17, available at: http://www.dbw.parks.ca.gov/pages/28702/files/2016DBW_AccidentStats_Ca_051217.pdf)

5) Argument in Support: None submitted.

6) Argument in Opposition: According to the Marina Recreation Association, “Our primary concern is that unlike motor vehicles where there are impound lots where vehicles can be safely stored, vessels will be impounded in both private and public marinas that have no designated areas for impoundment and may be held liable for damages that could occur while the vessel is being held in a marina. We simply request that the marinas may have a release of liability during the court ordered impoundment.

“We are not opposed to vessels being impounded in our marinas, however, we feel that there is additional burden on each marina that could create additional liabilities, unless there is specific language exempting both public and private marinas from liability we will continue to oppose.”

7) Related Legislation: AB 401 (Flora) required, in pertinent part, a court, upon convicting a person for a specified offense of driving under the influence that occurred within 10 years after a previous conviction or convictions, for specified DUI related offenses, to order that person’s vehicle to be impounded for not less than 30 days or 90 days, as specified. AB 401 failed passage in this committee and has been granted reconsideration.

8) Prior Legislation:

a) SB 644 (Stone), of the 2016-2017 Legislative Session, was identical to this bill and was vetoed.

b) AB 539 (Levine), Chapter 118, Statutes of 2015, authorizes the issuance of a search warrant to compel a blood draw from a person suspected of BUI.
REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

California Association of Harbor Masters and Port Captains
California Yacht Brokers Association
Marina Recreation Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Authorizes the superior court, in agreement with the district attorney and public defender, to establish a pretrial diversion program for primary caregivers of minor children. Specifically, this bill:

1) Allows the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender or the contract public defender’s office, to agree in writing to establish and conduct a pretrial diversion program for primary caregivers.

2) Specifies that the program may include, but is not limited to, parenting classes, family and individual counseling, and other classes, treatment and training programs.

3) Provides that the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant if the defendant meets all of the following requirements:

   a) The defendant is a custodial parent or legal guardian of a child under the age of 18 years who presently resides in the same household as that child, and, either alone or with the assistance of other household members, presently provides a significant portion of the necessary care or financial support of that child;

   b) The defendant has been advised of, and waives, the right to a speedy preliminary hearing and trial, and to a trial by jury;

   c) The defendant agrees to comply with the requirements of the program;

   d) The court determines that defendant does not pose an unreasonable risk of danger to public safety or to the custodial child, if allowed to remain in the community; and,

   e) The defendant is not charged with a serious felony or violent felony, as specified.

4) States that in determining whether the defendant poses an unreasonable risk if allowed to remain in the community, the court may consider the opinions of both the prosecutor and defense counsel, as well as the defendant’s violence and criminal history, the current charged offense, the behavior towards the minors, and any other factors deemed appropriate.

5) Provides that the court on its own motion, the prosecutor, or the probation department, may move to reinstate criminal proceedings if it appears that the defendant is either performing unsatisfactorily in the program, or if the defendant is convicted of a felony or any offense.
that reflects a propensity for violence subsequent to entering the program.

6) Requires the court, after notice to the defendant, to hold a hearing to determine whether to reinstate criminal proceedings.

7) Requires the court to schedule the matter for further proceedings if it finds that the defendant is not performing satisfactorily in the program or has been convicted of a felony or any offense that reflects a propensity for violence.

8) Entitles a defendant who has performed satisfactorily on diversion to dismissal of the criminal charges.

9) Provides that upon successful completion of diversion and dismissal of the charges, the arrest upon which the diversion was based shall be deemed to never have occurred and the court shall order access to the arrest record restricted, as specified.

10) Prohibits the use of, without the defendant’s consent, an arrest record or any record generated as a result of the defendant’s diversion in any way that could result in the denial of any employment, benefit, license, or certificate.

11) Requires the defendant be informed that an order to seal arrest records after successful completion of diversion has no effect on a criminal justice agency’s ability to access and use those sealed records and information regarding sealed records.

EXISTING LAW:

1) Defines pretrial diversion as “the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.” (Pen. Code, § 1001.1.)


3) Excludes specified driving under the influence offenses from pretrial diversion eligibility. (Pen. Code, § 1001.2, subd. (a).)

4) Provides that the district attorney of each county shall review annually any misdemeanor diversion program adopted by the county, and no program shall continue without the approval of the district attorney. No person shall be diverted under a program unless it has been approved by the district attorney. (Pen. Code, § 1001.2, subd. (b).)

5) States that the prosecutor is not authorized to determine whether a particular defendant shall be diverted. (Pen. Code, § 1001.2, subd. (b).)
6) Specifies that at no time shall a defendant be required to make an admission of guilt as a prerequisite for placement in a pretrial diversion program. (Pen. Code, § 1001.3.)

7) Provides that a defendant in a diversion program is entitled to a hearing, as set forth by law, before pretrial diversion can be terminated for cause. (Pen. Code, § 1001.4.)

8) States that if the defendant has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed at the end of the period of diversion. (Pen. Code, § 1001.7.)

9) Authorizes a person who has successfully completed pretrial diversion to petition a court to issue an order to seal the arrest records for the diverted offense. (Pen. Code, § 851.87.)

10) Provides that any record filed with the Department of Justice (DOJ) shall indicate the disposition in diverted cases. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The participant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the participant’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.9, subd. (a).)

11) Requires an advisement to the participant in a diversion program informing him or her that, regardless of the successful completion of diversion, the arrest record may be disclosed in response to a peace officer application request and the participant is obligated to disclose the arrest if applying for employment as a peace officer. (Pen. Code, § 1001.9, subd. (b).)

12) States that, notwithstanding an order to seal arrest records for a diverted offense, a criminal justice agency retains the ability to access and use those sealed records. (Pen. Code, § 1001.9, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “SB 394 protects dependent children from being separated from their caregiver by providing the primary caregivers with the support they need to remain in the home.

“SB 394 diverts eligible defendants out of the traditional system and into the pretrial diversion program where they required to participate in programming such as: housing, employment, parenting, counseling, financial literacy, drug and alcohol treatment, or mental health screening and treatment.

“Upon satisfactory completion of the diversion program, the charges will be dismissed, and the primary caregiver and dependent child will not be saddled with the debilitating collateral consequences of a criminal conviction.”
2) **Diversion Programs:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume.


This bill would authorize courts, in concurrence with the district attorney and the public defender of the county, to establish a pretrial diversion program for primary caregivers of minor children. This bill would also require that a defendant meet specific eligibility criteria including that the defendant is a custodial parent or legal guardian of a minor child, presently resides in the same household as that child, and either alone or with the assistance of other household members, presently provides a significant portion of the necessary care or financial support of that child. Further, in order to grant diversion, the court must be satisfied that the defendant would not pose an unreasonable risk of danger to public safety or to the custodial child, if allowed to remain in the community. A defendant charged with a serious or violent felony would be excluded from eligibility under the provisions of this bill.

3) **Impact of Incarceration on Dependent Children:** According to a 2017 article published by the National Institute of Justice (NIJ), children of incarcerated parents are “hidden victims” of the criminal justice system. These children often face a multitude of challenges including: psychological strain, antisocial behavior, suspension or expulsion from school, economic hardship, and criminal activity. (Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NIJ Journal No. 278, March 2017, available at: <https://www.nij.gov/journals/278/Pages/impact-of-incarceration-on-dependent-children.aspx>.) The article acknowledges that because each child and case is unique, “It is difficult to predict how a child will fare when a parent is intermittently or continually incarcerated, and research findings on these children’s risk factors are mixed.” (*Ibid.*)

According to the NIJ, the most common consequence of parental incarceration appears to be antisocial behavior, “which describes any number of behaviors that go against social norms, including criminal acts and persistent dishonesty.” Other psychological problems include depression.

The NIJ article notes that research indicates that the imprisonment of a parent will lead to a cycle of intergenerational criminal behavior. Further, one study found that children who have incarcerated mothers “had much higher rates of incarceration — and even earlier and more frequent arrests — than children of incarcerated fathers.”
Another impact described in the NIJ article is economic well-being, as most children with incarcerated parents have restricted financial resources available for their support. Finally, the article notes that the research suggests that the incarceration of a parent may affect educational attainment.

As for the propensity of the problem, the article states that the estimates on the number of who have incarcerated parents vary; but that one report found that the number of children who have experienced parental incarceration may range from 1.7 million to 2.7 million. The data further shows that children from communities of color are more likely to have an incarcerated parent than white children.

4) **Equal Protection Considerations:** This bill would establish a separate diversion program for primary caregivers of dependent children which is not available to defendants who are not primary caregivers. A state law that provides favorable treatment to one class of persons based solely on their status, while denying other classes of persons the same treatment may raise equal protection implications.

The concept of equal protection recognizes that persons who are similarly situated with respect to a law’s legitimate purposes must be treated equally. Accordingly, the first prerequisite to a claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged. *(People v. Brown (2012) 54 Cal.4th 314.)*

Under the provisions of this bill, the allegation would be that persons who commit the same crime might be treated differently based on whether or not the perpetrator is a parent who is the primary caregiver of a dependent child.

The courts have used a three-tier system in order to determine whether a statute violates the equal protection clause: strict scrutiny, intermediate scrutiny, and minimal scrutiny. Where legislation does not burden a suspect class or a constitutionally protected right, then the legislative act faces minimal scrutiny. Equal protection of the law is denied only where there is no “rational relationship between the disparity of treatment and some legitimate governmental purpose.” *(Johnson v. Department of Justice (2015) 60 Cal.4th 871, 881.)* Under the minimal level of equal protection analysis, great deference is given to legislative determinations. *(Id. at p. 887.) “A state may provide for differences as long as the result does not amount to invidious discrimination. Equal protection … require[s] that a distinction made have some relevance to the purpose for which the classification is made.” (People v. Cruz (2012) 207 Cal.App.4th 664, 675, citations omitted.)*

The stated goal of this primary caregiver diversion program is to avoid the detrimental impacts that parental incarceration has on minor, dependent children. This would appear to be a legitimate state interest.

Further, it should be noted that although most diversion programs are offense specific, there are several diversion programs which make eligibility contingent on the nature of the offender. For example, the Legislature established a diversion program for defendants diagnosed with qualifying mental health disorders. *(Pen. Code, § 1001.36, subd. (a).)* There
is also a diversion program for persons with cognitive developmental disabilities. (Pen. Code, § 1001.20 et. seq.) And there is diversion program available for members of the military and veterans. (Pen. Code § 1001.80.)

Moreover, several courts have found that equal protection principles do not require the Legislature to make diversion uniformly available. (See e.g. People v. Superior Court (Skoblov) (1987) 195 Cal.App.3d 1209, 1214-1218 [addressing an equal protection challenge to misdemeanor diversion because it was not offered in all counties]; People v. Edwards (1991) 235 Cal.App.3d 1700, [addressing an equal protection challenge based on ineligibility for drug diversion based on a specific offense].)

5) **Argument in Support**: According to the National Association of Social Workers California Chapter, "The incarceration of a parent is an inherently traumatic event for a child of any age. A study published in the September 2018 issue of the journal Pediatrics found that the incarceration of a parent was associated with unhealthy behaviors in young adulthood, even after controlling for other variables. This finding builds on previous research which has established that parental incarceration ‘is associated with learning delays and behavioral problems […] and] is detrimental to health in childhood and adulthood,’ with significantly higher rates of asthma, HIV/AIDS, depression, anxiety, and posttraumatic stress disorder among those whose parents were incarcerated ("Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration"). No child, of course, should live in an unsafe home; but all too often, parents are jailed for minor, nonviolent offenses, removed from their children when there is no threat to the child’s well-being."

"SB 394 (Skinner) would reduce the trauma of parental incarceration by allowing parents who are their children’s primary caregivers to complete a specially designed diversion program rather than face jail time for minor, nonviolent offenses—thus avoiding the punishment of children for their parents’ deeds.”

6) **Argument in Opposition**: According to the California District Attorneys Association, "This bill would create a new pretrial diversion scheme, singling out one class of individuals for disparate treatment under the law; allowing those who provide primary care for children, financially or otherwise, to avoid accountability for their crimes.

"The following cases offer legal support as to why disparate treatment should be avoided: Eisenstadt v. Baird (1972) 405 U.S. 438 [statute permitting married persons to obtain contraceptives to prevent pregnancy but prohibiting distribution of contraceptives to single persons for that purpose violates equal protection clause]; Williams v. State (Ala. Crim. App. 1986) 494 So.2d 819 [marital exemption to forcible sodomy statute was not rationally based and thus violated equal protection clause of Fourteenth Amendment].

"AB 394 would also jeopardize public safety by hiding the commission of criminal offenses to future employers who may come to rely on the integrity of the employee for financial and other sensitive matters….

"In Los Angeles County alone, there were 284,433 misdemeanors filed in FY 2014-15. SB 394 would allow many of these defendants (plus a sizeable cohort of 1170(h) felons) to make the case for diversion based on a claim that he or she is the primary caregiver, whether financially or through emotional support and care. In addition to the time this would take up
front, because this is pre-plea diversion, the court would have to leave all of these cases open for up to two years while the defendant participates in the program....

“Finally, SB 394 seems to ignore the reality that many of these crimes have victims. The bill lacks even basic language to address how victim restitution would be impacted in the event of a case dismissal and/or during the pendency of a lengthy diversion process.

“Under current law, the court already has the discretion to consider the defendant’s contribution to the family unit in determining what the appropriate sentence is for the offense committed. The probation department is in the best position to determine the appropriate services for a defendant that is placed on probation. And, the resources and infrastructure already exist for probation.”

7) Prior Legislation:

a) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, in pertinent part, created a diversion program for repeat theft offenders, and sunsets the program on January 1, 2021.

b) AB 1810 (Assembly Budget Committee), Chapter 34, Statutes of 2018, allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community.

c) AB 596 (Choi), of the 2017-2018 Legislative Session, would have provided that a referral to diversion qualifies as a conviction for purposes of a victim seeking and securing restitution. AB 596 was referred to this Committee and the hearing was cancelled at the request of the author.

d) AB 994 (Lowenthal), of the 2013-2014 Legislative Session, would have required each county to establish and maintain a pretrial diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed.

e) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
California State PTA
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter

Opposition

California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Riverside Sheriff's Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: June 25, 2019
Counsel: David Billingsley

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

SB 409 (Wilk) – As Amended April 9, 2019

PULLED BY AUTHOR
SUMMARY: Allows the service of a subpoena by electronic mail or fax. Specifically, this bill:

1) Requires a subpoena to contain a unique numeric or alphanumeric identification code, known as a "subpoena number".

2) Authorizes delivery of a subpoena by electronic mail or facsimile transmission.

3) Requires, for service to be effected, that:
   a) The witness identify the subpoena by reference number; and
   b) The sender make a written notation of the fact that the witness made said identification.

4) Repeals provisions of law pertaining to service of subpoenas by telegraph or teletype.

EXISTING LAW:

1) Permits only select individuals to sign and/or issue a subpoena. (Pen. Code, §1326.)

2) Provides that a subpoena may be served by any person, except the defendant. (Pen. Code, §1328, subd. (a).)

3) Requires that a peace officer shall serve, in his or her county, any subpoena delivered to the officer for service either on the part of the prosecution or the defendant, and shall, without delay make a written return of service stating the date and time of the service. (Pen. Code, §1328, subd. (a).)

4) Defines "service" as "delivering a copy of the subpoena to the witness personally". (Pen. Code, §1328, subd. (a).)

5) Provides that a subpoena may be delivered by mail or messenger. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, over the Internet by email or by completion of the sender’s online form or in person, and identifies himself or herself by reference to his or her date of birth and his or her driver’s license number or identification card. (Pen. Code, §1328d.)
6) Provides that the sender shall make a written notation of the identifying information obtained during any acknowledgement by telephone or in person. The sender will also retain a copy of any acknowledgement received over the internet until the court date. (Pen. Code, § 1328d.)

7) Provides that failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as contempt; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section. (Pen. Code, § 1328d.)

8) Provides that a telegraphic copy of a subpoena for a witness in a criminal proceeding may be sent by telegraph or teletype to a peace officer, and said copy is as effectual as the original subpoena issued. (Pen. Code, § 1328a.)

9) Provides that an officer causing telegraphic copies of subpoenas to be sent, must certify the copies as correct, and file in the telegraph office from which such copies are sent, a copy of the subpoena, and must return the original with a statement regarding delivery. (Pen. Code, § 1328b.)

10) Provides that a peace officer must serve any subpoena delivered to him by telegraph or teletype for service and must make a return of the service by telegraph or teletype. Any officer making a return of service of a subpoena by telegraph or teletype must certify as to his actions in making the service and file in the telegraph office from which the return is sent a written statement with his signature. The service of a teletype subpoena is made by showing the original teletype to the witness personally and informing him of its contents and delivering to him a copy of the teletype. (Pen. Code, § 1328c.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

1) **Author's Statement:** According to the author, "Personal service of a subpoena can be a laborious and often dangerous task requiring countless hours spent gathering information in order to locate the witness and subsequently serve the subpoena. It can also present danger to the person serving the subpoena as some witnesses do not wish to be served or may have active warrants. Many witnesses also do not want to be served at their place of work. There can also be danger for the person being served as he or she may not wish to be seen accepting service of a subpoena. Serving a subpoena can be equally dangerous for members of the Public Defender’s office or defense attorneys. Their witnesses often do not wish to be served either. Moreover, those who serve subpoenas for a District Attorney’s office often are peace officers and are armed pursuant to PC 830.1. That is not the case for those who serve subpoenas on behalf of Public Defender’s offices, creating potential safety concerns. The process of serving subpoenas can be very time consuming as well. Home and work addresses and phone numbers frequently change while a case is in the criminal justice system. This often requires multiple attempts to locate the person which is time consuming and expensive.”

2) **Effecting Service and the Subpoena Number:** A subpoena can already be delivered by mail or messenger under existing law. This bill would also allow delivery via email or fax. To ensure proper delivery and service, this bill would also add a unique numeric or
alphanumeric identification number to each subpoena, known as the “subpoena number”. Service shall be effected when the witness references the subpoena number the sender documents the recipient's acknowledgment.

3) **Argument in Support:** According to the *California District Attorneys Association*, “Current law allows for the personal service of subpoenas which can be a laborious and often dangerous task requiring countless hours spent gathering information to locate the witness and subsequently serve the subpoena. Home and work addresses and phone numbers frequently change while a case is in the criminal justice system. This often requires multiple attempts to locate the person which is time consuming and expensive. It can also present danger to the person serving the subpoena as some witnesses do not wish to be served or may have active warrants. There can also be danger for the person being served as he or she may not wish to be seen accepting service of a subpoena.”

“Although traditional mail service of subpoenas is widely utilized, technology has evolved to the point where service of subpoenas via electronic mail is becoming more commonplace. The law already permits law enforcement officers to be served through electronic means. It is time to extend that technology to civilian witnesses. SB 471 would add a unique subpoena number to subpoenas sent through electronic mail. Under SB 471 a witness served electronically would contact the office that issued the subpoena and confirm receipt by identifying the unique subpoena number on the subpoena. Receiving subpoenas through electronic mail expedites the process and ensures awareness of the subpoena so a witness can avoid the adverse consequences of not responding to it. This bill closes the gap between technological advances in the service of subpoenas and the law.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California District Attorneys Association (Sponsor)
Venture County District Attorney

**Opposition**

None

**Analysis Prepared by:** Lorraine Black / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 SB-471 (Stern (S))

Mock-up based on Version Number 99 - Introduced 2/21/19
Submitted by: Lorraine Black, Assembly Committee on Public Safety

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

SECTION 1. Section 1327 of the Penal Code is amended to read:

1327. (a) (1) A subpoena authorized by Section 1326 shall be substantially in the following form:

The people of the State of California to A. B.:

You are commanded to appear before C. D., a judge of the ___ Court of ___ County, at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E. F.

Given under my hand this ___ day of ____, A.D. 19____. G. H., Judge of the ___ Court (or "J. K., District Attorney," or "J. K., District Attorney Investigator," or "D. E., Public Defender," or "D. E., Public Defender Investigator," or "F. G., Defense Counsel," or "By order of the court, L. M., Clerk," or as the case may be).

(2) If books, papers, or documents are required, a direction to the following effect shall be contained in the subpoena: “And you are required, also, to bring with you the following” (describing intelligibly the books, papers, or documents required).

(b) Each subpoena issued pursuant to Section 1326 shall contain a unique numeric or alphanumeric identification code, known as a “subpoena number.”

SEC. 2. Section 1328a of the Penal Code is repealed.

1328a A telegraphic copy of a subpoena for a witness in a criminal proceeding may be sent by telegraph or teletype to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it, as though he held the original subpoena issued.

SEC. 3. Section 1328b of the Penal Code is repealed.

Lorraine Black
Assembly Committee on Public Safety
06/21/2019
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Every officer causing telegraphic copies of subpoenas to be sent, must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the subpoena, and must return the original with a statement of his action thereunder.

SEC. 4. Section 1328c of the Penal Code is repealed.

A peace officer must serve in his county or city any subpoena delivered to him by telegraph or teletype for service and must without delay make a return of the service by telegraph or teletype. Any officer making a return of service by telegraph or teletype must certify as to his actions in making the service and file in the telegraph office from which the return is sent a written statement with his signature in the same form as the return on an original subpoena. The service of a teletype subpoena is made by showing the original teletype to the witness personally and informing him of its contents and delivering to him a copy of the teletype.

SEC. 25. Section 1328d of the Penal Code is amended to read:

(a) Notwithstanding Section 1328, a subpoena may be delivered by mail, messenger, electronic mail, or facsimile transmission. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, over the Internet by e-mail or by completion of the sender's online form, or in person, and identifies himself or herself by reference to his or her date of birth and his or her driver's license number or Department of Motor Vehicles identification card number, and identifies the subpoena by reference to its unique subpoena number, as described in subdivision (b) of Section 1327. The sender shall make a written notation of the identifying information obtained during any acknowledgment by telephone or in person, and the fact that the witness identified the subpoena by reference to its unique subpoena number. The sender shall retain a copy of any acknowledgment received over the Internet until the court date for which the subpoena was issued or until any further date as specified by the court. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may state, provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section.

(b) A party requesting a continuance, based upon the failure of a witness to appear in court at the time and place required for his or her appearance or testimony pursuant to a subpoena, shall prove to the court that the party has complied with this section. That continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law, including the requirements of Sections 861 and 1382.

SEC. 36. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Lorraine Black  
Assembly Committee on Public Safety  
06/21/2019  
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However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Assembly Committee on Public Safety
06/21/2019
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SUMMARY: States that a practicing psychiatrist or psychologist from the Department of State Hospital (DSH) or the California Department of Corrections and Rehabilitation (CDCR) be afforded prompt and unimpeded access to an inmate temporarily housed at a county jail, when the psychiatrist or psychologist is conducting an evaluation of the inmate as a Mentally Disordered Offender (MDO). Makes changes to the process to determine whether an inmate is a MDO. Specifically, this bill:

1) Requires an inmate being considered for treatment as a MDO be evaluated by a practicing psychologist from CDCR, in addition to evaluations by the person in charge of treating the inmate and a practicing psychiatrist or psychologist from DSH.

2) Changes one of the criteria when evaluating a CDCR inmate as a MDO because they suffer from a severe mental disorder, to specify that the disorder has not been in remission for the six months (rather than simply being in remission) immediately preceding the evaluation.

3) Specifies that a determination of a potential MDO cannot be kept in remission without treatment will be evidenced by a review of the inmate’s treatment records for the 12 months immediately preceding the evaluation.

4) States that a MDO evaluation take place at a CDCR facility, county correctional facility, county medical facility, or facility of the Federal Bureau of Prisons.

5) Requires, for the evaluation of inmates temporarily housed at a county correctional facility, a county medical facility, or a state-assigned mental health provider, that a practicing psychiatrist or psychologist from DSH or CDCR be afforded prompt and unimpeded access to the inmate as well as their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

6) Deletes the provision of law mandating that CDCR electronically transmit to a county agency, the inmate’s tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto post-release community supervision (PRCS), for the purpose of identifying the medical and mental health needs of the individual, as specified.

EXISTING LAW:

1) Requires prisoners who meet the following criteria to be deemed an MDO and treated by the State Department of State Hospitals (DSH) as a condition of parole:
a) The inmate has a severe mental disorder;

b) The inmate used force or violence in committing the underlying offense;

c) The severe mental disorder was one of the causes or an aggravating factor in the commission of the offense;

d) The disorder is not in remission or capable of being kept in remission without treatment;

e) The inmate was treated for the disorder for at least 90 days in the year before the inmate's release; and,

f) By reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962.)

2) Allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order the inmate to remain in custody for up to 45 days past the scheduled release date for a full MDO evaluation. (Pen. Code § 2963.)

3) Allows the prisoner to challenge the MDO determination both administratively (a hearing before the board) and judicially (a superior court jury trial). (Pen. Code § 2966.)

4) Requires MDO treatment to be inpatient treatment unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. (Penal Code Section 2964(a).) If the hospital does not place the parolee on outpatient treatment within 60 days of receiving custody of the parolee, he or she may request to hearing to determine whether outpatient treatment is appropriate. (Pen. Code § 2964(b).)

5) Specifies that if the parolee's severe mental disorder is put into remission during the parole period and can be kept that way, the director of the hospital shall notify the BPH and shall discontinue treatment. (Pen. Code § 2968.)

6) Allows the district attorney to file a petition with the superior court seeking a one-year extension of the MDO commitment. (Pen. Code § 2970.)

7) Specifies that the cost of treatment for an MDO, whether inpatient or outpatient, is a state expense while the person is under the jurisdiction of either CDCR or the state hospital. (Pen. Code § 2976.)

8) Provides that an inmate who is released on parole or post-release community supervision (PRCS) must be returned to the county that was the last legal residence of the inmate prior to his or her incarceration, as specified, except as otherwise provided. Provides that an inmate may be returned to another county if that would be in the best interests of the public. (Pen. Code, § 3003, subds. (a)-(c).)

9) Specifies the information, if available, that must be released by CDCR to local law enforcement agencies regarding a paroled inmate or inmate placed on PRCS, who is released in their jurisdictions. (Pen. Code, § 3003, subd. (e)(1).)
10) States that unless the information is unavailable, CDCR is required to electronically transmit to a county agency, the inmate’s tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto PRCS, for the purpose of identifying the medical and mental health needs of the individual, as specified. (Pen. Code, § 3003, subd. (e)(2)-(5.).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

1) **Author's Statement:** According to the author, "It is crucial for inmates to have access to psychiatric care and evaluation prior to parole in order to be in compliance with state law. SB 591 will provide unimpeded access to inmates by the state the Department of State Hospitals and the Department of Corrections and Rehabilitation.”

2) **Background on the Mentally Disordered Offender Act (Pen. Code § 2960 et seq.):** A MDO commitment is a post-prison civil commitment. The MDO Act is designed to confine as mentally ill an inmate who is about to be released on parole when it is deemed that he or she has a mental illness which contributed to the commission of a violent crime. Rather than release the inmate to the community, CDCR paroles the inmate to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period. The MDO law actually addresses treatment in three contexts - first, as a condition of parole (Pen. Code, § 2962); then, as continued treatment for one year upon termination of parole (Pen. Code § 2970); and, finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (Pen. Code § 2972). (*People v. Cobb* (2010) 48 Cal.4th 243, 251.)

Penal Code section 2962 lists six criteria that must be proven for an initial MDO certification, namely, whether: (1) the inmate has a severe mental disorder; (2) the inmate used force or violence in committing the underlying offense; (3) the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the inmate was treated for the disorder for at least 90 days in the year before the inmate’s release; and (6) by reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962, subsd. (a)-(d); *People v. Cobb, supra*, 48 Cal.4th at p. 251-252.)

The initial determination that the inmate meets the MDO criteria is made administratively. The person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the DSH will evaluate the inmate. If it appears that the inmate qualifies, the chief psychiatrist then will certify to the Board of Parole Hearings (BPH) that the prisoner meets the criteria for a MDO commitment.

The inmate may request a hearing before BPH to require proof that he or she is a MDO. If BPH determines that the defendant is a MDO, the inmate may file, in the superior court of the county in which he or she is incarcerated or is being treated, a petition for a jury trial on whether he or she meets MDO criteria. The jury must unanimously agree beyond a reasonable doubt that the inmate is a MDO. If the jury, or the court if a jury trial is waived, reverses the determination of BPH, the court is required to stay the execution of the decision.
for five working days to allow for an orderly release of the prisoner.

MDO treatment must be on an inpatient basis, unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. But if the parolee can no longer be safely and effectively treated in an outpatient program, he or she may be taken into custody and placed in a secure mental health facility. A MDO commitment is for one year; however, the commitment can be extended. (Pen. Code § 2972, subd. (c).) When the individual is due to be released from parole, the state can petition to extend the MDO commitment for another year. The state can file successive petitions for further extensions, raising the prospect that, despite the completion of a prison sentence, the MDO may never be released. The trial for each one-year commitment is done according to the same standards and rules that apply to the initial trial.

3) **This Bill Specifies that a CDCR Psychologist Participate in an MDO Evaluation:** Under current law a MDO is required to be evaluated by the person in charge of treating the inmate and a practicing psychiatrist or psychologist from DSH. Current statutory language requires a chief psychiatrist from CDCR to certify that the inmate meets specified MDO criteria. This bill would state that a CDCR psychologist must conduct an evaluation, in addition to the two mental health evaluators already listed. According to the sponsor, AFSCME, this is currently taking place under the existing statutory language.

4) **This Bill Deletes Language Requiring CDCR to Transmit a Specified Inmate Medical Information to Counties:** Existing law generally requires that an inmate released on parole or post-release community supervision be returned to the county of last legal residence. Existing law requires the Department of Corrections and Rehabilitation to electronically transmit to specified county agencies an inmate’s tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto post-release community supervision for the purpose of identifying the medical and mental health needs of the individual.

This bill would delete that requirement. Earlier versions of this bill contained language regarding data sharing of inmate medical information that was amended out. Without new mandate to share this data, it is not clear what policy objective the deletion of this requirement accomplishes.

5) **Requirement of Prompt and Unimpeded Access to Inmates Temporarily Housed at a County Jail:** CDCR inmates are generally housed in CDCR facilities. However, a CDCR inmate might be temporarily transported to a county jail to deal with an unresolved case. This bill would require, for the evaluation of inmates temporarily housed at a county correctional facility, a county medical facility, or a state-assigned mental health provider, that a practicing psychiatrist or psychologist from DSH or CDCR be afforded prompt and unimpeded access to the inmate. The stated problem that this language is intended to address is as follows: CDCR evaluators are not always able to access inmates that are temporarily at a county jail with alacrity. CDCR psychologists and psychiatrists are feeling time pressure to get evaluations done, particularly with the passage of Prop. 57 and the changes it made to inmates’ ability to earn time credits against their sentence.

The number of CDCR inmates temporarily in custody at a county jail that require MDO evaluations is not large and it is not clear that any MDO evaluators have been categorically
denied access to those inmates. County jails are organizations with security requirements that do not always allow “prompt and unimpeded access” to inmates. Many other professionals such as lawyers, probation officers, privately retained psychiatrists, and other court order mental health evaluators all encounter difficulties accessing county jail inmates. Should the Legislature single out one category of individuals for “prompt and unimpeded access” to county jail inmates? Would including such language in statute change the practical realities individuals face when attempting to access inmates in a secure county jail facility in order to perform their professional responsibilities?

6) **Argument in Support**: According to *American Federation of State, County and Municipal Employees (AFSCME)*, “In accordance with Penal Code section 2962, prior to releasing a prison on parole, an evaluation of the prisoner must be conducted by specified clinicians. The purpose of this evaluation is to both ensure society is protected from prisoners with dangerous mental disorders and to provide treatment for those prisoners.

“AFSCME is committed to ensuring our state workforce has the tools needed to not only comply with Penal Code requirements, but to make a full and complete evaluation of the inmate. With the recent passage of Proposition 57 (2016) and other changes to the criminal justice system, prisoners are spending less time in our state facilities. It is difficult to provide prisoners with an adequate evaluation because there is no guarantee that state personnel can access the prisoner’s health records from their time in other non-state facilities. There are no medical record statutes that apply to correctional settings. Existing law prohibits health care providers and others from disclosing medical information without a patient’s authorization, this often results in prisoners moving from facility to facility without medical records. This lack of record accessibility risks the prisoners’ continuity of care and creates challenges for the health professionals who are charged with reviewing records prior to parole.

“Additionally, we need to ensure that the clinicians performing the evaluations are able to physically access and interview the prisoners, wherever they are located. This has proven to be extremely difficult and inconsistent when prisoners are sent to non-state facilities.

“AFSCME represents the psychologists who provide care for these inmates. These workers are hindered from adequately caring for the mental health needs of the inmates because they have no history of medical care, and limited access to the inmate, from which to draw upon. The lack of authorization of medical records for the psychologists creates an environment that is not safe for either the inmates or our communities if the inmates are released without proper mental health evaluations.”

7) **Argument in Opposition**: According to *the California Public Defenders Association*, “SB 591 greatly expands screening under Penal Code section 2962 for involuntary commitment as Mentally Disordered Offenders (MDO’s) to local jails, county medical facilities, and federal prisons before an inmate is released on parole. Under existing law, only inmates suffering from mental illness who are in state prison or already in state hospitals for treatment pursuant to Penal Code section 2684 are screened for involuntary commitment.

“SB 591 also expands the criteria for finding that an individual is eligible for involuntary treatment. SB 591 changes the parameters under Penal Code section 2962(d)(1) from “that the disorder is not in remission, or cannot be kept in remission without treatment” to “that the disorder has not been in remission for the 6 months immediately preceding the
evaluation, or cannot be kept in remission without treatment as evidenced by a review of the prisoner’s treatment records for the 12 months immediately preceding the evaluation."

"SB 591’s MDO expansion is a waste of taxpayers’ money, shortsighted public policy and ultimately endangers public safety. Currently, individuals treated pursuant to Penal Code 2962 are housed at 5 Department of State Hospitals facilities – Atascadero, Coalinga, Metropolitan, Napa and Patton State Hospitals.

"SB 591 would result in a substantial increase in the number of MDO’s involuntarily hospitalized. State hospital beds are in short supply and there is already a wait list of over 1,000 individuals who are incompetent to stand trial languishing in county jails waiting for beds in the same state hospitals as the MDO’s. Increasing the number of MDO’s involuntarily committed would exacerbate this problem.

"SB 591 would cost the taxpayers. In the short term, the budget for the Department of State Hospitals would have to be increased. In the long term, more state hospitals would have to be built and staffed. The costs are staggering. For example, the annual cost of hospitalizing an individual involuntarily at Atascadero Hospital is almost $242,857 per year. There are 574 MDO individuals current hospitalized at Atascadero, 48% of the patient population.

"Ultimately, SB 591 proposes to spend millions of dollars to involuntarily hospitalize more Californians while real basic reforms including investments in schools, jobs, health care, mental health treatment and housing which have been proven to reduce crime in our communities and provide stability for residents lack needed resources."

8) Prior Legislation:

a) SB 350 (Galgiani), of the 2017-2018 Legislative Session, would have required the disclosure of medical, dental, and mental health information between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider when an inmate is transferred from or between state and county facilities, as specified. SB 350 was held in the Senate Appropriations Committee.

b) SB 1443 (Galgiani), of the 2015-2016 Legislative Session, would have permitted the sharing of medical, mental health and dental information between correctional facilities, as specified. SB 1443 was held in the Senate Appropriations Committee.

c) SB 1295 (Nielsen), Chapter 430, Statutes of 2016, authorized the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by the State Department of State Hospitals as a MDO.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
Oppose

California Public Defenders Association

**Analysis Prepared by:** David Billingsley / PUB. S. / (916) 319-3744
Date of Hearing: June 25, 2019
Counsel: Sandy Uribe

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

SB 620 (Portantino) – As Amended June 17, 2019

SUMMARY: Allows a municipal police department or a county sheriff’s department to release the name and address of a person on supervised release to specified providers of transitional services, if the person consents. Specifically, this bill:

1) Provides, that notwithstanding any law, a municipal police department or a county sheriff’s department may release the name and address of a person on supervised release residing within its jurisdiction to transitional-service providers located within that jurisdiction.

2) Makes release of information contingent upon the supervised person’s authorization.

3) Requires notice to the released person that they may consent to the release of their name and address.

4) Requires the law enforcement agency to contact the person’s parole or probation officer to confirm the person has authorized the release of their information.

5) Defines the following terms for purposes of these provisions:
   a) “Person on supervised release” means a person on parole, postrelease community supervision, mandatory supervision, or supervised probation. It does not include a person on federal probation or any other type of supervised release from federal custody.
   b) “Service provider” means a local government entity or a nonprofit organization that provides transitional services to persons of supervised release, including, but not limited to, assistance with housing, job training or placement, and counseling or mentoring.

EXISTING LAW:

1) Defines “local summary criminal history information” as “the master record of information compiled by any local criminal justice agency ... pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrest, arresting agencies and booking numbers charges, dispositions, and similar data about the person.” (Pen. Code, § 13300, subd. (a).)

2) Provides that any employee of a local criminal justice agency who knowingly furnishes a record of local summary history information, or information contained therein, to a person who is not authorized to receive such information is guilty of a misdemeanor. (Pen. Code, § 13302.)
3) Defines “criminal justice agencies” are those agencies at all levels of government which perform as their principal functions, activities which either:

   a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or

   b) Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.)

4) Defines “probation” as “the suspension of the imposition or execution of a sentence and the conditional release of the defendant into the community under the supervision of a probation officer.” (Pen. Code, § 1203, subd. (a).)

Defines “mandatory supervision” as “the portion of a defendant’s sentenced term during which he or she is supervised by the county probation officer pursuant to criminal justice realignment.” (Pen. Code, §§ 19.9 & 1170, subd. (h)(5)(B).)

5) Requires specified persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 3000.08, subds. (a) and (c).)

6) Requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b) & 3451.)

7) States that during a period of mandatory supervision, a defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

8) Requires the probation department to make a written report to the court which include recommendations as to the granting or denying of probation, and the conditions of probation, if granted. (Pen. Code, § 1203, subd. (b)(2)(A).)

9) States that PRCS must include specified conditions, including that the person shall participate in rehabilitation programming as recommended by the supervising county agency. (Pen. Code, § 3453, subd. (r).)

10) Requires each county agency responsible for PRCS to establish a review process for assessing and refining a person’s program of post-release supervision. Further, each agency may determine additional appropriate conditions of supervision, including ordering appropriate rehabilitation and treatment services. (Pen. Code, § 3454, subds. (a) & (b).)

11) Requires CDCR to meet with each inmate at least 30 days prior to release and to provide the conditions of parole and the length of parole. (Pen. Code, § 3000, subd. (b)(7).)

FISCAL EFFECT: Unknown.

COMMENTS:
1) **Author's Statement:** According to the author, "When a subject is released from incarceration, they are returned to their city of residence without guidance or the needed resources to get their life back on track. Law enforcement officials have release data and the personal information of every parolee and Post Release Community Supervision probationer. However, they cannot connect these previously incarcerated community members to service providers or release this information. As they cannot connect those previously incarcerated with service providers that can help them, it is hard to break the cycle of recidivism.

"By having direct contact information of those returning to society, service providers focusing their efforts and grant funds on previously incarcerated community members would help those individuals succeed. This bill will allow those leaving prison to have access to Case Management, Systems Navigation, Financial Literacy, Mental Health and Substance Abuse Treatment, and Workforce Development Services.

"In Los Angeles County, 47% of community members who return from incarceration repeat offend and are re-incarcerated within three years. This results in predictable, preventable community violence and trauma in neighborhoods where we raise our children. Pasadena began a program 12 years ago, called the Vision 20/20 Reintegration Initiative, which started a collaboration among over 30 community groups, including the Pasadena Police Department, to provide a safety net of support and services for community members returning home from incarceration.

"The results of this program have been strong, showing that increased access to services upon release from incarceration can break the cycle of recidivism. The recidivism rate for the Fiscal Year 2017-18 was 7.5% as 92.5% of community members served did not repeat offend. The three-year recidivism rate was 15%, compared to 47% recidivism for the County of Los Angeles over-all. In summary, over three years, 85% of previously incarcerated community members served by the Vision 20/20 Network did not repeat offend."

2) **Supervised Release:** The premise of this bill is that people are being released from incarceration without guidance or needed resources to prevent them from recidivating. However, there are multiple agencies responsible for this very task.

"Probation Departments are responsible for providing community-based supervision of adults convicted of felonies or misdemeanors either in lieu of incarceration or as a condition of release following incarceration. As a field of law enforcement, Probation in California is distinguished by its commitment to a research-based approach to public safety that promotes positive behavior change. Since 2011, Probation has the responsibility of supervising many offenders from the state prison and parole systems, categorized as individuals either on post-release community supervision (PRCS) or on Mandatory Supervision as part of their split sentences. Currently, felony probation accounts for about 85% of those on probation, 11% on PRCS and 4% on mandatory supervision. Overall, Probation is responsible for nearly 60% of people involved in the California corrections system." (See 2018 California Probation Summary, Chief Probation Officers of California Website, available at: https://www.cpojc.org/sites/main/files/file-attachments/california_probation_executive_summary.pdf)

"Similarly, CDCR's "Division of Adult Parole Operations (DAPO) is responsible for
protecting the community by enabling parole agents to have an active part in the local community’s public safety plans while providing a range of programs and services that offer state supervised parolees the opportunity for change, encouraging and assisting them in their effort to reintegrate into the community.

“DAPO Parole Agents are committed to working closely with the Division of Rehabilitative Programs to ensure parolees are referred to appropriate rehabilitation and transition programs that are currently available to help them find success and opportunities within their communities.” (See CDCR Website, https://www.cdcr.ca.gov/parole/)

This bill would allow local police and sheriff’s departments to release contact information of persons on supervised release to local transitional service providers, with the person’s consent to release of the information. This would allow providers of transitional services to directly reach out to persons on supervised release to offer their programming. Participation in such programs would be strictly voluntary, as local police and sheriff departments do not have the authority to set conditions of release.

While the goal of connecting supervised persons to services meant to deter recidivism and successfully reintegrate into society is laudable, the approach taken by this bill raises some concerns as to how this programming is supposed to work in conjunction with the programming ordered by the court, probation departments, and parole agents. For example, some individuals may need a specific type of program or specific transitional housing to serve their specific criminogenic needs. An alternative approach might be for a local law enforcement agency who knows of a successful program to work with the local probation department and parole agents to get persons who will benefit from the specific programs referred there.

3) **Argument in Support**: According to the Pasadena Police Department, “When a subject is released from incarceration, they are returned to their city of residence without guidance of the needed resources to get their life back on track. Law enforcement officials have release data and personal information of every parolee and Post Release Community Supervision probationer. However, they cannot connect these previously incarcerated community members to service providers or release this information. Because they cannot connect those previously incarcerated with service providers that can help, it is hard to break the cycle of recidivism.

“By having direct contact information of those returning to society, service providers focusing their efforts and grant funds on previously incarcerated community members would help those individuals succeed. This bill will allow those leaving prison to have access to case management, systems navigation, financial literacy, mental health and substance abuse treatment, and workforce development services.”

4) **Argument in Opposition**: According to the Chief Probation Officers of California, “CPOC shares your desire to reduce recidivism and facilitate rehabilitative programs and services to people on supervised released. However, the processes established in this bill would run contrary to research-supported efforts on risk/needs and probation’s work to ensure that the programs in which referrals are made meet various tenets, focus on evidence-based principles, and meet the specific needs of each individual.
“Evidence-based programs and matching up an individual’s risk and needs to the right types of programs and services is integral to making sustainable behavioral changes that reduce recidivism. There are many factors to review and consider in developing a case plan for a person on supervision. Rather than having a risk/needs assessment guide program referral, this bill would allow for police and sheriffs personnel to provide information on persons under probation’s supervision to service providers directly. As a result, a service provider may reach out to a supervised person to offer a program that may not address a person’s criminogenic behavior and/or may not align with the person’s case plan or conditions.

“Again, probation very much supports the goals of rehabilitation and recidivism reduction. We value the partnerships with service providers toward this end, but believe this approach would bypass important considerations, case planning, and risk/needs determinations made by probation in developing the most appropriate plan to address an offender’s individual circumstances.”

5) Prior Legislation:

a) AB 2060 (V.M. Perez), Chapter 383, Statutes of 2014, established the Supervised Population Workforce Training Grant Program.

b) AB 2077 (Davis), of the 2011-2012 Legislative Session, would have required the Employment Development Department (EDD) to compile a list of employers willing to employ people who have been incarcerated, and provide the list to the public and to the county agency supervising persons on postrelease community supervision. AB 2077 was held by the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Pasadena Police Department (Sponsor)
California Police Chiefs Association
Riverside Sheriffs' Association

Opposition

Chief Probation Officers of California

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Clarifies that the right to post conviction discovery applies to any case in which a person was convicted of a serious or violent felony resulting in a sentence of 15 years or more without regard to when that conviction occurred, and further clarifies that a provision of law requiring attorneys to keep their files for the term of the client’s incarceration is meant to apply prospectively. Specifically, this bill:

1) Clarifies a provision of law in order to allow access to postconviction discovery materials for defendants who are serving time on a serious or violent felony conviction resulting in a sentence of 15 years or more without regard to when the conviction occurred.

2) Provides that the requirement that in criminal matters involving a conviction for a serious or a violent felony resulting in a sentence of 15 years or more, trial counsel must retain a copy of a former client’s files for the term of his or her that client’s imprisonment, applies prospectively.

EXISTING LAW:

1) Requires a court to order that discovery materials be produced to a defendant who has been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, if the defendant has shown a good faith effort to obtain the materials from the criminal defense attorney who represented him or her at the time of the conviction. (Pen. Code, § 1054.9, subd. (a).)

2) Defines “discovery materials” in the post-conviction context as “materials in the possession of the prosecution and law enforcement authorities to which the defendant would have been entitled to at the time of trial.” (Pen. Code, § 1054.9, subd. (b).)

3) Provides that a court may allow the defendant access to physical evidence relating to the investigation, arrest, and prosecution of the defendant if he or she makes a showing of good cause to believe that access to physical evidence is reasonably necessary to the defendant’s effort to obtain relief. (Pen. Code, § 1054.9, subd. (c).)

4) Provides that in response to a writ or motion, the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant’s effort to obtain relief. (Pen. Code, §
5) Provides that in criminal matters involving a conviction for a serious or violent felony resulting in a sentence of 15 years or more, trial counsel shall retain a copy of a former client’s files for the term of imprisonment. (Penal Code, § 1054.9 (g).)

6) Provides that specified changes to the postconviction discovery laws are intended to only apply prospectively. (Penal Code, § 1054.9 (j).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author’s Statement:** According to the author, “Innocent people are currently serving time for crimes they did not commit. From 1999-2018, the California Innocence Coalition won the freedom of over 60 wrongly imprisoned individuals who collectively spent over 750 years in prison. It takes innocence projects, on average, 3-4 years to investigate these cases because they are often working with incomplete files to recreate what happened years prior. Access to discovery is a critical tool for post-conviction review and expanding post-conviction discovery eligibility would speed up the review process, reducing the number of years an innocent person spends wrongfully incarcerated.

“In 2018, Governor Brown signed AB 1987 (Lackey) into law, which expanded post-conviction motion for discovery for defendants convicted of serious and violent crimes for more than 15 years. However, the bill only applied prospectively to future cases—omitting any conviction prior to January 1, 2019. SB 651 would allow the motion for discovery provisions of AB 1987 to be uniformly applied to anyone who qualifies.”

2) **Discovery in Post-Conviction Cases:** “Post-conviction discovery” is generally understood in the legal community as the provision of materials and documents to defendants after they have been convicted at the trial level and exhausted their appeals. Current law limits post-conviction discovery to only those cases in which a person is sentenced to death or life without parole. There are four categories of evidence or documents that may be necessary for a person attempting to establish his or her innocence in the post-conviction context. Those are documents or materials that either (1) the prosecution did provide at time of trial but have since become lost to the defendant; (2) the prosecution should have provided at time of trial because they came within the scope of a discovery order the trial court actually issued at that time, a statutory duty to provide discovery, or the constitutional duty to disclose exculpatory evidence; (3) the prosecution should have provided at time of trial because the defense specifically requested them at that time and was entitled to receive them; or (4) the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them. *(Davis v. Superior Court (2016) 1 Cal. App. 5th 881, 886.)*

3) **AB 1987:** AB 1987 (Lackey) Chapter 482, Statutes 2018, extended to the right to post-conviction discovery to serious or violent felonies resulting in a sentence of 15 years or more. Previously, postconviction discovery was only available to defendant who had been sentenced to death or life in prison without the possibility of parole. The intent behind AB 1987 (Lackey) was to have this apply to cases no matter when the person was convicted. The
section in the bill requiring defense attorneys to keep their client’s files for the duration of incarceration was intended to be prospective only. However, when the amendments were drafted to make the section dealing with the client’s files prospective, there was an error in the drafting and the entire section became prospective. This bill corrects that error and makes it clear that the only portion that shall be prospective is the provision requiring attorneys to keep client files. The expansion of post-conviction discovery to serious or violent felonies with sentences longer than 15 years will apply to convictions occurring before the implementation date as originally intended.

4) **Argument in Support:** According to the bill’s sponsor, the *California Innocence Project:* “Last year Governor Brown signed AB 1987 which provided the following for inmates serving 15 years or more in state prison behind a serious or violent felony conviction: “1) maintenance of the discovery by the defense attorney and, if this failed, 2) access to the discovery through district attorney offices.

“AB 1987 was a huge step toward a more efficient post-conviction review process for the wrongfully convicted and for post-conviction attorneys, however, a last minute amendment made the changes apply only prospectively, which has the practical effect of applying only to those that are convicted as of January 1, 2019. The impetus for the bill was to provide for a more efficient post-conviction review process for the most serious, high stakes cases. A post-conviction statute, by its very nature is a backwards looking statute in that it applies to those individuals who are presently convicted. To require the amendments to only apply prospectively would mean that a more efficient process would only exist for those individuals convicted post January 1, 2019 which does not align with the intended purpose of the bill.

“AB 1987 also provided a requirement that defense counsel retain all files in these serious or violent cases so that inmates could access their discovery first through their previous counsel rather than burdening the district attorney’s offices. To require this part of AB 1987 to apply prospectively was a reasonable requirement in light of the fact that defense attorneys who have already destroyed files of past clients prior to the enactment of AB 1987 should not be penalized for doing so when no such requirement previously existed.

“The vast majority of felony convictions would be unaffected by the change in this law, as only those individuals who did not retain their legal documents from trial—and who are interested in challenging their conviction through a habeas process—would be interested in obtaining these documents. To mitigate concerns about privacy and cost, all of the limitations and protections in place to protect victims and witnesses are still in effect and applicable because post-conviction discovery encompasses any items that would have been accessible to the defendant at the time of trial. Furthermore, AB 1987 made it safer through both appropriations committee last year prior to this last minute amendment.

“SB 651 is a simple fix that will fulfill the intended purpose of last year’s bill and allow for post-conviction discovery access for our clients, increasing the efficiency of post-conviction review, and allowing innocent people to dramatically reduce the amount of time they spend behind bars for crimes they did not commit.”

5) **Argument in Opposition:** According to the *California District Attorneys Association:* “On behalf of the California District Attorneys Association (CDAA), I regret to inform you that
we are opposed to your measure, Senate Bill 651. Penal Code Section 1054.9 imposes extensive post-conviction discovery obligations on prosecutors and outlines various procedures for complying with those obligations. Last year, the legislature passed AB 1987 which expanded its scope beyond cases involving death or LWOP to any new serious or violent felony cases resulting in a sentence of 15 years or more (i.e., cases arising after 1/1/18). This bill would make that expansion retroactive and apply it to cases where defendant was convicted of a serious or violent felony with a 15-year or more sentence at any time.

"Since AB 1987 passed into law, we are not arguing the merits of the policy as it is a prosecutor’s duty to carry out the law. However, applying the law retroactively would place a heavy burden on prosecutors due to the sheer volume of these cases. Any prosecutor who has had to respond to a PC 1054.9 request knows the immense time commitment it entails. These cases involve not just hours or days, but weeks of responding to discovery requests. AB 1987 exponentially increases the number of cases that will involve section 1054.9 requests. Although the actual costs of examination by the defendant or copying are borne or reimbursed by the defendant, a defendant is not required to reimburse the agency providing the discovery for costs related to prosecutorial examination and preparation of documents for production. (See Rubio v. Superior Court (2016) 244 Cal.App.4th 459, 465-466.)

"By requiring the district attorneys to respond to a whole new wave of 1054.9 requests for discovery, the legislature is imposing new duties (i.e., a new program or higher level of service) without allocating specific funds in the budget for the increase. Without a specific funding mechanism, we cannot support the bill for fiscal reasons."

6) Prior Legislation:

a) AB 1987 (Lackey) Chapter 482, Statutes of 2018, expanded the availability of a post-conviction motion for discovery materials to include cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more.

b) SB 1391 (Burton) Chapter 1105, Statutes of 2002, created a process for attorneys in habeas corpus proceedings in death penalty or life imprisonment cases to obtain access to discovery materials, and created a separate process for convicted persons, whether or not in custody, to vacate a judgement based on fraud or the presentation of false evidence by the government.

REGISTERED SUPPORT / OPPOSITION:

Support
California Innocence Project (Sponsor)
Loyola Law School Project for the Innocence (Co-Sponsor)
Northern California Innocence Project (Co-Sponsor)
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Exonerated Nation
San Francisco Public Defender's Office
Oppose

California District Attorneys Association

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

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

SB 781 (Committee on Public Safety) – As Amended April 8, 2019

As Proposed to Be Amended in Committee

SUMMARY: Makes technical and corrective changes to various code sections relating to criminal laws. Specifically, this bill:

1) Makes clarifying changes to state than any person seeking employment by a law enforcement agency, including a non-sworn employee, is subject to the law which requires that person’s former or current employer to disclose information to a law enforcement agency requesting information for the purpose of hiring that person.

2) Repeals the law which makes it a misdemeanor for an owner, driver, or possessor of an animal to permit the animal to be in a building, enclosure, lane, street, square, or lot of a city, city and county, or judicial district without proper care and attention.

3) Amends the Penal Code to reflect that all inmates, regardless of their gender, are permitted to participate in a voluntary alternative custody program in lieu of confinement in state prison, as specified.

4) Removes the reference to an inmate patient’s Physician Orders for Life-Sustaining Treatment (POLST) from the petition process.

5) Authorizes the Department of Justice to receive copies of juvenile case files to carry out its duties as a repository for sex offender registration and notification in California.

6) Makes a number of other technical changes.

EXISTING LAW:

1) Requires a former or current employer to disclose information to a law enforcement agency requesting that information for the purpose of hiring a peace officer or other non-sworn employee of a law enforcement agency. (Gov. Code, §1031.1.)

2) Makes it a misdemeanor for an owner, driver, or possessor of an animal to permit the animal to be in a building, enclosure, lane, street, square, or lot of a city, city and county, or judicial district without proper care and attention. Provides for the confiscation, treatment, or humane destruction of an abandoned, neglected, sick, or injured animal, as specified. (Pen. Code, § 597f.)

3) Authorizes the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates who are committed to state prison may be allowed to
participate in a voluntary alternative custody program in lieu of confinement in state prison. (Pen. Code, § 1170.05.)

4) Presumes that an adult housed in a state prison has the capacity to give informed consent and make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate, unless a physician or dentist files a petition with the Office of Administrative Hearings to request a determination as to a patient’s capacity. Requires that petition to include specified information, including a discussion of the inmate patient’s desires, if known, and whether there is an advance health care directive, a Physician Orders for Life Sustaining Treatment (POLST) form, or other documented evidence of the inmate patient’s directives or desires and how those indications might influence the decision to issue an order. (Pen. Code, § 2604.)

5) Specifies the individuals who may inspect a juvenile case file, including the Department of Justice to carry out its duties as a repository for sex offender registration and notification in California. Existing law specifies the individuals who may receive copies of the juvenile case file, including court personnel and the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases. (Welf. and Inst. Code, § 827(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: “This is the annual omnibus bill. In past years, the omnibus bill has been introduced by all members of the Committee on Public Safety. This bill is similar to the ones introduced as Committee bills in the past, in that it has been introduced with the following understanding: The bill’s provisions make only technical or minor non-controversial changes to the law; and, there is no opposition by any member of the Legislature or recognized group to the proposal. This procedure has allowed for introduction of fewer minor bills and has saved the Legislature time and expense over the years.”

2) California Department of Corrections and Rehabilitation (CDCR) program for all inmates: Existing statute states that CDCR may offer an Alternative Custody Program (ACP) to female inmates. However, in Sassman v. Brown, et al., 73 F. Supp. 3d 1241 (2014), a federal court reviewing the law deemed the law unconstitutional to the extent that it denies male inmates the same benefits as females. Thus, this bill would align the state’s statute to reflect the federal court’s decision. Regulations adopted by CDCR already accord with the Sassman decision. This modification will ensure that California’s statutes reflect language that complies with the Fourteenth Amendment to the United States Constitution, and ensures that the state complies with the Sassman decision.

3) DOJ Right to Obtain Copies in Juvenile: Existing law places limitations on who may receive copies of a juvenile case file. Currently, the Department of Justice (DOJ) is allowed to inspect the juvenile court file for sex offender registration purposes but not receive copies of the file without filing a petition with the court, which the court is not required to grant. In several counties, the DOJ must complete the JV-570, Request for Disclosure of Juvenile Case File, in order to request permission to receive copies of a juvenile record from the individual whose record is in question. The individual is not required to grant access to their juvenile record. The current law prohibiting DOJ from the list of entities that are permitted to
obtain a copy of these records has created a backlog in processing and assessing juvenile sex offender registration records. Additionally, the DOJ is unable to advise local agencies whether registration is required pursuant to Penal Code Section 290.008 if it cannot obtain copies of the juvenile court records to confirm that the juvenile was committed to the Division of Juvenile Justice on the sex offense(s). This bill would allow DOJ to receive copies of these files.

4) Prior Legislation:

a) SB 1494 (Committee on Public Safety), Chapter 423, Statutes of 2018, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

b) SB 811 (Committee on Public Safety), Chapter 269, Statutes of 2017, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

c) SB 1474 (Committee on Public Safety), Chapter 59, Statutes of 2016, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

d) SB 795 (Committee on Public Safety), Chapter 499, Statutes of 2015, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

e) SB 1461 (Committee on Public Safety), Chapter 54, Statutes of 2014, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

f) SB 514 (Committee on Public Safety), Chapter 59, Statutes of 2013, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 SB-781 (Committee on Public Safety (S)) -
(Senators Skinner (Chair), Bradford, Jackson, Mitchell, Moorlach, Morrell,
and Wiener))

Mock-up based on Version Number 98 - Amended Senate 4/8/19
Submitted by: Nikki Moore, Assembly Committee on Public Safety

The proposed amendments delete Section 9 pertaining to firearms and cadets.