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California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, June 29, 2021
9 a.m. -- State Capitol, Room 4202

Part II

SB 731 (Durazo) – SB 296 (Limón)

Date of Hearing: June 29, 2021
Counsel: David Billingsley

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

SB 731 (Durazo) – As Amended June 23, 2021

SUMMARY: Expands automatic arrest record relief to include arrests for felonies punishable by state prison, as specified. Expands automatic conviction relief to include felonies where the defendant was not granted probation and did not complete probation without revocation, but excludes serious and violent felonies, and felonies requiring sex registration. Expands discretionary expungement relief to include felonies where the defendant was sentenced to state prison, rather than just realigned felonies, as specified. Specifically, **this bill:**

1) Specifies that when the Department of Justice (DOJ), reviews the records in the statewide criminal justice databases, to identify persons with records of arrest that are eligible for arrest record relief, that the criteria for relief will include felony arrests punishable by less than eight years that occur after January 1, 2021, where:

   a) there is no indication that criminal proceedings have been initiated;

   b) at least three calendar years have elapsed since the date of the arrest; and,

   c) no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

2) States that arrests that occur after January 1, 2021, for a felony offense punishable by eight or more years, are eligible for the relief described above when:

   a) there is no indication that criminal proceedings have been initiated;

   b) at least six years have elapsed since the date of the arrest, and

   c) no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

3) Allows all defendants sentenced for a felony, not just those serving a sentence under realignment, to petition the court, in its discretion and in the interests of justice, to dismiss the charge and grant relief from penalties associated with the conviction, except as specified.

4) Provides a defendant sentenced to the state prison on a felony, can petition for expungement relief after two years following the defendant's completion of the sentence.

5) Specifies that discretionary expungement relief for felonies, as described in the provisions of this bill, applies to convictions that occur before, on, or after January 1, 2021.

6) States that discretionary conviction relief and automatic conviction relief does not release the defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court, as specified. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

7) Requires the parole officer to notify the prosecuting attorney when a petition for post-conviction relief is filed and the defendant was on parole.

8) Expands automatic conviction relief to include felony convictions occurring on or after January 1, 2005, where based upon the disposition date and the sentence specified in the DOJ's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense.

9) Excludes serious and violent felonies, as specified, and felonies requiring sex registration from automatic conviction record relief.

10) Includes the California Department of Corrections and Rehabilitation (CDCR), as an entity that can file a petition to prohibit DOJ from granting automatic conviction record relief, and allows CDCR to present evidence, through the prosecutor, to present evidence

11) Places the initial burden of proof on CDCR to show that granting conviction relief would pose a substantial threat to the public safety.

12) States that a person denied relief automatic conviction relief may continue to be eligible for relief pursuant to other specified laws allowing a defendant to petition for record relief, including the record relief described in the provisions of this bill.

13) Makes technical and conforming changes.

EXISTING LAW:

1) Requires the DOJ, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, and identify persons with records of arrest that meet the criteria to be eligible for arrest record relief. (Pen. Code § 851.93, subd. (a)(1).)

2) States that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 2021, and meets any of the following conditions:

   a) The arrest was for a misdemeanor offense and the charge was dismissed;

   b) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest;

c) The arrest is for a realigned felony offense where there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest;

d) The person successfully completed any of the following, relating to that arrest:

i) A prefiling diversion program, as defined, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

ii) A drug diversion program administered by a superior court or a deferred entry of judgment program; and,

iii) A pretrial diversion or other diversion program, as specified. (Pen. Code § 851.93, subd. (a)(2).)

3) Requires the DOJ to grant relief to a person identified as eligible for arrest record relief, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 851.93, subd. (b).)

4) Requires the DOJ, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 851.93, subd. (c).)

5) Requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation and the petitioner successfully completed probation or terminated early, is not serving a sentence for, on probation for, or charged with the commission of any offense. The court has discretion to do so in the interests of justice in other probation cases. (Pen. Code, § 1203.4, subds. (a) & (b).)

6) Specifies that a court may grant expungement relief, in its discretion and the interest of justice, for offenses where the defendant was sentenced on a realigned felony (not placed on probation), as specified. (Pen. Code, § 1203.41, subd. (a).)

7) States that expungement on a realigned felony, as specified, may be granted only after the lapse of one year or two years following the defendant's completion of the sentence, as specified. (Pen. Code, § 1203.41, subd. (a)(2).)

8) Provides that expungement on a realigned felony may be granted only if the defendant is not under mandatory supervision, and is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code, § 1203.41, subd. (a)(3).)

9) Provides the same discretionary expungement relief if a defendant was sentenced prior to the implementation of the 2011 Realignment Legislation for a crime for which he or she would otherwise have been eligible for sentencing pursuant to realignment. (Pen. Code, § 1203.42.)

10) Specifies that expungement relief is subject to the following conditions:

a) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed;

b) Does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission;

c) Does not permit a person to own, possess, or have in his or her custody or control any firearm, if conviction for such offense would otherwise prohibit such possession; and,

d) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office. (Pen. Code, §§ 1203.4, 1203.41 and 1203.42.)

11) Requires DOJ, as of January 1, 2021, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons with convictions that meet specified criteria and are eligible for automatic conviction record relief. (Pen. Code § 1203.425, subd. (a)(1).)

12) States that a person is eligible for automatic conviction relief if they meet all of the following conditions:

a) The person is not required to register pursuant to the Sex Offender Registration Act;

b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

c) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges;

d) Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

e) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation; or

ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code §

1203.425, subd. (a)(2).)

13) Requires the DOJ to grant relief, including dismissal of a conviction, to a person who is eligible, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 1203.425, subd. (b).)

14) Requires the DOJ, on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted. (Pen. Code § 1203.425, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Nationally, an estimated 70 million people (nearly one in three adults, and 8 million people in California alone) have a past arrest or conviction on their record. The vast majority of people with convictions have long finished their sentence in prison, jail, parole or probation and exited the 'deepest end' of the justice system.

   "Despite the data on recidivism, California still maintains these records until the person reaches 100 years of age. Due to the widespread usage of background checks in today's society, the availability of these records activate thousands of barriers for one quarter of the state's population resulting in chronic housing insecurities, long-term unemployment, and widespread lack of civic participation. These collateral consequences disproportionately affect Black and Latino communities and have become one of the leading drivers of multi-generational poverty.

   "For families seeking to live outside of impoverished areas, mothers that want to pursue new careers through education, fathers who want to coach, homeowners that want to join their HOA board, couples who may want to adopt, or grandchildren that want to care for their elderly grandparent, old criminal records go beyond economics and into denial of human decency, family responsibility and basic citizenship. All told, California has created a permanent underclass that it funnels thousands of people into every year through over incarceration."

2) **Employment Barriers for People with Criminal History Records**: Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

   The refusal to consider job applicants with a criminal history perpetuates a vicious cycle: folks who have been involved in criminal activity seek to come clean and refocus their lives on productive, non-criminal endeavors, but find it nearly impossible to land employment.

Unable to earn a steady income and excluded from the dignity and social inclusion that a job confers, people with criminal histories sometimes drift back toward criminal endeavors, resulting in increased recidivism.

The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

3) **Expungement Relief Generally**: Defendants who have successfully completed probation (including early discharge from probation) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Pen. Code, § 1203.4.) Penal Code Section 1203.4 also provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code Section 1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

When relief is granted under Penal Code section 1203.4, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.)

Expungement relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency. (See e.g., Bus. & Prof. Code, §§ 475, 480, 490; Ed. Code, § 44009; *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230.) If the employer is an entity statutorily authorized to request criminal background checks on prospective employees, the background check would reveal the expunged conviction with an extra entry noting the dismissal on the record. On the other hand, except as specified, employers cannot consider a conviction dismissed under Penal Code section 1203.4 in hiring decisions. (Lab. Code, § 432.7.)

Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.) Expungement does not permit a person to possess a firearm if the conviction would otherwise prohibit such possession.

Expungement relief is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Pen. Code, §§ 1203.4 and 1203.4a.)

Expungement was originally available only when a defendant was placed on probation. However, expungement relief has been extended to other categories of cases. First the relief was extended to misdemeanants who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced on a realigned felony where probation was not granted. (Pen. Code, § 1203.41.) Expungement relief was granted to those persons who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state

prison instead of county jail because they were sentenced before the enactment of Realignment. (Pen. Code, § 1203.42.)

This bill would expand a court's discretionary power to provide expungement relief to all felonies, not just realigned felonies where probation was not granted. Under existing law a felony sentenced to state prison does not have an option to pursue expungement relief. This bill would allow a court to grant expungement relief on those felonies, in the court's discretion and in the interests of justice. This is the same standard a court currently applies when considering relief for a realigned felony where a defendant was not granted probation. A person would not be eligible on a felony where the person received a state prison sentence until two years after the completion of the sentence. Such a person would not be eligible for discretionary expungement relief if the person is on probation, parole, or mandatory supervision or the person is charged with a new offense.

4) **Automatic Conviction and Arrest Record Relief**: In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 1076 established a procedure in which persons who had been arrested or convicted under certain conditions could have certain convictions dismissed, arrest records sealed, and have such information be withheld from disclosure, all without having to file a petition with the court. The purpose of AB 1076 was to remove barriers to housing and employment for recently convicted and arrested individuals in order to foster their successful reintegration into the community.

As originally envisioned, AB 1076 would have applied to any arrest or conviction regardless of when that arrest or conviction occurred. A subsequent version of the bill made it applicable only to those arrests and convictions that occurred on or after January 1, 1973. In its chaptered version, AB 1076 applied only to those arrests and convictions which occur on or after January 1, 2021.

Existing law (separate from AB 1076) provides a number of procedures by which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her arrest/conviction information sealed or dismissed. Typically, the procedure for sealing an arrest record, or dismissing a conviction is a court process. It requires the defendant to submit an application, or "petition" with the court, and the court makes a determination about whether the person is eligible for the relief he or she is seeking.

AB 1076 streamlined the process for defendants that have suffered arrests or convictions after January 1, 2021, that would otherwise be eligible through petitioning the court. AB 1076 removed the requirement that a defendant file a petition with the court, and instead requires DOJ to proactively seek out defendants who are eligible for relief by searching its criminal information databases. Once DOJ makes a determination that a person is eligible for either arrest record or conviction record relief, it must grant relief in the form of either 1) sealing an arrest record, or 2) in the case of a guilty plea, withdrawing the plea of guilty, entering a plea of not guilty, and dismissing the charges, or 3) in the case of a conviction after a plea of not guilty, vacating the conviction and dismissing the charges against the person. DOJ would be required to search for eligible defendants on a monthly basis and inform the superior court with jurisdiction over the case when relief is granted.

AB 1076 left in place certain prohibitions resulting from arrests or convictions after relief has been granted, such as the prohibition on owning a firearm after a conviction for domestic

violence or a felony, and would not restore someone's driving privilege if that privilege was lost as a result of the conviction for which he or she is obtaining relief. AB 1076 also does not allow DOJ to grant conviction records relief to a person who is required to register as a sex offender, or a person who is under court supervision or facing criminal charges.

A person is eligible for automatic conviction relief if they meet all of the following conditions:

a) The person is not required to register as a sex offender;

b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

c) The person is not currently serving a sentence for any offense and does not have any pending criminal charges;

d) There is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

e) The conviction occurred on or after January 1, 2021 and meets one of the following criteria:

   i) The defendant was sentenced to probation and has completed the term of probation without revocation; or

   ii) The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgment.

This bill would expand automatic conviction relief to include felonies other than one for which the defendant completed probation without revocation of probation, where the conviction occurred on or after January 1, 2005. The conditions to be eligible for automatic relief include a finding that, based upon the disposition date and the sentence specified in DOJ's records, the defendant appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This bill would exclude serious and violent felonies, as specified and felony offenses requiring sex registration.

This bill seeks to expand automatic arrest record relief to include most felony offenses where there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest. This bill would specify that if the arrest is for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment pursuant to a realigned felony for eight years or more, at least six years must have elapsed since the date of the arrest.

5) **Argument in Support**: According to the *California Labor Federation,* "Nationally, an estimated 70 million people – nearly one in three adults, and 8 million people in California alone – have a past arrest or conviction on their record. California maintains an individual's conviction records until that person reaches 100 years of age. Because of the widespread usage of background checks in today's society, the permanence of these records present thousands of barriers resulting in widespread constraints on community reintegration.

"Examples of these barriers are felt by families seeking to live outside of impoverished areas, individuals that want careers in education or health care, others who want to coach, homeowners that want to join their HOA board, couples that want to adopt, or grandchildren that want to care for their elderly grandparent. Old conviction records go beyond economics and into denial of human decency, family responsibility, and basic citizenship.

"Lack of access to employment and housing are primary factors driving recidivism, and conviction records are serious barriers to successful reentry and come at a cost of $20 billion annually to California's economy. Nationally, it has been estimated that the U.S loses roughly $372.3 billion per year because of employment losses among people living with convictions."

6) **Argument in Opposition:** According to *Peace Officers Research Association of California*, "Current law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence. Current law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified. This bill would make this relief available to a defendant who has been convicted of any felony.

"PORAC believes that by expanding the relief of penalties for all felonies, we are placing our communities at risk. Oftentimes, felony crimes are violent and leave behind innocent victims whose lives will never be the same. By allowing violent criminals back on the street, with their record dismissed, they will have less deterrent to commit another crime. Thus, leaving more victims in their wake. If the author is willing to amend the bill to exclude violent criminals, we would be inclined to remove our opposition."

7) **Related Legislation**:

a) AB 1308 (Ting), would require the DOJ, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified, for all convictions that occurred on or after January 1, 1973 rather than just those that occurred on or after January 1, 2021. AB 1308 is awaiting hearing in the Senate Public Safety Committee.

b) AB 1540 (Ting), requires the court to provide counsel for the defendant when there is recommendation from the CDCR, BPH, or the district attorney, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 is awaiting hearing in

the Senate Public Safety Committee.

c) AB 1245 (Cooley), would authorize a petition for resentencing by a defendant who has served at least 15 years of their sentence and has at least 24 months of their sentence remaining. AB 1245 is a two year bill in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 2978 (Ting), of the 2019-2020 Legislative Session, contained the same provisions as this bill. AB 2978 was never heard in the Assembly Public Safety Committee.

b) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires starting on January 1, 2021, and subject to an appropriation in the annual Budget Act, that the DOJ, on a monthly basis, review the records in the statewide criminal justice databases grant relief to persons who identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.

c) AB 972 (Bonta), of the 2019-2020 Legislative Session, would have established a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 was held in the Assembly Appropriations Committee.

d) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held of the Assembly Appropriations Suspense File.

e) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

f) AB 641(Bradford), Chapter 787, Statutes of 2013, authorized a court, in its discretion and in the interests of justice, to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition (Co-Sponsor)
California for Safety and Justice (Co-Sponsor)
Legal Services for Prisoners With Children (Co-Sponsor)
Los Angeles Regional Reentry Partnership (LARRP) (Co-Sponsor)
A New Way of Life Re-entry Project
ACLU California Action
All of Us or None Los Angeles
All of Us or None Riverside
Alliance of Californians for Community Empowerment (ACCE) Action
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties

Arts for Healing and Justice Network
Asian Americans Advancing Justice - California
Asian Solidarity Collective
Bend the Arc: Jewish Action
Black Los Angeles Young Democrats
Blameless and Forever Free Ministries
Building Opportunities for Self-sufficiency
California Attorneys for Criminal Justice
California Calls
California Catholic Conference
California Immigrant Policy Center
California Labor Federation, Afl-cio
California Public Defenders Association (CPDA)
California Religious Action Center of Reform Judaism
California State Council of Laborers
Californians Coalition for Women Prisoners
Californians United for A Responsible Budget
Cat Clark Consulting Services LLC
Center of Hope LA
Change Begins With Me Indivisible Group
Chrysalis Center, the
Code for America
Communities United for Restorative Youth Justice (CURYJ)
Community Advocates for Just and Moral Governance
Community Legal Services in East Palo Alto
Community Works
County of Los Angeles Board of Supervisors
Courage California
Cure California
Defy Ventures
Del Cerro for Black Lives Matter
Democratic Club of Vista
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Right
Faith in Action East Bay
Family Reunification Equity & Empowerment (F.R.E.E.)
Felony Murder Elimination Project
Forward Impact Dba Represent Justice
Fresno Barrios Unidos
Friends Committee on Legislation of California
Hillcrest Indivisible
Homeboy Industries
Initiate Justice
Inland Empire Fair Chance Coalition
Inland Equity Partnership
Kehilla Community Synagogue
LA Voice
Last Prisoner Project

Law Enforcement Action Partnership
Legal Aid At Work
Livefree California
Michelson Center for Public Policy
Mission Impact Philanthropy
Multi-faith Action Coalition
National Association of Social Workers, California Chapter
Partnership for The Advancement of New Americans
People Objective LLC
Phenomenal Angels of The Community
Pico California
Pillars of The Community
Project Rebound Consortium
Prosecutors Alliance California
Racial Justice Coalition of San Diego
Re:store Justice
Riseup
Riverside Community College District
Root & Rebound
Rubicon Programs
San Bernardino Free Them All
San Diego Progressive Democratic Club
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Sd-qtpoc Colectivo
Seiu California
Shields for Families
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County San Diego
Smart Justice California
Social & Environmental Justice Committee of The Universalist Unitarian Church of Riverside
Social Justice Research Partnership
Social Workers for Equity & Leadership
Southern California Coalition
Starting Over, INC.
Team Justice
The Dream Corps
The Experience Christian Ministries
The Reverence Project (TRP)
Think Dignity
Time for Change Foundation
Timelist Group
Transitions Clinic Network
Uncommon Law
Underground Grit
Underground Scholars Initiative At UC Riverside
Underground Scholars Initiative Berkeley
Underground Scholars Initiative, University of California Davis

Unite-la, INC.
Uprise Theatre
We the People - San Diego
Young Women's Freedom Center

125 private individuals

Oppose

California Association of Licensed Investigators
California Board of Psychology
California District Attorneys Association
Peace Officers Research Association of California (PORAC)
Alliance for Constitutional Sex Offense Laws
Physician Assistant Board

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 29, 2021
Counsel: Matthew Fleming

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

SB 320 (Eggman) – As Amended June 14, 2021

SUMMARY: Codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order; requires the court to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm/ammunition relinquishment order, and clarifies that specified provisions of law pertaining to a relinquishment of a firearm also apply to ammunition. Specifically, **this bill**:

1) Requires the court, when issuing a protective order, to provide information about relinquishing any firearms and ammunition that are still in the restrained party's possession, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.

2) Requires the court, when holding a hearing, to review the file to determine whether the receipt showing proof of relinquishment has been filed and inquire of the respondent whether they have complied with the requirement.

3) Requires the court to report violations of the firearms prohibition of a restraining order to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

4) Requires every law enforcement agency in the state to develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms or ammunition.

5) States that if the results of the court's search of records and databases, prior to issuing a civil domestic violence restraining order (DVRO), indicate that the subject of the order owns a registered firearm, or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm.

6) States that if evidence of compliance with a relinquishment order is not provided, the court shall order the clerk of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms and ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.

7) Codifies the following Rules of Court that pertain to family or juvenile law domestic violence protective orders:

a) When relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm in, or subject to, their immediate possession or control;

b) In making such a determination, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted;

c) The court may make the determination at a noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing, or at any subsequent family or juvenile law hearing while the order remains in effect;

d) If the court makes a determination that the restrained person has a firearm or ammunition in violation of a protective order, the court shall make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing;

e) When presented with information that a restrained person has a firearm or ammunition, the court may set a review hearing to determine whether there has been a violation of the protective order;

f) The review hearing shall be held within 10 court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person shall provide notice of the review hearing to the restrained person at least two court days before the review hearing, by personal service or by mail to the restrained person's last known address;

g) The court may, for good cause, extend the date of the review hearing for a reasonable period or remove it from the calendar;

h) The court shall order the restrained person to appear at the hearing;

i) The court may conduct the review hearing in the absence of the protected person;

j) The court may permit a party to appear by telephone; and,

k) The determination may be considered by the court in issuing an order to show cause for contempt, as specified, or an order for monetary sanctions, as specified.

8) Requires the court to consider whether a party is a restrained person in possession or control of a firearm or ammunition when making specified determinations related to child custody and visitation matters.

9) Requires the juvenile court, when issuing a DVRO, to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition, and applies the procedures for firearm relinquishment.

10) Specifies that certain penalties do not apply if the restrained person is a juvenile.

11) Makes additional conforming changes.

EXISTING LAW:

1) Authorizes protective orders to be issued by the civil court in domestic violence cases. (Fam. Code, § 6380 et seq.)

2) Provides that when making a protective order where both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from owning, possessing, purchasing or receiving or attempting to own, possess, purchase or receive a firearm or ammunition, and including notice of the penalty of the violation. (Fam. Code, § 6304.)

3) Prohibits a person who is the subject of a protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while the protective order is in effect. (Fam. Code, § 6389.)

4) Punishes a violation of the prohibition as either a misdemeanor (owning or possessing a firearm when prohibited from doing so by a restraining order) or a wobbler (purchasing or receiving or attempting to purchase or receive a firearm when prohibited from doing so by a restraining order). (*Id.*; Pen. Code, § 29825.)

5) Provides that upon issuance of a restraining order, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control. (Fam. Code, § 6389, subd. (c)(1).)

6) Requires a law enforcement officer serving a protective order that indicates that the respondent is in possession of firearms to request their immediate surrender. If a request is not made by the officer, the relinquishment shall occur within 24 hours of being served with the order, by surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified. A receipt shall be issued to the person relinquishing the firearm at the time of relinquishment and the person shall do both of the following within 48 hours of being served with the order:

   a) File the relinquishment receipt with the court. Failure to timely file a receipt shall constitute a violation of the protective order; and

   b) File a copy of the receipt with the law enforcement agency that served the protective order. Failure to timely file a copy of the receipt shall constitute a violation of the protective order. (Fam. Code, § 6389, subd. (c)(2).)

7) Authorizes the issuance of a search warrant when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody of or controlled by, a person who is prohibited by a civil DVRO that has been lawfully served, and the restrained person has failed to relinquish the firearm as required. (Pen. Code, § 1524, subd. (a)(11).)

8) Requires, prior to a hearing on the issuance of a civil DVRO, the court to ensure that a search has been conducted to determine if the subject of the proposed order has a prior criminal conviction for a violent felony or a serious felony, has a misdemeanor conviction involving domestic violence, weapons, or other violence, has an outstanding warrant, is currently on parole or probation; has a registered firearm; or has a prior restraining order or a violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court, as provided. (Fam. Code, § 6306, subd. (a).)

9) Provides that if the results of the court's search of records and databases indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify appropriate law enforcement officials and law enforcement officials shall take all actions necessary to execute any outstanding warrants or any other actions as appropriate and as soon as practicable. (Fam. Code, § 6306, subd. (e).)

10) Requires when relevant information is presented to the court at any noticed hearing that a restrained person has a firearm, the court must consider that information to determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm in his or her immediate possession or control. (Cal. Rules of Court, rule 5.495.)

11) Provides that in making a determination under this rule, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted. This determination may be made at any noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing or any subsequent hearing while the order remains in effect. (*Id.*)

12) States that if the court makes a determination that the restrained person has a firearm in violation the protective order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing. (*Id.*)

13) States that when the court is provided with information relevant to whether the person subject to a protective order has a firearm in his or her immediate possession or control, the court may set a review hearing to be held within 10 court days after the noticed hearing at which the information was presented. (*Id.*)

14) Provides that if the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing, by personal service or by mail to the restrained person's last known address. (*Id.*)

15) Authorizes the court to extend the date of the review hearing for a reasonable period of remove it from the calendar. (*Id.*)

16) Requires the court to order the restrained person to appear at the review hearing; the court may conduct the hearing in the absence of the protected person. (*Id.*)

17) States that the court may permit a party to appear at the review hearing by telephone. (*Id.*)

18) States that if the court determines that the restrained person has a firearm in violation of the protective order, the court must consider that determination when deciding the issue of child custody. (*Id.*)

19) Requires the court, in making the determination of the best interest of the child for purposes of deciding child custody, to consider specified factors, including whether the perpetrator of domestic violence is restrained by a protective order or restraining order and has complied with that order. (Fam. Code, § 3044.)

20) Authorizes a juvenile court to issue a DVRO, as specified. (Welf. & Inst. Code, § 213.5.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "In California, 33% of women and 27% of men experience some form of domestic violence during their lifetimes. We know that the presence of a firearm in the home during an incident of domestic violence increases the risk of homicide by at least 500%. Although California has led the charge when it comes to comprehensive firearm legislation, recovering firearms from those who are mandated to relinquish them has proven to be more difficult.

"The Armed Prohibited Persons System (APPS) data show consistently that over 20,000 people in California are armed and prohibited – and that's only identifying those with firearms known to the state of California. California DOJ has consistently recommended that steps be taken at the local level to ensure relinquishment as close to the time of prohibition as possible.

"Under existing law, when a person is the subject of a domestic violence restraining order they automatically become a prohibited person. In 2014, the Judicial Council adopted Rule 5.495 laying out the procedures courts could take to ensure relinquishment and to coordinate with law enforcement where necessary. Because the rule is optional, it has been implemented inconsistently throughout California. Codifying Rule of Court 5.495, and strengthening requirements for courts to communicate with law enforcement when an order has been violated, demonstrates California's commitment to removing firearms from prohibited persons at the earliest point in time while also ensuring consistent and robust implementation of the policy across all 58 counties of our state.

"The inconsistency in implementation is especially concerning in the civil context because the only person with the ability to address the firearm prohibition as close to the time of prohibition as possible is the judge hearing the case. Unlike in the criminal context, there is no outside law enforcement, probation officer, or prosecutor present in the courtroom to address compliance or violations with the firearms relinquishment process.

"In civil domestic violence restraining order cases the burden is too often on the victim to know about the rule of court process and to request that the court conduct a hearing to ensure the restrained person is no longer armed. Making sure courts, litigants, and attorneys know how important it is to address the firearms prohibition at the earliest point possible will

protect victims of domestic violence, their families and communities, and law enforcement."

2) **Judicial Council Report**: In 2008, the Judicial Council published a report that recommended guidelines for improving the administration of justice in domestic violence cases. On the issue of firearms relinquishment, the report stated that while California and federal law bars persons subject to restraining orders from possessing or purchasing firearms or ammunition, a court's order to relinquish firearms are not self-implementing. The restrained party is responsible for surrendering any firearms to law enforcement or selling them to a licensed gun dealer but some gun owners are extremely reluctant to comply. (*Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force* (Jan. 2008) Administrative Office of the Courts, p. 21, available at: https://www.courts.ca.gov/documents/dvpp_rec_guidelines.pdf, [as of June 15, 2021].)

   The report states:

   > Ultimately, public safety is best served when law enforcement and the entire justice system take immediate action to remove firearms, whether registered or not, from the hands of a person who is statutorily barred from possessing them. The courts have a necessary and important role in achieving this goal, but because they are not investigative or enforcement agencies, the courts must rely on justice system entities to provide necessary information and to enforce compliance with firearm relinquishment orders. (*Ibid.*)

   This would bill make changes to enhance communication with law enforcement related to identifying people subject to, or in violation of, the relinquishment requirement. Specifically, this bill:

   - Requires the court to notify the parties of how any firearms still in the restrained party's possession are to be relinquished and how to submit a receipt to the court.

   - Requires a court holding a hearing regarding the firearm relinquishment to review the file to determine whether the receipt regarding relinquishment has been filed and to inquire as to whether the person has complied with the requirement.

   - Requires violations of the relinquishment requirement to be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

   - Requires the court, in performing the search to see if the person has, among other things, a registered firearm, to make a written record as to whether the person has relinquished their firearms, and if evidence has not been provided, to notify law enforcement officials, who must then take all actions necessary to ensure the individual relinquishes the firearms.

3) **Existing California Rules of Court**: In 2014, the Judicial Council adopted Rule of Court 5.495 related to firearm relinquishment procedures when a civil DVRO has been issued. These rules of court were created in order to address a procedural gap in existing statutes that

prohibit a restrained person from owning, possessing, or controlling a firearm for the duration of the restraining order but do not provide for a procedure for the court to determine whether its order to relinquish firearms has been complied with. Specifically, the rules:

- Require the court to consider relevant information, when presented at a noticed hearing, to determine whether the person subject to a civil domestic violence order has a prohibited firearm;

- Provide procedures regarding the court's determination of whether the firearm has been relinquished;

- Provide that the court may make its determination at the time the DVRO is issued or at a subsequent noticed hearing while the order remains in effect;

- Specify that documentation of the court's determination be provided to the parties;

- Specify remedies to be applied if the court determines that a restrained person has failed to relinquish a prohibited firearm; and,

- For cases in which the court defers consideration of the matter to a review hearing, specifies the timing of the hearing, specified notice requirements if the restrained person was not present when the court set the review hearing, specifies who must be present at the hearing and provides that a party may appear by telephone.

According to the author and sponsor of this bill, these rules of court are not mandatory and therefore the implementation of these procedures has been inconsistent throughout different counties. In fact, "Rules of Court have the force of law and are as binding as procedural statutes as long as they are not inconsistent with statutory or constitutional law." (*R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 205.) Nevertheless, this bill would codify Rule of Court 5.495 in the Family Code so that the standards and procedures for ensuring the relinquishment of a firearm and ammunition following the issuance of a civil restraining order would consistently apply throughout the state.

4) **Conforming Changes Regarding Ammunition**: Existing law prohibits a person who is the subject of a protective order issued by the family court from owning, possessing, purchasing, or receiving a firearm or ammunition. Existing law also provides procedures for how a person may legally relinquish their firearm in order to comply with that prohibition. However, the current law governing these procedures only references firearms, and makes no mention of ammunition. This bill would add in references to ammunition in order to make it clear to all parties that a person must also relinquish their ammunition, and the legal procedures for making sure that the court is properly apprised of the fact that a person has done so.

5) **Argument in Support**: According to the bill's sponsor, *Gifford's*: "The presence of a firearm in the home during an incident of domestic violence increases the risk of homicide by at least 500%; over half of female victims of domestic violence homicide in the United States are killed with firearms. California lawmakers have passed important legislation providing criminal and civil remedies to address this public health issue however, a gap remains

regarding the procedures for ensuring restrained parties understand and promptly comply with the firearms relinquishment and prohibition requirements. This bill works to address this gap and offers life-saving opportunities to ensure firearm relinquishment or seizure takes place.

"This bill would strengthen court processes for ensuring firearm relinquishment by people who, under current law, are no longer permitted to own, possess, or purchase firearms because they are subject to a domestic violence restraining order. When a protected party has provided information to the court about a restrained party having firearms, we know that matter involves greater risk of harm to the protected person, family and community members, and law enforcement. SB 320 would build on existing law that currently directs courts to review relevant records prior to a hearing on issuance of a protective order to determine whether the respondent failed to relinquish firearms. It also provides for notification to law enforcement so that appropriate steps can be taken to reduce risk to protected persons, members of law enforcement, and the public generally.

"In addition to adding new language that would require information be provided to restrained parties to make it easier for them to comply with firearm relinquishment procedures, this bill would codify an existing court rule (5.495) adopted by the Judicial Council that has been unevenly implemented across the state. This rule directs courts to consider information about unlawful firearm or ammunition access and failure to comply with relinquishment requirements, including conducting review hearings to verify compliance and notifying law enforcement of violations. The bill would also require courts to consider the significance of a violation when ruling on child custody and visitation.

"Civil domestic violence restraining order cases almost always involve self-represented parties. As a result, those seeking protection rely heavily on the courts to ensure that orders are effective and provide the remedies that have been enacted in California, including ensuring that firearms are in fact relinquished and prohibitions around future purchases are put into place. This bill would encourage courts to utilize straightforward, existing mechanisms to reduce the risk of firearm violence and ensure compliance with the law and court orders.

Those who have used violence against their partners and who become subject to protective and restraining orders too often are able to illegally keep guns and use them to threaten, terrorize, maim, or murder their family members, law enforcement officers, or others in their community. This bill makes Californians safer by codifying best practices and ensuring that courts and law enforcement consistently verify that restrained parties are in fact disarmed. We believe this policy will save lives.

6) **Related Legislation**:

a) SB 374 (Min) would provide that reproductive coercion is a form of domestic violence for which a restraining order may be granted. SB 374 is pending in the Assembly Appropriations Committee.

b) SB 538 (Rubio) would require courts to receive domestic violence restraining order petitions or gun violence restraining order petitions electronically. SB 538 is pending in

this Committee.

7) **Prior Legislation**: AB 465 (Eggman), Chapter 137, Statutes of 2020, would have codified Rules of Court that pertaining to criminal court and family court processes for determining if a restrained party failed to relinquish a firearm as required by a protective order. AB 465 was amended into an unrelated bill and signed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Brady Campaign
Brady Campaign California
California District Attorneys Association
California Partnership to End Domestic Violence
Family Violence Appellate Project
Giffords
Little Hoover Commission
Los Angeles County Bar Association - Family Law Section
National Association of Social Workers, California Chapter
Neveragainca
Prosecutors Alliance of California
The Violence Prevention Coalition of Orange County
Weave
Women Against Gun Violence

Oppose

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Date of Hearing: June 29, 2021
Counsel: David Billingsley

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

SB 358 (Jones) – As Amended April 15, 2021

SUMMARY: Expands the crime of mail theft to apply to mail theft from a private mail carrier's shipping or delivery route.

EXISTING LAW:

1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

2) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified. (Pen. Code, § 487.)

3) Defines petty theft as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950, and makes it punishable as a misdemeanor, except in the case where a person has a prior super strike or registrable sex conviction and a prior theft conviction, as specified. (Pen. Code, § 490.2, subd. (a).) This provision does not apply to theft of a firearm. (Pen. Code, § 490.2, subd. (c).)

4) Defines shoplifting as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950 dollars. Shoplifting is punishable as a misdemeanor, except where a person has a prior super strike or registrable sex conviction. Any act of shoplifting must be charged as shoplifting. (Pen. Code, § 459.5, subd. (a).)

5) States that every person who commits mail theft, as defined by federal law, is guilty of a crime, and shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. (Pen. Code, § 530.5, subd. (e).)

6) Defines mail theft is defined as follows:

   a) Whoever steals, takes, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein;

   b) Whoever steals, takes, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection

upon or adjacent to a collection box or other authorized depository of mail matter; or,

c) Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, as described above, knowing the same to have been stolen, taken, or embezzled. (Pen. Code, § 530.5, subd. (e), cross referencing 18 U.S.C, § 1708).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Since the COVID-19 crisis began, home delivery of packages and mail has dramatically increased across the nation. Seniors and disabled Californians in particular rely on mail delivery for fundamental items such as medication and food. Unfortunately, package theft has become its own epidemic, with 30% of package thefts nationwide occurring here in California.

"Current California law provides that every person who commits mail theft pursuant to Title 18 of U.S. Code Section 1708 is guilty of a misdemeanor punishable by imprisonment not to exceed one year. Written into law in 1948, the mail protections under this U.S. Code Section only apply to mail sent through the United State Postal Service (USPS) but does not address mail sent through private carriers.

"When 18 U.S.C. § 1708 was written over 70 years ago, mail was an entirely different concept than it is today. Consumers had a limited number of mail carrier options, with USPS as the primary mail service available. Consumers also did not rely on mail nearly as much as they do today. Modern mail has transitioned to delivering daily necessities, often in a rushed manner. Today, consumers have a variety of mail carrier options including USPS, FedEx, and UPS. The current mail protections are outdated and do not reflect the modern nature of mail delivery. This gap in law leaves many types of packages out of these protections.

"Cities are inundated with increases in property crime, especially when there are few consequences to deter thieves. For example, the San Diego Police Department is overwhelmed with property crime reports, and, even if the crime victim has a picture or video of the thief stealing, very little can be done to apprehend the perpetrator, because of recent changes in the law.

"SB 358 updates the definition of mail to protect all forms of mail sent through all types of mail carriers, including USPS and private carriers. This bill will protect mail throughout the entire delivery process, regardless of its location including in the delivery truck, on the receiver's porch, and in the mailbox. With this updated definition, California will follow the lead of six other states that also protect all forms of mail throughout the entire delivery process: Washington, Michigan, Wisconsin, Utah, Texas, and Oklahoma."

2) **Mail Theft:** California criminalizes the theft of mail. The California crime is based on the federal statute prohibiting the theft of mail, and specifically cross references the federal statute to establish the elements of mail theft. Mail theft is an offense which involves the theft of items sent through the United States Postal Service (USPS), a federal agency. "Mail"

constitutes the items that are sent through and entrusted to that governmental agency. In order for mail theft to occur, the theft must occur while the items are physically or constructively within the control and ambit of the USPS.

Courts have noted the crime of mail theft is based on the importance of the USPS as government agency providing service to the citizens of the United States. "The United States Postal Service has served as the keystone of the American communications system since its founding by Benjamin Franklin in 1775. In recognition of the indispensable role the Postal Service plays in the private and commercial life of the nation, Congress has provided criminal penalties for activities that interfere with the Postal Service's mandate to deliver the mail." (*United States v. Lavin* (3d Cir. 1977), 567 F.2d 579, 580.)

This bill seeks to expand the crime of mail theft to a person "who commits that mail theft from a private mail carrier's shipping or delivery route." Given that mail theft was specifically constructed as a crime involving the government, it is not clear that including private actors within mail theft is consistent with the nature of the crime. This bill does not define a private mail carrier. As such, it is not clear whether it would apply to private entities that are in the shipping and delivery business, such as Fed Ex and United Parcel Service, or whether it would also apply to retailers who also happen to deliver their own packages, such as Amazon. In either case, it is not clear that a "private mail carrier" performs a role and function that is coextensive with that of the USPS to appropriately be included in the crime defined by the elements of the federal crime of mail theft.

3) **Proposition 47 and Theft**: Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See (http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf)

   Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. The initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The penalties for the offenses of receiving stolen property and check forgery were reduced from alternate felony/misdemeanors to misdemeanors if the value was $950 or less. The initiative also reduced the penalty for petty theft with a prior theft to a misdemeanor from an alternate felony/misdemeanor. The initiative was consistent in demarcating a distinction between thefts consisting of an amount of $950 and below and those exceeding that amount.

   Proposition 47 directed that theft crimes of $950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions.

   Proposition 47 contained language reflecting one of the purposes and intents of the proposition was to focus on non-custodial alternatives for nonserious, nonviolent offenses:

   > The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment.

(https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2328&context=ca_ballot_props)

Under Proposition 47 and current law, the conduct of "package theft" already constitutes the crime of theft. Pursuant to current law, that crime would be punished as a misdemeanor with a maximum sentence of six months (petty theft) if the value of the property was $950 or less. If the value of the items(s) exceeded $950, the conduct could be punished as an alternate felony/misdemeanor with a maximum penalty of three years in the county jail.

The provisions of this bill would increase the maximum penalty to one year county jail, for conduct that would constitute a petty theft under current law with a maximum penalty of six months county jail.

4) **Argument in Support**: According to the *Peace Officers Research Association of California*, "Current law makes mail theft, as defined, a crime punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Current law also limits mail theft to specified types of theft from the routes and facilities of the United States Postal Service. This bill would expand that crime to also apply to mail theft from a private mail carrier's shipping or delivery route.

"With more Californians doing shopping online, it is important to address the increase of package theft as deliveries are frequently left unattended on doorsteps, patios, driveways, and enclosed yards. PORAC believes this bill is a preventative step towards decreasing the amount of package theft on residential properties."

5) **Argument in Opposition**: According to the *American Civil Liberties Union California Action*, "Under existing law, a person can already be prosecuted for entering the curtilage of a home with the intent to commit a theft. Indeed, depending on the circumstances, a person could be convicted of trespassing, attempted grand theft, attempted petty theft, or attempted receipt of stolen property. If the person actually takes the package, they can be convicted of a slew of other crimes, including grand theft, petty theft, and mail theft. The current penalty for petty theft of a package containing an item valued at less than $950 is up to six months incarceration, with more severe penalties applicable under certain circumstances. Increasing this penalty to a year in cases where the package is stolen from a private mail carrier's delivery route will do nothing to reduce the incidence of package theft, and instead will result in increased costs to the taxpayers of California and harms to the families of those individuals locked up for up to six additional months.

"We are also concerned that SB 358 could be applied in a discriminatory manner. In particular, we fear that the expansion of mail theft to apply to the theft of packages that are delivered by private services, like Amazon, could be used as a pretext for arresting people against whom law enforcement or property owners are explicitly or implicitly biased. Homeowners are more likely to call the police if they see a group of Black teenagers come onto the porches in their neighborhood than they would be if the teenagers were white. Although the issues of discrimination and bias already occur today, application of the higher penalties for mail theft in these situations will exacerbate these problems – and subject those who are convicted for theft of packages of small value to unjustly harsh punishment." (footnotes omitted.)

6) **Related Legislation**:

a) SB 8 (Skinner), would have established petty theft in the first degree as the taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury. SB 8 was held in the Senate Appropriations Committee.

b) AB 331 (Jones-Sawyer), would extend the sunset date for organized retail theft to January 1, 2026. AB 331 is pending in the Senate Appropriations Committee.

7) **Prior Legislation**:

a) AB 1210 (Low), of the 2019-2020 Legislative Session, would have made it an alternate felony/misdemeanor to enter the property adjacent to a dwelling with the intent to steal a package that has been shipped to the dwelling. AB 1210 was held in the Assembly Appropriations Committee.

b) SB 979 (Jones), of the 2019-2020 Legislative Session, would have made it a crime for a person from entering the curtilage of a residential dwelling, as defined, with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. AB 979 failed passage in the Senate Public Safety Committee.

c) AB 1772 (Chau), of the 2019-202 Legislative Session, would specify that if the value of the property taken or intended to be taken exceeds $950 over the course of distinct but related acts, whether committed against one or more victims, the value of the property taken or intended to be taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. AB 1772 was never heard in heard in the Assembly Public Safety Committee.

d) AB 875 (Cooper), of the 2017-2018 Legislative Session, would have made petty theft with a prior conviction as a punishable felony as provided in pre-Proposition 47 provisions. AB 875 was held in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)

Oppose

ACLU California Action
California Public Defenders Association (CPDA)
Drug Policy Alliance
Ella Baker Center for Human Rights
Legal Services for Prisoners With Children
Rubicon Programs

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: June 29, 2021
Counsel: Cheryl Anderson

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

SB 215 (Leyva) – As Amended May 20, 2021

SUMMARY: Provides sexual assault survivors the ability to privately, securely, and electronically track their own sexual assault evidence kit through the Sexual Assault Forensic Evidence Tracking (SAFE-T) database. Specifically, **this bill**:

1) Requires that on or before July 1, 2022, the Department of Justice (DOJ), in consultation with law enforcement agencies and crime victims groups, to establish a process that allows sexual assault survivors to track and receive updates privately, securely, and electronically regarding the status, location, and information pertaining to their sexual assault evidence kit in the department's SAFE-T database.

2) Allows sexual assault survivors to access this data privately, securely, and electronically on or before July 1, 2022.

EXISTING LAW:

1) Requires the DOJ, in consultation with law enforcement agencies and crime victims groups, to establish a process for victims of sexual assault to inquire about the location and information regarding their sexual assault evidence kits. (Pen. Code, § 680.1.)

2) Requires law enforcement agencies involved in collecting sexual assault kit evidence on or after January 1, 2018, to create an information profile for the kit on the DOJ's SAFE-T database and report the following information within 120 days of collection:

   a) If biological evidence samples from the kit were submitted to a DNA laboratory for analysis;

   b) If the kit generated a probative DNA profile; and,

   c) If evidence was not submitted to a DNA laboratory for processing, the reason or reasons for not submitting evidence from the kit to a DNA laboratory for processing. (Pen. Code, § 680.3, subd. (a).)

3) States the SAFE-T database must be updated with the reason(s) a kit submitted to a laboratory is not tested within 120 days of submission, and every 120 days thereafter until testing is complete. (Pen. Code, § 680.3, subd. (b).)

4) Provides that upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of the crime scene evidence, as specified, the law enforcement agency must state in writing the

reason a kit collected as part of that case's investigation was not analyzed. (Pen. Code, § 680.3, subd. (c).)

5) States that the SAFE-T database shall not contain any identifying information about a victim or suspect, any DNA profiles, or any information that would impair a criminal investigation. (Pen. Code, § 680.3, subd. (d).)

6) Provides that the DOJ must submit an annual report to the Legislature summarizing the data entered into the SAFE-T database during the preceding calendar year. (Pen. Code, § 680.3, subd. (e).)

7) Provides that upon the victim's request, a law enforcement agency investigating specified sexual offenses must inform the victim of the status of the DNA testing of their rape kit or other evidence from their case. (Pen. Code, § 680, subd. (d)(1).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 215 prioritizes healing and justice by empowering rape survivors to receive an update on their rape kit without ever needing to interact with another person. After being raped and then undergoing an invasive rape kit exam, a survivor should certainly not be forced to call or visit law enforcement in order to find out the status of their sexual assault kit. SB 215 will help empower rape survivors and strengthen public safety."

2) **Sexual Assault Kits**: After a sexual assault has occurred, a victim of the crime may choose to be seen by a medical professional, who collects evidence from the victim. The evidence collected is called a "sexual assault kit." Sexual assault kits vary by jurisdiction but generally contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers. The exam can last several hours and includes swabbing the victim for biological evidence that may contain the perpetrator's DNA. The collected evidence can be tested in order to try to identify the perpetrator. (National Institute of Justice (NIJ), *Sexual Assault Kits: Using Science to Find Solutions*, pp. 3-4 <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/unsubmitted-kits.pdf> [as of June 15, 2021].)

3) **SAFE-T Database**: In 2015, the DOJ created the SAFE-T database to collect data regarding the status of sexual assault kits in the possession of law enforcement agencies and crime laboratories. Until the end of 2017, law enforcement agencies and crime laboratories entered this data into the SAFE-T database on a voluntary basis. However, due to public and legislative interest in clearing backlogs of untested sexual assault evidence kits, the Legislature passed AB 41, Chapter 694, Statutes of 2017, which mandated reporting in the SAFE-T database of all victim sexual assault evidence kits collected as of January 1, 2018. (Office of the Attorney General, *Sexual Assault Forensic Evidence Tracking Database Annual Report to the Legislature, Calendar Year 2019*, p. 2 <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-report-safe-t-database-

2019.pdf?> [as of June 15, 2021].)

Upon the request of a sexual assault victim, a law enforcement agency must inform them of the status of the DNA testing of their rape kit or other evidence from their case. (Pen. Code, § 680, subd. (d)(1).)

This bill would require an online portal intended to empower victims by allowing them to anonymously track the status of their rape kit in the SAFE-T database. Over two dozen states have already implemented similar rape kit tracking portals. (*California Senator: Rape Survivors Must Be Able to Track Their Rape Kits* (Jan. 15, 2021) Forensic <https://www.forensicmag.com/572290-California-Senator-Rape-Survivors-Must-Be-Able-to-Track-Their-Rape-Kits/> [as of June 15, 2021].)

4) **Argument in Support**: According to the *Alameda County District Attorney*, a sponsor of this bill, "Following a sexual assault, survivors in California may choose to undergo a forensic medical examination to collect evidence in a rape kit. If the survivor also chooses to report the crime, the law enforcement agency with jurisdiction over the offense will take the kit into custody and submit it to a forensic laboratory for DNA analysis. California law currently states that law enforcement and forensic laboratories are required to use the California Department of Justice's SAFE-T evidence system to maintain and update information about the location and testing status of all newly collected rape kits. Chapter 692, Statutes of 2017 of California law states that upon the request of a sexual assault victim, the law enforcement agency shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. However, without a way for victims to track their kit online, this process is cumbersome and not private. Currently victims must contact law enforcement agencies via phone or in person to receive an update on their kits; this is not a victim sensitive process.

"Senate Bill 215 would create a new victim portal in California's existing rape kit tracking system, the Sexual Assault Forensic Evidence Tracking (SAFE-T) database, to allow survivors of sexual assault to anonymously and electronically track and receive updates regarding the status, location, and information regarding their sexual assault evidence kit. A rape kit tracking system with a secure victim access portal and information about backlogged kits allows survivors to control when they obtain critical information about the status and location of their kits.

"Survivors assume their sexual assault evidence kits are being tested but that is not always the case. Chapter 588, Statutes of 2019 of California law requires all law enforcement agencies to submit sexual assault kits (SAKs) within 20 days of receipt and have a crime lab test them no later than 120 days following receipt. This victim portal will provide the victims with the piece [sic] of mind where their sexual assault evidence kits in the process and ensure that law enforcement is following the law and analyzing the kits in a timely manner.

"Not having access to such information can severely hamper recovery. Access to information about the status and location of their rape kits can help survivors counter the loss of self-determination and control that is often at the core of a sexual assault experience. A victim portal on the sexual assault kit tracking system ensures survivors have access to that information anonymously, and whenever they prefer."

5) **Prior Legislation**:

a) AB 358 (Low), of the 2019-2020 Legislative Session, would have required the DOJ, by no later than July 1, 2023, to create a statewide tracking system that allows a sexual assault victim to monitor the testing and processing of the sexual assault forensic evidence collected in their case. AB 358 was held in the Assembly Committee on Appropriations.

b) SB 22 (Leyva), Chapter 588, Statutes of 2019, required law enforcement agencies to submit sexual assault forensic evidence to a crime lab and required crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading.

c) AB 41 (Chiu), Chapter 694, Statutes of 2017, required local law enforcement agencies to periodically update the SAFE-T database on the disposition of all sexual assault evidence kits in their custody.

d) AB 1312 (Gonzalez Fletcher), Chapter 692, Statutes of 2017, required law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights.

e) AB 2499 (Maienschein), Chapter 884, Statutes of 2016, required the Department of Justice (DOJ), in consultation with law enforcement agencies and crime victims groups, to establish a process by which victims of sexual assault may inquire into the location and information regarding their sexual assault evidence kits.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Co-Sponsor)
California District Attorneys Association
Leda Health
National Association of Social Workers, California Chapter
Prosecutors Alliance California
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Work Equity Action Fund

Oppose

None

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: June 29, 2021
Counsel: Sandy Uribe

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

SB 299 (Leyva) – As Amended May 20, 2021

As Proposed to be Amended in Committee

SUMMARY: Allows eligibility for compensation under the California Victim Compensation Program (CalVCP) for serious bodily injury or death caused by a law enforcement officer's use of force. Specifically, **this bill**:

1) Revises the definition of a "crime" for purposes of the CalVCP to specify that the offense is still a crime regardless of whether any person is arrested for, charged with, or convicted of, the commission of the crime.

2) States that a "crime" also includes an incident occurring on or after January 1, 2022, in which an individual sustains serious bodily injury or death as a result of a law enforcement officer's use of force, regardless of whether the officer is arrested for, charged with, or convicted of committing a crime.

3) States that a "law enforcement officer" is a peace officer as defined in Penal Code section 830.

4) Prohibits CalVCP's denial of an application for a claim based on a victim's serious bodily injury or death resulting from police use of force based on the victim's or other applicant's involvement in the qualifying crime that gave rise to the claim, except as follows:

   a) For a claim based on police use of force resulting in serious bodily injury, the board may deny an application if the claimant is convicted of a violent crime, or a crime that resulted in serious bodily injury to, or death of, another person, and the crime occurred at the time and location of the incident on which the claim is based; and,

   b) For a claim based on police use of force resulting in death, the board may deny an application if there is clear and convincing evidence that the decedent committed a crime during which the decedent personally inflicted serious bodily injury on, or killed, another person at the time and location of the incident on which the claim is based.

5) Prohibits CalVCP's denial of an application for a claim based on a victim's serious bodily injury or death resulting from police use of force based on the victim's failure to cooperate.

6) Prohibits CalVCP's denial of an application based on a victim's death as a result of a crime based in whole, or in part on the deceased victim's involvement in the crime that gave rise to the claim (except as specified above with regard to police use-of-force claims), or based on the victim or derivative victim's failure to cooperate.

7) Prohibits CalVCP's denial of any application for mental health services or funeral and burial expenses based on the victim's or derivative victim's involvement in the crime that gave rise to the claim (except as specified above with regard to police use-of-force claims), or based on their failure to cooperate.

8) Provides that for claims based on use of force resulting in serious bodily injury, the board cannot consider the claim while charges are pending alleging that a claimant committed a crime that also resulted in seriously bodily injury or death, except that the board may approve mental health related expenses at any time.

9) Prohibits the board from denying a claimant's application arising out of police use of force, in whole or in part, based solely upon the contents of a police report, or because a police report was not made, or based on whether any suspect was arrested or charged with the crime that gave rise to the claim. Requires the board to consider other specified evidence to establish that the qualifying event occurred.

10) Prohibits a determination made by the board as to the eligibility for compensation or a writ of mandate related to a final decision by the board from being used as evidence:

    a) That any person committed a crime or is liable for a victim's injury or death in any civil action or proceeding, or in any criminal action or proceeding, as specified; or

    b) In any action, disciplinary investigation, or proceeding relating to the employment or duties of the peace officer, nor used as evidence to support any punitive action or denial of a promotion of a peace officer, when the claim is based on law enforcement's use of force.

11) Defines "victim services provider" as "an individual, whether paid or serving as a volunteer, who provides services to victims under the supervision of either an agency or organization that has a documented record of providing services to victims, or a law enforcement or prosecution agency."

12) Specifies that the board's subrogation rights apply to a claim based on serious bodily injury or death that resulted from a law enforcement officer's use of force.

EXISTING LAW:

1) Establishes the Victim Compensation Board to operate the CalVCP to assist California residents in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts. (Gov. Code, § 13950 et. seq.)

2) Authorizes the board to reimburse for pecuniary loss for the following types of losses:

    a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

    b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided

by a rape crisis center;

c) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death;

d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

e) The expense of installing or increasing residential security, not to exceed $1,000;

f) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;

g) Relocation expenses up to $2,000 if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and,

h) Funeral or burial expenses. (Gov. Code, § 13957, subd. (a).)

3) Limits the total award to, or on behalf of, each victim to $35,000, except that this amount may be increased up to $70,000 if federal funds for that increase are available. (Gov. Code, § 13957, subd. (b).)

4) Defines "crime" for purposes of compensation as "a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult. (Gov. Code, § 13951, subd. (b)(1).)

5) Defines "victim" as "an individual who sustains injury or death as a direct result of a crime." (Gov. Code § 13951, subd. (g).)

6) Defines "derivative victim" as "an individual who sustains pecuniary loss as a result of injury or death to a victim." (Gov. Code § 13951, subd. (e).)

7) Authorizes the board to require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation. (Gov. Code, § 13952, subd. (c)(1).)

8) Requires the board to verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. (Gov. Code, § 13954, subd. (a).)

9) Provides that an application may be denied in whole or in part because of the nature of the victim's or other applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application. (Gov. Code, § 13956, subd. (a).)

10) Provides that an application shall be denied if the victim or derivative victim failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of a

criminal committing the crime, except as specified. (Gov. Code, § 13956, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 299 is critically important, as it ensures that more survivors receive the support needed to address their trauma, regardless of who caused that harm. Survivors of police violence and other violent crimes should not have to overcome unjust barriers to compensation. Ultimately, this bill will improve access to this crucial program for survivors."

2) **CalVCP**: The CalVCP was created in 1965, the first such program in the country. The board provides compensation for victims and derivative victims of crime. It reimburses eligible victims for many crime-related expenses, such as counseling and medical fees. (See the California Victim Compensation Board's website < http://www.vcgcb.ca.gov/board > [as of Mar. 29, 2021].) A victim is defined as an individual who sustains injury or death as a direct result of a crime. (Gov. Code, § 13951, subd. (e).) A "derivative victim" is considered an individual who sustains pecuniary loss as a result of injury or death to a victim. (*Ibid.*)

   This bill would fundamentally change the nature of the CalVCP. It would permit claims for people who are not necessarily victims of crime by compensating persons, or relatives of persons, who have suffered serious bodily injury[1] or death as a result of police use of force. Compensation would be authorized regardless of whether the officer is arrested for, charged with, or convicted of committing a crime. Whether the use of force was justified is also irrelevant for purposes of compensation.

   For these types of new claimants, this bill would also expand eligibility in two other respects. Under existing law, the board may deny an application based on a finding that the victim was involved in the events leading to the crime or the victim's failure to reasonably cooperate with law enforcement. (Gov. Code, § 13956.) This bill would eliminate the requirement that a victim cooperate with law enforcement to be eligible for compensation. It would also prohibit the board from denying an application based on the victim's or other applicant's involvement in the crime that gave rise to the claim, except in the limited circumstances discussed below.

3) **Exceptions to Eligibility for Compensation**: With regard to the new police use-of-force claims, the grounds for denial of a claim depend on whether the use of force resulted in serious bodily injury or death. For a claim based on police use of force resulting in serious bodily injury, the board may deny an application if the perpetrator/claimant is convicted of: a violent crime as defined in Penal Code section 667.5; or any crime that resulted in serious bodily injury to, or death of, another person.

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[1] Existing law defines "serious bodily injury" as "a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss of impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement." (Pen. Code, § 243, subd. (f)(4).)

In contrast, for a claim based on police use of force resulting in death, the board may deny a derivative claimant's application if there is clear and convincing evidence that the deceased perpetrator committed a crime that resulted in serious bodily injury to, or death of, another person and that deceased perpetrator personally inflicted bodily injury or killed someone in the commission of that crime. However, the board may not deny a claim solely on the grounds that the deceased perpetrator committed a violent crime. So, for example, if in the commission of a kidnapping or carjacking, or first degree burglary where residents are present in the home, an officer shoots and kills the perpetrator after the perpetrator shot at the officer but fortuitously missed, compensation would be allowed. The rationale is that it is a derivative victim (i.e. the perpetrator's family), not the actual perpetrator, who is seeking compensation from the board.

4) **Status of Restitution Fund**: Funding for CalVCP comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. The Restitution Fund has been operating under a structural deficiency for a number of years. In 2015, the Legislative Analyst's Office reported the Restitution Fund was depleting and would eventually face insolvency. Although revenue has remained consistent, expenditures have outpaced revenues since FY 2015-16. The Governor's 2021-22 budget proposes $33 million dollars in one-time General Fund monies to backfill declining fine and fee revenues in the Restitution Fund, and $39.5 million annually afterwards. This amount will allow the CalVCP to continue operating at its current resource level. Expanding compensation eligibility to victims currently not eligible will put cost pressures on an already deficient fund. (See *The 2021-22 Budget: Overview of the Governor's Budget*, Legislative Analyst's Office, January 2021, Appendix Figure 2, p. 21.)

The California Department of Justice (DOJ) collects information on use of force incidents that result in serious bodily injury or death or involved the discharge of a firearm. According to the 2019 use of force incident reporting, there were 738 reported incidents involving use of force. Out of these incidents, 147 civilians were killed and 439 were seriously injured. (See *Use of Force Incident Reporting 2019*, p. 42. available at < https://openjustice.doj.ca.gov/resources/publications>.) For comparison, in Fiscal Year 2019-2020, the board received 50,699 claim, which was about 2,000 less claims than received the prior fiscal year. (See *California Victim Compensation Board Annual Report Fiscal Year 2019-2020*, p. 15, available at: Publications Archive - CA Victim Compensation Board .) Arguably the additional volume of claims would not significantly overburden the board.

Nevertheless, can a program that requires backfilling to maintain its solvency handle the additional financial pressures created by this bill? Should a different state fund be created specifically for this purpose?

5) **San Francisco District Attorney's Office Compensation for Victims of Police Violence**: In June of last year, San Francisco District Attorney Chesa Boudin announced a new policy to provide compensation for victims of police violence that occurred in San Francisco or to a San Francisco resident. The new program made victims and their families eligible for up to $7,500 in funeral costs, $5,000 for medical bills, $2,500 for relocation costs, $1,000 for mental health treatment and $1,000 for crime scene cleanup if property is damaged during an incident. The district attorney's office will determine eligibility and may require documentation of harm such as medical bills. The program will not apply retroactively.

(Iovino, *San Francisco DA Makes Victims of Police Violence Eligible for Compensation*, Courthouse News Service (June 9, 2020) < https://www.courthousenews.com/san-francisco-da-makes-victims-of-police-violence-eligible-for-compensation/> [as of June 24, 2021].)

This bill appears to be modeled on that concept.

6) **Argument in Support**: According to *Californians for Safety and Justice*, a co-sponsor of this bill, "This measure makes necessary changes to expand access to victim compensation, and to remove barriers faced by victims and witnesses of police violence and other violent crimes. SB 299 is critically important, as it ensures equal access to support services and resources for survivors of police violence.

"Victim compensation is an important pathway for survivors to access support – covering specific expenses such as medical bills, funeral and burial expenses, and counseling. Compensation is available only when a survivor has no other avenue for covering these costs (e.g. insurance or Medi-Cal). There are also limits on how much can be paid for each expense, and expenses must result directly from the crime. But eligibility restrictions can lock survivors out of compensation, and victims of police violence and their families typically cannot access victim compensation.

"The California Victim Compensation Board (CalVCB), which administers the reimbursement program, can deny applications if it finds the victim was involved in the events that gave rise to the application, or if it finds that the survivor did not cooperate with police. These restrictions apply even when the victim is killed, compounding trauma for family members who are left without support. For most victims, CalVCB cannot approve a claim without a police report. Yet data collected by the U.S. Department of Justice in 2019 found that 6 in 10 violent victimizations are never reported to police. Victims of violent crime face a complex series of issues as they navigate the justice system, the healing process, and even everyday life. Acknowledging these complex needs and barriers to reporting, the state legislature has taken action to allow or other forms of evidence. CalVCB may use other evidence to establish eligibility for victims of sexual assault, domestic violence, and human trafficking, but other victims are not afforded the same flexibility.

"For survivors of police violence and loved ones of those killed by police, these restrictions are especially perverse. A police report documenting the victimization is often elusive. Survivors may not want to speak with officers, resulting in exclusion for noncooperation. And, state regulation encourages giving 'significant weight…to the conclusions of a law enforcement agency' when assessing 'involvement.' The very people responsible for the victimization are tasked with assigning blame and denying the victim or their family access to needed resources."

7) **Argument in Opposition**: According to the *California District Attorney's Association*, "This bill would unjustly expand the universe of claimants entitled to receive payments as victims of crime from the California Restitution Fund.

"This bill expands the definition of crime to include any use of force by a peace officer that results in serious bodily injury or death, regardless of whether the peace officer is arrested for, charged with, or convicted of committing a crime. The bill ignores the reality that use of force by peace officers is most often lawful and justified – and certainly not criminal.

"Under this bill, a claimant seriously injured by a peace officer, is entitled to victim compensation regardless of the claimant's conduct in the incident, unless the claimant is convicted of a crime for inflicting great bodily injury or death during the same incident. For example, a home invasion robber who runs out the back door, shoots at the waiting police but misses, and who in turn gets wounded by police in return fire, is entitled to compensation intended for 'victims' of crime….

"The Restitution Fund has been operating under a structural deficit for a number of years. It would be bad policy to further deplete resources for victims of crime by requiring the California Victim Compensation Board to pay claims to perpetrators of crimes."

8) **Related Legislation**: AB 886 (Chiu), as introduced, would have eliminated the requirement that a victim cooperate with law enforcement to be eligible for compensation. AB 886 was substantially amended to an unrelated matter and subsequently held in the Assembly Appropriations Committee.

9) **Prior Legislation**:

   a) AB 767 (Grayson), of the 2019-2020 Legislative Session, would have included in the definition of "crime," for purposes of VCP, the use of force by a peace officer that is beyond what is reasonable under the totality of the circumstances, and that causes the victim injury or death, regardless of whether the peace officer is arrested for or charged with the commission of a crime or a public offense. AB 767 was held in the Senate Appropriations Committee.

   b) AB 629 (Smith), Chapter 575, Statutes of 2019, authorizes the Victim Compensation Board to provide compensation equal to loss of income or support to human trafficking victims.

   c) AB 900 (Gonzalez Fletcher), of the 2017-2018 Legislative Session, would have authorized CalVCP to provide compensation equal to lost wages for human trafficking victims. AB 900 was vetoed.

   d) AB 1061 (Gloria), of the 2017-2018 Legislative Session, would have expanded eligibility for compensation and increased compensation limits for specified reimbursable losses. AB 1061 was held in the Senate Appropriations Committee.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Prosecutors Alliance California (Sponsor)
San Francisco District Attorney's Office (Sponsor)
Crime Survivors for Safety and Justice (Co-Sponsor)
ACLU California Action
Brady Campaign
Brady Campaign California
California Alliance for Youth and Community Justice
California Catholic Conference
California for Safety and Justice
California Public Defenders Association (CPDA)
California State Controller
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Ella Baker Center for Human Rights
Everytown for Gun Safety Action Fund
Fresno Barrios Unidos
Initiate Justice
Los Angeles County
Los Angeles County District Attorney's Office
Moms Demand Action for Gun Sense in America
Rubicon Programs
Smart Justice California
Southeast Asia Resource Action Center
Students Demand Action for Gun Sense in America

Oppose

California District Attorneys Association
Peace Officers Research Association of California (PORAC)

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

Amended Mock-up for 2021-2022 SB-299 (Leyva (S))

Mock-up based on Version Number 96 - Amended Senate 5/20/21
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 13951 of the Government Code is amended to read:

13951. As used in this chapter, the following definitions shall apply:

(a) "Board" means the California Victim Compensation Board.

(b) (1) "Crime" means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult, regardless of whether any person is arrested for, charged with, or convicted of committing the crime or public offense.

(2) "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state.

(3) "Crime" includes an incident occurring on or after January 1, 2022, in which an individual sustains serious bodily injury, as defined in Section 243 of the Penal Code, or death as a result of a law enforcement officer's use of force, regardless of whether the law enforcement officer is arrested for, charged with, or convicted of committing a crime.

(c) "Derivative victim" means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(d) "Law enforcement" means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, and social services agency, the Department of Justice, the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the Department of the California Highway Patrol, the police department of any campus of the University of California, California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

(e) ~~(1)~~ "Law enforcement officer" ~~includes all of the following:~~ **means**

~~(A) A~~ **a** peace officer, as defined **in** ~~by~~ Section 830 of the Penal Code~~, except as otherwise provided in paragraph (2)~~.

~~(B) A person employed by a local, city, county, municipal, or state governmental agency outside of this state, who holds a substantially similar position to one described by subparagraph (A).~~

~~(C) A federal criminal investigator, federal law enforcement officer, federal agent, or member of the National Guard, including, but not limited to, officers of the United States Immigration and Customs Enforcement and United States Customs and Border Protection.~~

~~(D) Any person who is employed in, and has the authority or responsibility for maintaining custody of, persons housed or detained in a county, local, private, or federal locked facility that houses or detains individuals, including noncitizens detained for federal immigration proceedings and any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained on behalf of, or pursuant to a contract with, the federal Office of Refugee Resettlement or the United States Immigration and Customs Enforcement.~~

~~(2) "Law enforcement officer" does not include any of the following:~~

~~(A) Investigators of the Public Employees' Retirement System.~~

~~(B) Investigators of the office of the Controller.~~

~~(C) Persons employed by the Contractors State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code.~~

~~(D) Investigators of the office of the Secretary of State.~~

~~(E) Investigators employed by the Employment Development Department pursuant to Section 317 of the Unemployment Insurance Code.~~

(f) "Pecuniary loss" means an economic loss or expense resulting from an injury or death to a victim of crime that has not been and will not be reimbursed from any other source.

(g) "Peer counseling" means counseling offered by a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling within the State of California.

(h) "Victim" means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955.

(i) "Victim center" means a victim and witness assistance center that receives funds pursuant to Section 13835.2 of the Penal Code.

(j) "Victim services provider" means an individual, whether paid or serving as a volunteer, who provides services to victims under the supervision of either an agency or organization that has a documented record of providing services to victims, or a law enforcement or prosecution agency.

SEC. 2. Section 13954 of the Government Code is amended to read:

13954. (a) The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) (1) The applicant shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application solely on this ground.

(2) An applicant may be found to have failed to cooperate with the board if any of the following occur:

(A) The applicant has information, or there is information that the applicant may reasonably obtain, that is needed to process the application or supplemental claim, and the applicant failed to provide the information after being requested to do so by the board. The board shall take the applicant's economic, psychosocial, and postcrime traumatic circumstances into consideration, and shall not unreasonably reject an application solely for failure to provide information.

(B) The applicant provided, or caused another to provide, false information regarding the application or supplemental claim.

(C) The applicant refused to apply for other benefits potentially available to the applicant from other sources besides the board including, but not limited to, worker's compensation, state disability insurance, social security benefits, and unemployment insurance.

(D) The applicant threatened violence or bodily harm to a member of the board or staff.

(c) The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and victim centers in conducting training sessions for center personnel and shall cooperate in the development of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with

victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) (1) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers that have contracts with the board pursuant to subdivision (c), upon request, a complete copy of the law enforcement report and any supplemental reports involving the crime or incident giving rise to a claim, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, and any other document made available to the probation officer or to the judge, referee, or other hearing officer, for the specific purpose of determining the eligibility of a claim filed pursuant to this chapter.

(2) The board and victim centers receiving records pursuant to this subdivision may not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, the minor's custodial parent or guardian, the attorneys for those parties, and any other persons that may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and may not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) The law enforcement agency supplying information pursuant to this section may withhold the names of witnesses or informants from the board, if the release of those names would be detrimental to the parties or to an investigation in progress.

(e) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) by the applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter.

(f) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to subdivision (c) of Section 13956, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(g) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

(h) Any verification conducted pursuant to this section shall be subject to the time limits specified in Section 13958.

(i) Any county social worker acting as the applicant for a child victim or elder abuse victim shall not be required to provide personal identification, including, but not limited to, the applicant's date

of birth or social security number. County social workers acting in this capacity shall not be required to sign a promise of repayment to the board.

(j) Notwithstanding any other provision of statute, administrative rule, local ordinance, or other law, a determination made by the board as to the eligibility of a victim or applicant for compensation shall be used for the limited purposes described in this chapter, or in a proceeding related to determining the amount of restitution a person who has been convicted of a crime owes, pursuant to Section 1202.4 of the Penal Code. A determination of eligibility made by the board shall not otherwise be admissible as evidence that any person committed a crime or is liable for a victim's injury or death in any civil action or proceeding, in any criminal action or proceeding including pretrial motions and hearings and postconviction motions and hearings, in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, or in any court of law. This subdivision shall not be construed to limit or in any way affect the board's subrogation and recovery rights under Section 13963 or 13966, and shall not be construed to limit or in any way affect the ability of a court to consider the amount of assistance provided by the Restitution Fund to a victim in a determination relating to a restitution order following a conviction, in accordance with Section 1202.4 of the Penal Code.

(k) Notwithstanding any other provision of statute, administrative rule, local ordinance, or other law, for claims based on a victim's serious bodily injury or death that resulted from a law enforcement officer's use of force, as provided in Section 13951, a determination made by the board as to the eligibility of a victim or applicant for compensation shall not be admissible as evidence in any action, disciplinary investigation, or proceeding relating to the employment or duties of the law enforcement officer, nor used as evidence to support any punitive action or denial of promotion of a law enforcement officer.

SEC. 3. Section 13956 of the Government Code is amended to read:

13956. Notwithstanding Section 13955, a person shall not be eligible for compensation under the following conditions:

(a) An application may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application.

(1) Factors that may be considered in determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(A) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime.

(B) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim.

(C) The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to them being victimized. However, committing a crime shall not be considered involvement if the victim's injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or for a crime of unlawful sexual intercourse with a minor in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(2) If the victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered to mitigate or overcome involvement include, but are not limited to:

(A) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement.

(B) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(C) The board shall consider the victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the application should be denied pursuant to this section. The application of a derivative victim of domestic violence under 18 years of age or derivative victim of trafficking under 18 years of age shall not be denied on the basis of the denial of the victim's application under this subdivision.

(3) Notwithstanding paragraphs (1) and (2), and except as provided in paragraphs (4) and (5), for a claim based on a victim's serious bodily injury or death that resulted from a law enforcement officer's use of force, as provided in Section 13951, the board shall not deny the application based on the victim's or other applicant's involvement in the qualifying crime that gave rise to the claim.

(4) Notwithstanding paragraph (3), for a claim based on a victim's serious bodily injury that resulted from a law enforcement officer's use of force, as provided in Section 13951, the board may deny the application based on the victim's involvement if the victim is convicted of **a violent crime as defined in Section 667.5 of the Penal Code**, **or** a crime that resulted in serious bodily injury, as defined in Section 243 of the Penal Code, to or death of another person, and the crime occurred at the time and location of the incident on which the claim is based. The board shall not consider a claim for compensation while charges are pending alleging that a victim subject to this paragraph committed such a crime, except that the board may approve a claim for psychiatric, psychological, or mental health counseling-related expenses at any time. A victim or applicant subject to this paragraph may apply for compensation pursuant to this chapter at any time for any expense other than psychiatric, psychological, or mental health counseling-related expenses, but the award of that compensation shall not be granted until the charges are no longer pending against the victim. If the victim is deceased, charges shall not be considered pending against the victim for the purposes of this paragraph.

(5) Notwithstanding paragraphs (3), (6), and (7), for a claim based on a victim's death that resulted from a law enforcement officer's use of force, as provided in Section 13951, the board may deny an application based on the victim's involvement in the qualifying crime that gave rise to the claim

if there is clear and convincing evidence that the deceased victim committed a crime during which the deceased victim personally inflicted serious bodily injury, as defined in Section 243 of the Penal Code, on another person or personally killed another person at the time and location of the incident on which the claim is based.

(6) Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (5), for a claim based on a victim's death as a result of a crime, the board shall not deny the application, in whole or in part, based on the deceased victim's involvement in the crime that gave rise to the claim.

(7) Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (5), the board shall not deny a claim for psychiatric, psychological, or mental health counseling-related expenses, or for funeral and burial expenses, based on a victim's or derivative victim's involvement in the crime that gave rise to the claim.

(b) (1) An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors. Victims of domestic violence shall not be determined to have failed to cooperate based on their conduct with law enforcement at the scene of the crime. Lack of cooperation shall also not be found solely because a victim of sexual assault, domestic violence, or human trafficking delayed reporting the qualifying crime.

(2) Notwithstanding paragraph (1), for a claim based on a victim's serious bodily injury or death that resulted from a law enforcement officer's use of force, as provided in Section 13951, the board shall not deny the application based on the victim's failure to cooperate.

(3) Notwithstanding paragraph (1), for a claim based on a victim's death as a result of a crime, the board shall not deny the application based on a victim's or derivative victim's failure to cooperate.

(4) Notwithstanding paragraph (1), the board shall not deny a claim for psychiatric, psychological, or mental health counseling-related expenses, or for funeral and burial expenses, based on a victim's or derivative victim's failure to cooperate.

(5) An application for a claim based on domestic violence shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical

records documenting injuries consistent with allegations of domestic violence, mental health records, or that the victim has obtained a permanent restraining order.

(6) An application for a claim based on a sexual assault shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow it to consider and approve applications for assistance based on a sexual assault relying upon evidence other than a police report to establish that a sexual assault crime has occurred. Factors evidencing that a sexual assault crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of sexual assault, mental health records, or that the victim received a sexual assault examination.

(7) An application for a claim based on human trafficking as defined in Section 236.1 of the Penal Code shall not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on human trafficking relying upon evidence other than a police report to establish that a human trafficking crime as defined in Section 236.1 of the Penal Code has occurred. That evidence may include any reliable corroborating information approved by the board, including, but not limited to, the following:

(A) A law enforcement agency endorsement issued pursuant to Section 236.5 of the Penal Code.

(B) A human trafficking caseworker, as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking.

(8) (A) An application for a claim by a military personnel victim based on a sexual assault by another military personnel shall not be denied solely because it was not reported to a superior officer or law enforcement at the time of the crime.

(B) Factors that the board shall consider for purposes of determining if a claim qualifies for compensation include, but are not limited to, the evidence of the following:

(i) Restricted or unrestricted reports to a military victim advocate, sexual assault response coordinator, chaplain, attorney, or other military personnel.

(ii) Medical or physical evidence consistent with sexual assault.

(iii) A written or oral report from military law enforcement or a civilian law enforcement agency concluding that a sexual assault crime was committed against the victim.

(iv) A letter or other written statement from a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed therapist, or mental health counselor, stating that the victim is seeking services related to the allegation of sexual assault.

(v) A credible witness to whom the victim disclosed the details that a sexual assault crime occurred.

(vi) A restraining order from a military or civilian court against the perpetrator of the sexual assault.

(vii) Other behavior by the victim consistent with sexual assault.

(C) For purposes of this subdivision, the sexual assault at issue shall have occurred during military service, including deployment.

(D) For purposes of this subdivision, the sexual assault may have been committed off base.

(E) For purposes of this subdivision, a "perpetrator" means an individual who is any of the following at the time of the sexual assault:

(i) An active duty military personnel from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard.

(ii) A civilian employee of any military branch specified in clause (i), military base, or military deployment.

(iii) A contractor or agent of a private military or private security company.

(iv) A member of the California National Guard.

(F) For purposes of this subdivision, "sexual assault" means an offense included in Section 261, 262, 264.1, 286, 287, formerly 288a, or Section 289 of the Penal Code, as of the date the act that added this paragraph was enacted.

(c) Notwithstanding any provision of this section, for applications based on a victim's serious bodily injury or death that resulted from a law enforcement officer's use of force as provided in Section 13951, the board shall not deny an application, in whole or in part, based solely upon the contents of a police report, or because a police report was not made, or based on whether any suspect was arrested or charged with the crime that gave rise to the claim. The board shall consider other evidence to establish that a qualifying crime occurred. Factors evidencing that a qualifying crime occurred may include, but are not limited to, all of the following:

(1) Medical records documenting injuries consistent with the allegation of the qualifying crime.

(2) A written statement from a victim services provider stating that the victim is seeking services related to the qualifying crime.

(3) A permanent restraining order or protective order issued by a court to protect or separate the victim or derivative victim from the person who is responsible for the qualifying crime.

(4) A statement from a licensed medical provider, physician's assistant, nurse practitioner, or other person licensed to provide medical or mental health care documenting that the victim experienced physical, mental, or emotional injury as a result of the qualifying crime.

(5) A written or oral report from a law enforcement agency stating that a qualifying crime was committed against the victim.

(6) Evidence that the qualifying crime was reported under Section 12525.2 to the Department of Justice as an incident in which the use of force by a law enforcement officer against a civilian resulted in serious bodily injury or death.

(d) A person making a statement or report regarding a qualifying crime under paragraph (2), (4), or (5) of subdivision (c) may consider any information or evidence they deem relevant.

(e) (1) Notwithstanding Section 13955, no person who is convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may be granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, or has been discharged from postrelease community supervision or mandatory supervision, if any, for that violent crime. In no case shall compensation be granted to an applicant pursuant to this chapter during any period of time the applicant is held in a correctional institution, or while an applicant is required to register as a sex offender pursuant to Section 290 of the Penal Code.

(2) A person who has been convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may apply for compensation pursuant to this chapter at any time, but the award of that compensation may not be considered until the applicant meets the requirements for compensation set forth in paragraph (1).

SEC. 4. Section 13960 of the Government Code is amended to read:

13960. (a) Judicial review of a final decision made pursuant to this chapter may be had by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The petition shall be filed as follows:

(1) Where no request for reconsideration is made, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the board's decision on the application for compensation.

(2) Where a timely request for reconsideration is filed and rejected by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the notice of rejection.

(3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the final decision on the reconsidered application.

(b) (1) In an action resulting in the issuance of a writ of mandate pursuant to this section the court may order the board to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars ($1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a judicial determination, the board shall pay the applicant's costs of filing the petition.

(2) In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees.

(3) Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

(c) (1) Notwithstanding any other provision of statute, administrative rule, local ordinance, or other law, a writ of mandate issued pursuant to this section shall apply for the limited purposes of compelling the board to award compensation pursuant to this chapter, or in a proceeding related to determining the amount of restitution a person who has been convicted of the crime owes, pursuant to Section 1202.4 of the Penal Code. A writ of mandate issued pursuant to this section shall not otherwise be admissible as evidence that any person committed a crime or is liable for a victim's injury or death in any civil action or proceeding, in any criminal action or proceeding including pretrial motions and hearings and postconviction motions and hearings in criminal proceedings, in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, or in any court of law. This subdivision shall not be construed to limit or in any way affect the board's subrogation and recovery rights under Section 13963 or 13966, and shall not be construed to limit or in any way affect the ability of a court to consider the amount of assistance provided by the Restitution Fund to a victim in a determination relating to a restitution order following a conviction, in accordance with Section 1202.4 of the Penal Code.

(2) Notwithstanding any other provision of statute, administrative rule, local ordinance, or other law, for a claim based on a victim's serious bodily injury or death that resulted from a law enforcement officer's use of force, as provided in Section 13951, a writ of mandate issued pursuant to this section shall not be admissible as evidence in any action, disciplinary investigation, or proceeding relating to the employment or duties of the law enforcement officer, nor used as evidence to support any punitive action or denial of promotion of a law enforcement officer.

SEC. 5. Section 13963 of the Government Code is amended to read

(a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of the compensation granted by the board. The board may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the recipient. If a claim is filed within one year of the date of recovery, the board shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the recipient responsible for recovery if the recipient notified the board of the action prior to receiving any recovery. The remaining amount, and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this chapter if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the recipient. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a recipient, where the board has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment, and the name and address of any insurer directly or indirectly providing for the satisfaction.

(e)(1) If the recipient brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this chapter, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the recipient if no attorney is employed.

(2) Notice shall include all of the following:

(A) Names of all parties to the claim or action.

(B) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.

(C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, notice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) For purposes of this section, "recipient" means any person who has received compensation or will be provided compensation pursuant to this chapter, including the victim's guardian, conservator or other personal representative, estate, and survivors.

(i) In accordance with subparagraph (B) of paragraph (4) of subdivision (f) of Section 1202.4 of the Penal Code, a representative of the board may provide the probation department, district attorney, and court with information relevant to the board's losses prior to the imposition of a sentence.

(j) These provisions also apply to compensation by the board for a claim based on serious bodily injury or death that resulted from a law enforcement officer's use of force, as provided in paragraph (3) of subdivision (a) of Section 13951.

Date of Hearing: June 29, 2021
Counsel: Cheryl Anderson

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

SB 296 (Limón) – As Amended May 20, 2021

SUMMARY: Requires each local jurisdiction that employs code enforcement officers to develop code enforcement officer safety standards appropriate for the code enforcement officers employed in their jurisdiction.

EXISTING LAW:

1) Defines "code enforcement officer" as a person who is not described as a peace officer and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints. (Pen. Code, §§ 829.5, subd. (a), 241, subd. (d)(9)(A), 243, subd. (f)(11)(A).)

2) States that a "code enforcement officer" also includes a person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements, as specified. (Pen. Code, §§ 829.5, subd. (b), 241, subd. (d)(9)(B), 243, subd. (f)(11)(B).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 296 is an important step to protect Code Enforcement officers that risk their safety, health and lives protecting our communities.

   "Too often, Code Enforcement Officers encounter individuals who refuse to comply with a city's local codes that impact the quality of life in a local community. It is not unusual for Code Enforcement Officers to be threatened, harassed, or even assaulted. Tragically, there have even been Code Enforcement Officers murdered in the line of duty. During the current COVID-19 pandemic, these health threats to Code Enforcement Officers have been significantly increased, as they have continued their important safety work despite the additional hazards posed by the pandemic.

   "SB 296 would direct each local jurisdiction that employs Code Enforcement Officers to develop appropriate safety standards based on the nature of their work and the issues they face."

2) **Code Enforcement Officers**: Code enforcement officers enforce the regulations and standards of state and local governments. "Code enforcement is a function local governments perform that citizens consider important for accomplishing community goals, such as protecting property values and the environment. Others view code enforcement as an annoying intrusion into the free use of private property." (Schilling and Hare, Code Enforcement – A Comprehensive Approach (1994) < https://www.caceo.us/page/10> [as of June 15, 2021].)

   Because code enforcement officers are responsible for investigating violations and ensuring compliance with the law, they are in an adversarial position from the start. Given the punitive nature of their job, they can face dangerous consequences. Attacks on code enforcement officers have included the use of firearms, explosives, bludgeons, knives, motor vehicles, beatings, and even human bites on the officer's person. (Francis, Melaina, *Risk Solutions-Code Enforcement Officer Safety: A Paramount Concern* (Nov. 2018) California Joint Powers Insurance Authority, Issue 81 <https://cjpia.org/newsletters/issue-80/article-11/#:~:text=Risk%20Solutions%2DCode%20Enforcement%20Officer%20Safety%3A%20A%20Paramount%20Concern,-By%20Melaina%20Francis&text=According%20to%20the%20California%20Association,may%20not%20offer%20any%20protection> [as of June 15, 2021].) In a 2001 survey of members of the California Association of Code Enforcement Officers, 63% of those who responded to the survey reported having been assaulted or threatened. (*Code Compliance Officers, Often in Danger, Seek Protections* (Dec. 13, 2019) Cal-OSHA Reporter, Vol. 46, No. 47 <https://www.cal-osha.com/article/code-compliance-officers-often-in-danger-seek-protections/> [as of June 15, 2021].)

   This bill would acknowledge the risks that code enforcement officers face on the job and would help protect them by requiring that those who employ them develop appropriate safety standards.

3) **Argument in Support**: According to the *California Association of Code Enforcement Officers*, the sponsor of this bill, "Senate Bill 296 is a simple but extremely critical piece of Legislation. This bill would require each local jurisdiction that employs code enforcement officers to develop safety standards appropriate for the code enforcement officers employed in their jurisdiction based on the nature of their work and the issues they face. For example, a city might decide to restructure its organization chart so that its Code Enforcement Officers might have the confidentiality of their home addresses protected; or they might require that a Code Enforcement Officer be accompanied by a colleague or even a peace officer to certain field assignments; training on de-escalation strategies might be provided; sufficient protective equipment might be provided a Code Enforcement Officer; proper hazardous waste protections, clothing, masks, respirators and gloves may be provided; or any of a number of other strategies designed to protect a Code Enforcement Officer based on the nature and unique challenges of his or her assignment. SB 296 does not contain a specific one size fits all laundry list of to do items, but correctly vests discretion with the employing agency to come up with the best guidelines suited to the particular challenges of those Code Enforcement Officers they do employ. This recognizes that Code Enforcement Officers deal with a very broad array of health and safety, and quality of life issues throughout the State.

   "While most or all cities have developed safety standards for peace officers and firefighters, and may believe these adequately would protect Code Enforcement Officers as well, this is

incorrect. First, many jurisdictions do not have any safety standards applicable to Code Enforcement Officers. Second, those standard that apply to peace officers or firefighters rarely also apply to Code Enforcement Officers, or reflect the unique situations Code Enforcement Officers deal with, or the fact that they are civilian enforcement officials lacking the protection measures from which peace officers benefit. Simply put, Code Enforcement Officers lack adequate, and in many cases, any protection or safety standards, while they continue to risk their safety, health and lives protecting our communities."

4) **Prior Legislation**: AB 3319 (Jones-Sawyer), of the 2019-2020 Legislative Session, would have done the same thing as this bill. AB 3319 was not heard in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Code Enforcement Officers (Sponsor)
California College and University Police Chiefs Association
California Narcotic Officers' Association
California Peace Officers Association
California Teamsters Public Affairs Council
Coalition of Public Safety Officers Support Services
Congress of Racial Equality
International Faith Based Coalition
Los Angeles Professional Peace Officers Association

Oppose

None

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