Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – March 10, 2020
State Capitol, Room 126

REGULAR ORDER OF BUSINESS

Item	Bill No. & Author	Counsel	Summary
1.	AB 1927 (Boerner Horvath)	Mr. Fleming	Witness testimony in sexual assault cases: inadmissibility in a separate prosecution.
2.	AB 1936 (Rodriguez)	Mr. Billingsley	Price gouging: public safety power shutoffs.
3.	AB 1963 (Chu)	Mr. Pagan	Child abuse or neglect: mandated reporters.
4.	AB 2014 (Maienschein)	Mr. Fleming	Medical misconduct: misuse of sperm, ova, or embryos.
5.	AB 2061 (Limón)	Mr. Pagan	Firearms: inspections.
6.	AB 2105 (Quirk-Silva)	Ms. Moore	Criminal procedure: competence to stand trial

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Date of Hearing: March 10, 2020
Counsel: Matthew Fleming

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

AB 1927 (Boerner Horvath) – As Amended March 2, 2020

SUMMARY: Makes testimony provided by a victim or witness in a felony prosecution for specified sex offenses, that at or around the time of the sex offense the victim or witness unlawfully possessed or used a controlled substance or alcohol, inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol.

EXISTING LAW:

1) Makes it a felony for any person to assault another with intent to commit mayhem, rape, sodomy, oral copulation, lewd or lascivious acts with children, penetration by a foreign object, or with the intent to aid and abet a rape, punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code § 220, subd. (a)(1).)

2) Makes it a felony for any person to assault another person under 18 years of age with the intent to commit mayhem, rape, sodomy, oral copulation, lewd or lascivious acts with children, penetration by a foreign object, or with the intent to aid and abet a rape, punishable by imprisonment in the state prison for five, seven, or nine years. (Pen. Code § 220, subd. (a)(2).)

3) Makes it a felony for any person who, in the commission of a burglary of the first degree, assaults another with intent to commit rape, sodomy, oral copulation, lewd or lascivious acts with children, penetration by a foreign object, or with the intent to aid and abet a rape, punishable by imprisonment in the state prison for life with the possibility of parole. (Pen. Code § 220, subd. (b).)

4) States that sexual battery occurs when any person touches an intimate part of another person while that person is unlawfully restrained, institutionalized for medical treatment, unconscious of the nature of the act, or it is fraudulently represented that the touching served a professional purpose, by the accused or an accomplice, if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse. (Pen. Code § 243.4, subd. (a) - (d).)

5) Punishes sexual battery as either a misdemeanor with imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars ($2,000); or as a felony with imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars ($10,000). (Pen. Code § 243.4, subds. (a) - (d).)

6) States that rape is an act of sexual intercourse accomplished with a person where the person is incapable of giving legal consent, where it is accomplished by means of force, violence,

duress, menace, or fear of bodily injury, where the person is prevented from resisting by any intoxicating or anesthetic substance, where the person was unconscious of the nature of the act, where the person is induced to believe that the person committing the act is someone known to the victim, where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. (Pen. Code § 261.)

7) Punishes rape by imprisonment in the state prison for three, six, or eight years, or for longer terms if the act was accomplished by means of force against a minor, specifically, nine, eleven, or thirteen years for a minor under the age of 14, and seven, nine, or eleven years for a minor over the age of 14. (Pen. Code § 264.)

8) States that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, and if the person is a minor; and defines a "minor" as someone who is under 18 years of age, and an "adult" as someone who is at least 18 years of age. (Pen. Code § 261.5, subd. (a).)

9) Punishes an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, as a misdemeanor. (Pen. Code § 261.5, subd. (b).)

10) Punishes an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony. (Pen. Code § 261.5, subd. (c).)

11) Criminalizes the acts of sodomy, oral copulation, and sexual penetration, when it is accomplished either without consent or with a minor, and punishes those offenses as either alternate felony/misdemeanors ("wobbler" offenses) or as felonies, depending on a variety of circumstances, including whether force was used as well as the age difference between the perpetrator and the minor. (Pen. Code §§ 286, 287, and 289.)

12) Criminalizes the act of willfully and lewdly committing any lewd or lascivious act upon or with the body, or any part or member thereof, of a child who is 15 years or younger, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, and punishes those offenses as either alternate felony/misdemeanors ("wobbler" offenses) or as felonies, depending on a variety of circumstances, including whether force was used as well as the age difference between the perpetrator and the minor. (Pen. Code § 288.)

13) Establishes a procedure in which a person may be compelled to testify or produce evidence in a felony case if a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated and allows the district attorney or any other prosecuting agency to request an order granting use immunity or transactional immunity to the person compelled to give testimony or produce evidence. (Pen. Code § 1324.)

14) Establishes a procedure in which a person who refuses to answer a question or produce evidence of any other kind in a misdemeanor case on the ground that he may be incriminated, may agree to testify voluntarily in exchange for immunity from prosecution. (Pen. Code § 1324.1.)

15) Prohibits the admission of evidence that a person was in possession of condoms in a prosecution for a prostitution-related offense. (Evid. Code § 782.1.)

16) Prohibits the admission of evidence that a victim of, or a witness to, a serious felony, as defined, assault, domestic violence, extortion, sexual battery, or stalking, each as specified, has engaged in an act of prostitution at or around the time they were the victim of or witness to the crime is inadmissible in a separate prosecution of that victim or witness to prove criminal liability for the act of prostitution. (Evid. Code, § 1162.)

17) Prohibits the arrest of a person for a misdemeanor controlled substances offense or a prostitution offense if the person reports being a victim of, or a witness to, a serious felony, as defined, assault, domestic violence, extortion, sexual battery, or stalking, each as specified, if the person was engaged in such behavior at or around the time they were the victim of, or witness the offense they are reporting. (Evid. Code § 647.3.)

18) Establishes the "Right to Truth-in-Evidence," which states that except as provided by statute enacted by a two-thirds vote of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. (Cal. Const., art. I, § 28, subd. (f), par. (2)).

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "A report by the White House Task Force to Protect Students from Sexual Assault confirm that liability for illegal consumption of alcohol and drugs can keep victims from reporting sexual assault. Higher education institutions nationwide, including the University of California system, utilize amnesty clauses to encourage college students to report sexual misconduct. These amnesty clauses provide limited immunity to individuals coming forward with a complaint. California should expand this concept to apply to all victims of sexual assault. Every victim deserves to come forward without fear of being found liable for minor violations of underage drinking or drug use. Providing victims with amnesty will help law enforcement prosecute perpetrators of sexual assault and increase overall public safety. AB 1927 will ensure that sexual assault survivors receive the justice they deserve."

2) **The Need for This Bill**: The California Coalition Against Sexual Assault (CALCASA) publishes an annual report entitled the "Cost and Consequences of Sexual Assault in California." (CALCASA, Feb. 2018, available at: https://www.calcasa.org/wp-content/uploads/2018/02/CALCASA_CCofSV_FINALSpreads_2018.pdf, [as of Mar. 2, 2020].) That report purports to track the instances of self-reported sexual assaults against the number of sexual assaults that are reported to law enforcement. (*Id.*) One of the conclusions drawn from the report is that discrepancy in the number of self-reported sexual assaults

versus the number of reports to law enforcement "highlight the extensive underreporting of sexual violence in California crime reports." (*Id.* at 12.) CALCASA has submitted a letter in support of this bill.

Various reports indicate that sexual assault is particularly prevalent on college and university campuses. In 2014, President Obama issued a memorandum directing the Office of the Vice President and the White House Council on Women and Girls to lead an interagency effort to address campus rape and sexual assault. (White House Press Release, Jan. 22, 2014, *Memorandum -- Establishing a White House Task Force to Protect Students from Sexual Assault*, available at: https://obamawhitehouse.archives.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a [as of Feb. 26, 2020].) The White House Task Force to Protect Students from Sexual Assault ("White House Task Force") was then established.

The White House Task Force released its first report in 2014, finding that sexual assault on campus is "chronically underreported" and that only 2% of sexual assault survivors who were incapacitated from drugs or alcohol at the time of the assault report the incident to law enforcement. (*Not Alone: The First Report of the White House Task Force*, Apr. 2014, at page 7, available at: https://www.justice.gov/archives/ovw/page/file/905942/download, [as of Mar. 2, 2020].) The reporting rate for forcible rape was slightly higher, but still quite low, at 13%. (*Ibid.*) The fact that a victim may have used or possessed alcohol or drugs at or around the time of the sexual assault may be a reason why many witnesses are unwilling to come forward with allegations and evidence about a sexual offense. As part of its report, the White House Task Force created a checklist for Campus Sexual Misconduct Policies which included an amnesty policy for drug and alcohol use in specific situations. (*Checklist for Campus Sexual Misconduct Policies*, White House Task Force, Apr. 2014, at page 5, available at: https://www.justice.gov/archives/ovw/page/file/910271/download, [as of Mar. 2, 2020].) The University of California has implemented such an amnesty policy. (University of California Policy on Sexual Violence and Sexual Harassment, Jul. 2019, at page 9, available at: https://policy.ucop.edu/doc/4000385/SVSH, [as of Mar. 2, 2020].) Under that policy, the University of California will not ordinarily discipline Complainants or witnesses for student conduct policy violations such as underage drinking or drug use, if it occurred around the time of alleged sexual misconduct. (*Ibid.*)

Under the provisions of this bill, a similar amnesty-like policy would be adopted at a statewide level. Specifically, any victim or witness to a felony-level sexual assault would be allowed to testify in regards to that assault without fear that their statements could be used in a separate prosecution for drug or alcohol use or possession. This statutory grant of immunity as to any statements about drug or alcohol use or possession at or around the time of the felony-level sexual assault may encourage victims and witnesses to be more honest and forthcoming in cases that involve serious allegations of sex crimes. In recent years, the Legislature has adopted similar policies – AB 2243 (Friedman) Chapter 27, Statutes of 2018 and SB 233 (Wiener), Chapter 141, Statutes of 2019 – that prohibit the use of testimony and evidence of low-level controlled substance and prostitution offenses when the person has shared that testimony or evidence in order to prosecute a more serious violation of law.

3) **Existing Procedure for Compelled Testimony/Grant of Immunity**: Under current law, a victim or witness may be granted immunity for their testimony in a felony prosecution through a process known as "compelled testimony." (Pen. Code § 1324.) In that procedure,

the victim or witness must first formally refuse to testify or provide evidence, invoking the rationale that doing so may incriminate them. The court can then "compel" the person to testify, granting immunity from prosecution for their statements and evidence in the process. According to the proponents of this bill, the existing procedure is often traumatic and complicated for victims and witnesses, who have often already been traumatized by virtue of being the witness to, or victim of, a sexual assault.

4) **Proposition 8, Right to Truth-in-Evidence**: In 1982, California voters approved Proposition 8, which included a provision known as the "Right to Truth-in-Evidence." The Right to Truth-In-Evidence is codified in the California Constitution, and stands for the principle that no relevant evidence may be excluded from a criminal proceeding, with specific exceptions that were already in place at the time Proposition 8 was adopted. (Cal. Const., art. I, § 28(f)(2).) Additionally, the Right to Truth-In-Evidence provision required a 2/3 vote in both houses in order to create any new exceptions to the rule that relevant evidence not be excluded in a criminal proceeding. Consistent with that provision, this bill has been marked as a 2/3 vote because it could potentially exclude relevant evidence from being presented in a prosecution for a use/possession of drugs or alcohol case, if the defendant had previously testified in a separate case for a sex offense about their drug or alcohol use/possession.

5) **Argument in Support**: According to the bill's sponsor, *The San Diego District Attorney*: "AB 1927 seeks to address the current underreporting of what's nationally known as the "silent epidemic." AB 1927 will provide victims and witnesses with use immunity in sexual assault cases where their testimony about their illicit drug use or underage drinking at the time of the crime exposes them to criminal liability. AB 1927 creates an "amnesty clause" by adding 1324.2 to the Penal Code. This addition will provide that the testimonial evidence given by a victim or witness of a sexual assault who possessed or used a controlled substance or alcohol at the time of the crime would be inadmissible in a separate prosecution of that victim or witness to prove criminal liability for the unlawful possession or use of a controlled substance.

   "AB 1927 will fix the current contradiction in California law. Penal Code section 1324 is the only formal legal process to grant use immunity to a victim who has potential criminal liability. In order to utilize Penal Code section 1324 to grant immunity to the sexual assault victim, the victim must be compelled by the court to testify. The notion that a sexual assault survivor would be compelled to testify in a sexual assault case runs contrary to the rights bestowed upon sexual assault victims under Penal Code section 680.2(a)(1); This section informs sexual assault victims that they are 'not required to participate in the criminal justice system.' In practice, when a sexual assault victim has potential criminal liability for the use of drugs or alcohol, the court will also appoint a defense attorney to advise and represent the sexual assault victim. The effect of having a lawyer appointed and being compelled by a judge to testify increases trauma to the victim and treats the sexual assault victim as a potential criminal.

   "Numerous reports, including the 2014 White House Task Force to Protect Students from Sexual Assault and the American Association of State Colleges and Universities, confirm that an amnesty clause can encourage sexual assault reporting within the campus community. The University of California system implemented a sexual assault "amnesty" policy last year. However, sexual assaults happen everywhere. According to the Federal Bureau of

Investigation's 2018 Uniform Crime Report there were more than 15,000 reported sexual assaults in California. These crimes affect children, men and women. This bill will remedy the underreporting of sexual assault cases by creating a statutory vehicle by which California's criminal justice system can provide survivors and witnesses of sexual assault relief from potential criminal liability from self-incriminating testimony about their minor drug and alcohol-related offenses as it relates to the sexual assault case. This bill limits liability for drug-related or alcohol crimes only in the limited circumstance where the victim or witness testified in a sexual assault prosecution, and that the required testimony was incriminating. It does not prohibit the accused from introducing evidence that the accuser was under the influence. The only goal of this bill is to make the criminal justice system more supportive of sexual assault survivors who may have criminal liability for the use of drugs or alcohol at the time of their victimization.

6) **Argument in Opposition**: According to *The California Public Defenders Association*: "AB 1927, as currently proposed, erodes the defendant's constitutional right to confrontation by cloaking victims and witnesses in a false aura of credibility by stating that their testimony regarding drug or alcohol use or possession cannot be used against them in a separate proceeding. In order to balance the defendant's right to confrontation with society's goal of having sexual assault victims testify without fear of prosecution, we suggest the following amendment:

""This section shall not be construed to limit the admissibility in the aforementioned felony prosecution of any otherwise admissible evidence of the victim's or witness's possession or use of alcohol or a controlled substance, especially as it may affect that person's credibility, memory of the events, or motivation to testify in a certain manner. Furthermore, the statutory immunity provided by this section shall be admissible to the same extent as any other grant of immunity which may provide a motivation or enticement to testify in a certain manner."

"Although we are proposing an amendment, AB 1927 is not needed because its goals are easily accomplished under existing law; and its enactment would start a proverbial "slippery slope" of bills to exclude evidence in criminal trials. Under existing law, prosecutors can already use their discretion to not file charges of possession or use of controlled substances or alcohol. In addition, Penal Code section 1324.1 (for misdemeanors; most illegal use or possession of controlled substances or alcohol is misdemeanor) and 1324 (for felonies) can also be used by prosecutors to provide statutory immunity. Moreover, AB 1927 would also start our criminal law down a slippery slope: why stop with these eight crimes? Why not extend this evidentiary exclusion to domestic violence, all types of assault, or any number of other crimes? Soon our criminal code would be littered with evidentiary exclusions for illegal possession or use of drugs or alcohol."

7) **Prior Legislation**:

a) SB 233 (Wiener) Chapter 141, Statutes of 2019, made condoms inadmissible as evidence in specified crimes relating to prostitution and prohibited the arrest of a person for misdemeanor drug possession or prostitution-related offenses when the person is reporting specified other crimes.

b) AB 2243 (Friedman) Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to a violent felony as specified, extortion, or stalking, were

engaged in an act of prostitution at or around the time they were the witness or victim to the crime.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego County District Attorney Office (Sponsor)
California District Attorneys Association (Co-Sponsor)
Alameda County District Attorney's Office
California Coalition Against Sexual Assault
Center for Community Solutions
Crime Victims United of California
End Violence Against Women International
Southern California Public Health Association

Opposition

California Public Defenders Association

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

Date of Hearing: March 10, 2020
Counsel: David Billingsley

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

AB 1936 (Rodriguez) – As Amended March 5, 2020

As Proposed to be Amended in Committee

SUMMARY: Includes Public Safety Power Shut Offs as an emergency for which price gouging is prohibited if a state of emergency has been declared by specified governing bodies or government officials. Specifically, **this bill**:

1) States that upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur; and for that period of time until 72 hours after the conclusion of the public safety power shutoff, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell and consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.

2) Specifies that if a declaration of emergency is made because of an announcement that a public safety power shutoff will occur, and that shutoff does not occur, the provisions of this bill prohibiting price gouging will only apply for 72 hours following the declaration.

3) Allows a price increase greater than 10% if the person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services during the state of emergency or locale emergency, and the price is no more than 10 percent greater than the total cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

4) States that specified provisions in the existing price gouging law regarding residential rental property, motels or hotels, and contractors, do not apply to a declaration of emergency made because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur.

5) State that the provisions in the existing price gouging law which allow extension in 30 day periods of the prohibition on price gouging do not apply to a declaration of emergency made because of a public safety power shutoff or because of an announcement that public safety power shutoff will occur.

EXISTING LAW:

1) Finds that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. (Pen. Code, § 396, subd. (a).)

2) States that it is the intent of the Legislature to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. (Pen. Code, § 396, subd. (a).)

3) Provides that upon the declaration of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. (Pen. Code, § 396, subd. (b).)

4) States that upon the declaration of a state of emergency, as specified, and for a period of 180 days following that declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. (Pen. Code, § 396, subd. (c).)

5) Provides that a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency or local emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. (Pen. Code, § 396, subd. (c).)

6) Specifies that upon the proclamation of a state of emergency, as specified, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously

contracted rates. (Pen. Code, § 396, subd. (d).)

7) Specifies that, a greater price increase for the goods and services, mentioned above, is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed by specified circumstances. (Pen. Code, § 396, subd. (a)-(c).)

8) States that up the proclamation of a state of emergency and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined, advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. (Pen. Code, § 396, subd. (e).)

9) Specifies that it is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency and for a period of 30 days following that proclamation or declaration, or any period that the proclamation or declaration is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. (Pen. Code, § 396, subd. (f).)

10) Provides that time frame prohibiting specified price increases may be extended for additional 30-day periods by a local legislative body or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens. (Pen. Code, § 396, subd. (g).)

11) States that the conduct described above is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment. (Pen. Code, § 396 subd. (h).)

12) Specifies that the conduct described above shall constitute an unlawful business practice and an act of unfair competition. (Pen. Code, § 396 subd. (i).)

13) Defines "State of emergency" as "a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor of California." (Pen. Code, § 396, subd. (j)(1).)

14) Defines "Local emergency" as "a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make such a declaration in any county, city, or city and county in California.." (Pen. Code, § 396, subd. (j)(2).)

15) Defines "Housing" as "any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobilehome park or campground" for purposes of criminal price gouging. (Pen. Code, § 396, subd. (j)(11).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, ""Like wildfires, Public Safety Power Shutoffs are becoming the new normal. Last year, millions of Californians were affected by Public Safety Power Shutoffs and were only given a few days' notice, prompting them to hastily go out and purchase necessary goods needed to endure the event. This causes a surge in demand for essential goods in the few days before a scheduled shutoff, creating an opportunity for sellers to take advantage of consumers by price gouging the cost of goods such as generators, gasoline, and medical supplies. Price gouging on essential goods before an anticipated Public Safety Power Shutoff can be as life-threatening as price gouging during a natural disaster or emergency – especially for elderly, disabled, and low-income Californians."

2) **Utility Power Shutoffs and to Mitigate Wildfire Risk:** In October 2019, Pacific Gas & Electric shut power to about 800,000 customers across Northern California in an attempt to avoid wildfires caused by winds damaging power equipment. The blackouts impacted 34 counties throughout northern and central California. Malfunctions on the part of utilities have been tied to some of the state's most destructive fires, including the Camp fire, which devastated Paradise, Calif., and the 2017 wine country blazes. (https://www.latimes.com/california/story/2019-10-08/pge-power-shutdown-winds-critical-fire-danger)

   Michael Wara, director of Stanford University's climate and energy policy program, said, "Power shut-offs in the face of really widespread dangerous fire weather, which is what we're confronting, may be the best thing we can do for the time being," Wara went on to say, "In the long run, PG&E needs to fix its grid. And so does Edison ... so they can use power shut-offs as a more limited tool like a scalpel rather than the blunt instrument they have now." (Id.)

   Given the time required for utilities to make safety changes to the electrical grid, California can expect that Public Safety Power Shutoffs will continue to be a tool to reduce fire danger for the foreseeable future.

3) **Price Gouging:** Current law makes it unlawful for retailers and service providers to price gouge during for a 30 day period (180 days for reconstruction services) after a declared state of emergency. "Price gouging" is increasing the price of specified goods and services by more than 10% above the price of those goods and services prior to the declaration of emergency. The provisions of the price gouging statute are triggered when a state of emergency has been declared by the President of the United States, the Governor, or officials at a county or municipal level, as specified.

   Price gouging applies to the following items: lodging (including permanent or temporary rental housing, hotels, motels, and mobilehomes); food and drink; emergency supplies such as water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers; and medical supplies such as prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products. It also applies to other goods and services including: home heating oil; building materials, including lumber, construction tools, and windows; transportation; freight; storage services; gasoline and other motor fuels; and repair and reconstruction services.

Utilities in California have recently used Public Safety Power Shutoff when conditions exist that create a heightened risk of fire. Public Safety Power Shutoffs are imposed by energy utilities in certain geographic areas to mitigate that fire risk. These service outages has caused significant disruptions to Californians' lives. The power outages have affected California citizens in a similar manner to natural disasters that have resulted in a declared state of emergency. However, there are also some differences between a Public Safety Power Shutoff and natural disasters, such as earthquake or fire. Unlike an earthquake or fire, there is no permanent damage to infrastructure from a Public Safety Power Shutoff. Because there is no damage to infrastructure, the time to recover from the disruption caused by a Public Safety Power Shutoff is much quicker than the time required to recover from an earthquake of wildfire.

This bill applies the price gouging statute to a declared state of emergency based on a Public Safety Power Shutoff. However, the bill limits the time period in which the price gouging statute applies to a period of 72 hours (rather than 30 days from declaration of emergency) after the power has been restored. Because there is no damage to housing stock or other infrastructure, specified provisions of the price gouging statute applying to reconstruction costs, hotels, and rental housing would not apply to a declaration of emergency based on a Public Safety Power Shutoff.

4) **Argument in Support**: According to the *Consumer Attorneys of California*, "AB 1936 expands the current prohibition on public emergency price gouging by triggering the prohibition *before* a public emergency event takes place. Specifically, it would take effect when the governing body of a city or county announces a planned Public Safety Power Shutoff.

"This change would protect consumers in need from price hikes spurred by a sudden increase in the demand of vital goods and services. For low-income Californians, the elderly, and the disabled, AB 1936 will preserve purchasing power in an otherwise life-threatening situation.

"A growing number of Californians have been disrupted by planned utility shutoffs. We must ensure they're not also taken advantage of by unfair pricing tactics."

5) **Prior Legislation**:

   a) AB 1919 (Wood), Chapter 631, Statutes of 2018, expanded the scope of the crime price gouging by including rental housing that was not on the market at the time of the proclamation or declaration of emergency. Defines and clarifies the "rental price" of housing for purposes of price gouging.

   b) AB 2820 (Chiu), Chapter 671, Statutes of 2016, specified that criminal price gouging includes rental of any housing with an initial lease of up to one year for purposes of criminal price gouging. Included the transportation of persons and towing services in the criminal price gouging during a declared emergency.

   c) AB 457 (Nunez), Legislative Session of 2005-2006, would have authorized the Governor to proclaim an abnormal market disruption, as defined. AB 457 died in the Senate.

d) SB 1363 (Ducheny), Chapter 492, Statutes of 2004, prohibits the owner or operator of a hotel or motel from increasing its regular advertised rates by more than 10% for 30 days following a proclamation or declaration of emergency, except as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association
Consumer Attorneys of California
Disability Rights California
Rural County Representatives of California

Opposition

None

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

Amended Mock-up for 2019-2020 AB-1936 (Rodriguez (A))

Mock-up based on Version Number 98 - Amended Assembly 3/5/20
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 396 of the Penal Code is amended to read:

396. (a) The Legislature hereby finds that during a state of emergency or local emergency, including, but not limited to, an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or man-made disaster, and during a public safety power shutoff, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or local emergency or a public safety power shutoff results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or local emergency or a public safety power shutoff for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further, it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) (1) Except as provided in paragraph (2), upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.

(2) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, because of a public safety power shutoff or because of an announcement that a public

safety power shutoff will occur, and for that period of time until 72 hours after the conclusion of the public safety power shutoff, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency. If a proclamation or declaration is made because of an announcement that a public safety power shutoff will occur, and that shutoff does not occur within 72 hours after the proclamation or declaration, this section shall only apply for the 72 hours immediately following the proclamation or declaration.

(3) A price increase greater than that permitted by paragraphs (1) and (2) is not unlawful if the person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(c) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 180 days following that proclamation or declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, during the state of emergency or local emergency, and the price represents no more than 10 percent greater than the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency.

(d) ~~(1)~~ Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel's or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

~~(2) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any county, city, or city and county, because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur, and for that period of time until 72 hours after the conclusion of the public safety power shutoff, it is unlawful for an owner or operator of a hotel or motel to increase the hotel's or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.~~

(e) Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the state of emergency or local emergency is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. However, a greater rental price increase is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration. It shall not be a defense to a prosecution under this subdivision that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as provided in paragraph (11) of subdivision (j) with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant. This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.

(f) It is unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period that the state of emergency or local emergency is extended by the applicable authority and rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged under this section. It shall not be a violation of this subdivision for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

(g) The prohibitions of this section may be extended for additional 30-day periods, as needed, by a local legislative body, local official, the Governor, or the Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

(h) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(i) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(j) This section does not preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

(k) A business offering an item for sale at a reduced price immediately prior to the proclamation or declaration of the emergency may use the price at which it usually sells the item to calculate the price pursuant to subdivision (b) or (c).

(l) This section does not prohibit an owner from evicting a tenant for any lawful reason, including pursuant to Section 1161 of the Code of Civil Procedure.

(m) Subdivision (c)~~, paragraph (1) of subdivision (d), and subdivisions (e)~~ to (g), inclusive, shall not apply to a proclamation or declaration of emergency made because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur.

(n) For the purposes of this section, the following terms have the following meanings:

(1) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(2) "Consumer food item" means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(3) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, generators, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(4) "Gasoline" means any fuel used to power any motor vehicle, generator, or power tool.

(5) "Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

(6) "Housing" means any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobilehome park or campground.

Date of Hearing: March 10, 2020
Chief Counsel: Gregory Pagan

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

AB 1963 (Chu) – As Introduced January 21, 2020

As Proposed to be Amended in Committee

SUMMARY: Makes a human resource employee of a business that that employs minors a mandated reporter of child abuse or neglect, and a person whose duties require direct contact with and supervision of minors in the performance of the minors duties in the workplace a mandated reporter of sexual abuse for the purpose of the Child Abuse and Neglect Reporting Act (CANRA).

EXISTING LAW:

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

defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriff's department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7, subd. (a).)

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

3) States that the reporting duties under CANRA are individual and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided they are not inconsistent with CANRA. (Pen. Code, § 11166, subd. (i)(1).)

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

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

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

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

mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)

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

9) Provides that any supervisor or administrator who interferes or inhibits a mandated reporter from reporting suspected child abuse or neglect shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and a fine. (Pen. Code, § 11166.01, subd. (a).)

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1963 is a commonsense measure in this era of 'Times Up' and 'Me Too,' to designate human resource employees of any business which employs minors and those supervisors whose duties require direct contact and supervision of minors in the workplace as mandated reporters and direct them to the existing free training in the duties of mandated reporters.

   "California has millions of minors who are in the workforce. Sadly, the workplace is also an environment where sexual harassment and other forms of employee abuse can take place. As noted in the 2017 Report of the Co-Chairs of the Equal Employment Opportunity Commission (EEOC) Select Task Force on the Study of Harassment in the Workplace, almost one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. In addition, the report noted a series of factors that put employees at a higher risk of experiencing harassment in the workplace, including a young workforce.

   "When the employee is a minor, the same conduct that violates an employer's sexual harassment policies may also be child abuse, which must be immediately reported to

authorities for investigation. Unlike the children who report child abuse in a school setting for instance, where teachers, administrators and other employees are trained mandated reporters, the sexual harassment prevention training mandated for children who are employees is governed under the Government Code provisions for employment protections, which sends any sexual harassment complaints to the Human Resources Department, and to the Department of Fair Employment and Housing, where a lengthy legal process is available. AB 1963 is needed to assure that when a report of sexual harassment in the workplace is brought forward by a minor or on behalf of a minor, the complaint will be made to a trained mandated reporter so that all of their rights under law will be protected."

2) **Prior Legislation**: AB 189 (Kamlager-Dove), Chapter 674, Statutes of 2019, provided that a certified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional provided, as defined, is a mandated reporter of known or suspected child abuse for the purpose of CANRA.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Amendments Mock-up for 2019-2020 AB-1963 (Chu (A))

***********Amendments are in BOLD***********

Mock-up based on Version Number 99 - Introduced 1/21/20
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by a public or private school.

(4) A classified employee of a public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of a public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator, board member, or employee of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency.

(9) An employee of a county office of education or the State Department of Education whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child daycare facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency, as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a childcare institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) A person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in a public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker, unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) An emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed associate marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner or other person who performs autopsies.

(29) A commercial film and photographic print or image processor as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print or image processor" means a person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, or who prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation. The term includes any employee of that person; it does not include a person who develops film or makes prints or images for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means a person who, for financial compensation, acts as a monitor of a visit between a child and another person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means a person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means a person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) An employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 5.655 of the California Rules of Court.

(36) A custodial officer, as defined in Section 831.5.

(37) A person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not, in and of itself, a sufficient basis for reporting child abuse or neglect.

(39) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code.

(40) An associate professional clinical counselor registered under Section 4999.42 of the Business and Professions Code.

(41) An employee or administrator of a public or private postsecondary educational institution, whose duties bring the administrator or employee into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution. Nothing in this paragraph shall be construed as altering the lawyer-client privilege as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(42) An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.

(43) (A) A commercial computer technician as specified in subdivision (e) of Section 11166. As used in this article, "commercial computer technician" means a person who works for a company that is in the business of repairing, installing, or otherwise servicing a computer or computer component, including, but not limited to, a computer part, device, memory storage or recording mechanism, auxiliary storage recording or memory capacity, or any other material relating to the operation and maintenance of a computer or computer network system, for a fee. An employer who provides an electronic communications service or a remote computing service to the public shall be deemed to comply with this article if that employer complies with Section 2258A of Title 18 of the United States Code.

(B) An employer of a commercial computer technician may implement internal procedures for facilitating reporting consistent with this article. These procedures may direct employees who are mandated reporters under this paragraph to report materials described in subdivision (e) of Section 11166 to an employee who is designated by the employer to receive the reports. An employee who is designated to receive reports under this subparagraph shall be a commercial computer technician for purposes of this article. A commercial computer technician who makes a report to the designated employee pursuant to this subparagraph shall be deemed to have

complied with the requirements of this article and shall be subject to the protections afforded to mandated reporters, including, but not limited to, those protections afforded by Section 11172.

(44) Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary educational institutions.

(45) An individual certified by a licensed foster family agency as a certified family home, as defined in Section 1506 of the Health and Safety Code.

(46) An individual approved as a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.

(47) A qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional, as defined in Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(48) A human resource employee of a business that employs minors.

(49) A person whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace is a mandated reporter of sexual abuse, as defined in Section 11165.1. Nothing in this paragraph shall be construed to modify or limit the person's duty to report known or suspected child abuse or neglect when the person is acting in some other capacity that would otherwise make the person a mandated reporter.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Except as provided in subdivision (d), employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) Pursuant to Section 44691 of the Education Code, school districts, county offices of education, state special schools and diagnostic centers operated by the State Department of Education, and charter schools shall annually train their employees and persons working on their behalf specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(e) (1) On and after January 1, 2018, pursuant to Section 1596.8662 of the Health and Safety Code, a childcare licensee applicant shall take training in the duties of mandated reporters under the child abuse reporting laws as a condition of licensure, and a childcare administrator or an employee of a licensed child daycare facility shall take training in the duties of mandated reporters during the first 90 days when that administrator or employee is employed by the facility.

(2) A person specified in paragraph (1) who becomes a licensee, administrator, or employee of a licensed child daycare facility shall take renewal mandated reporter training every two years following the date on which that person completed the initial mandated reporter training. The training shall include, but not necessarily be limited to, training in child abuse and neglect identification and child abuse and neglect reporting.

(f) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(g) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 10, 2020
Counsel: Matthew Fleming

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

AB 2014 (Maienschein) – As Amended March 4, 2020

SUMMARY: Extends the statute of limitations for civil lawsuits and criminal offenses involving the misuse of sperm, ova, or embryos in assisted reproduction technology. Specifically, **this bill**:

1) Extends the statute of limitations in a civil action for assault, battery, or injury to, or for the death of, an individual caused by a wrongful act or neglect in regards to the misuse of sperm, ova, or embryos in assisted reproduction technology from two years beginning at the time of wrongful act or neglect, to three years from the discovery of the wrongful act or neglect.

2) Extends the statute of limitations for a criminal offense relating to the misuse of sperm, ova, or embryos in assisted reproduction technology from three years from the time that the offense occurred, to one year from the discovery of the offense.

3) Specifies that the statute of limitations proposed by this bill would only apply to offenses committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, has not expired as of January 1, 2021.

EXISTING LAW:

1) States that it is unlawful for anyone to knowingly use sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider's signature on a written consent form. (Pen. Code § 367g, subd. (a).)

2) States that it is unlawful for anyone to knowingly implant sperm, ova, or embryos, through the use of assisted reproduction technology, into a recipient who is not the sperm, ova, or embryo provider, without the signed written consent of the sperm, ova, or embryo provider and recipient. (Pen. Code § 367g, subd. (b).)

3) Punishes the unlawful use or implantation of sperm, ova, or embryos by imprisonment in the county jail for three, four, or five years, by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment. (Pen. Code § 367g, subd. (c).)

4) Provides that there is no statute of limitations for crimes punishable by death, or by imprisonment in the state prison for life, or by life without the possibility of parole. (Pen. Code, § 799, subd. (a).)

5) Provides that there is no statute of limitations for specified sex crimes if the crime was committed on or after January 1, 2017, or if the crime was committed before that date but the statute of limitations had not expired on January 1, 2017. (Pen. Code, § 799, subd. (b)(1).)

6) Provides that prosecution for crimes punishable by imprisonment for eight years or more must be commenced within six years after commission of the offense. (Pen. Code, § 800.)

7) Provides that prosecution for other felonies punishable by less than eight years must be commenced within three years after commission of the offense. (Pen. Code, § 801.)

8) Provides that the statute of limitations for most misdemeanors is one year. (Pen. Code, § 802, subd. (a).)

9) Provides that notwithstanding any other time limitations, for specified sex crimes that are alleged to have been committed when the victim was under the age of 18, prosecution may be commenced any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a).)

10) Provides that notwithstanding any other time limitations, prosecution for a felony offense requiring sex offender registration shall be commenced within 10 years after commission of the offense. (Pen. Code, § 801.1, subd. (b).)

11) Provides that, notwithstanding any other limitation of time, a criminal complaint for specified sex crimes may be filed within one year of the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid (DNA) testing, if specified conditions are met. (Pen. Code, § 803, subd. (g)(1).)

12) Provides that, notwithstanding any other limitation of time, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under 18 years of age, was the victim of specified sex offenses. (Pen. Code, § 803, subd. (f)(1).)

13) Provides that, notwithstanding any other limitation of time, a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to an invasion of privacy offense. (Pen. Code, § 803 (i).)

14) Provides that, notwithstanding any other limitation of time, if a person flees the scene of an accident, a criminal complaint alleging vehicular manslaughter may be filed one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, but not later than six years after the commission of the offense. (Pen. Code, § 803, subd. (k).)

15) Provides that if more than one time period described in the statute of limitations scheme applies, the time for commencing an action is governed by that limitation period that expires the latest in time. (Pen. Code, § 803.6, subd. (a).)

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

    a) An indictment or information is filed;

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Making the decision to have a child through Assisted Reproductive techniques is monumental to a couple, and having to experience this type of fraud can be a massive violation of the personal, fiduciary, and ethical realms. While this is an illegal practice in California, there is a glaring deficiency that the legislature can address. Current statute of limitations provides a 3 year window after commission of the offense to be prosecuted; however, it is common for victims to discover this way after the fact. For example, a case in Indiana was uncovered ranging from 26-40 years after the fraud occurred, which would mean this misconduct could not be prosecuted under California law. By changing the statute of limitations to 3 years from discovery, we can provide victims with a viable option for seeking justice."

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

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

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

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

   More recently, in *Stogner v. California* (2003) 539 U.S. 607, the Court underscored the basis for statutes of limitation: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that

judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

The failure of a prosecution to be initiated within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived in limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.) Furthermore, the court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

The amount of time in which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner*, *supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

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

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

3) **Fertility Fraud Cases**: In the 1990's, two doctors were charged with stealing embryos and eggs belonging to women who sought fertility treatment at the University of California Irvine Center for Reproductive Health and implanting them in other women without the consent of the donors. (Carollo, *Fertility Doctor on the Run Arrested in Mexico*, ABC News, Dec. 28,

2010, available at: https://abcnews.go.com/Health/ReproductiveHealth/fugitive-fertility-doctor-ricardo-asch-arrested-mexico/story?id=12492575, [as of Mar. 2, 2020].) That case, which involved dozens of victims (*Id.*), led California to introduce legislation which criminalized the misuse of sperm, embryo and ova. SB 1555 (Hayden) Chapter 865, Statutes of 1996, made it illegal for any person to knowingly use sperm, embryo and ova in manner that was inconsistent with the consent of the donor, and imposed prison penalties for a violation of that provision.

According to the Society for Assisted Reproductive Technology (SART), California is one of just three states that criminalizes fertility fraud. (SART website, https://www.sart.org/news-and-publications/news-and-research/legally-speaking/fertility-fraud-an-update/). According to the SART:

> "In the typical fertility fraud fact pattern, an adult learns that he or she has different paternal genetic relations and/or unexpected half-genetic siblings. This adult may have already known that he/she was donor-conceived or may discover that fact through the genetic testing process. Conversations with these new relations suggest that something just isn't right. In some cases, half-genetic siblings find that their parents all sought treatment from the same physician, and in others, their investigative efforts reveal a genetic relationship to the physician. When asked about the circumstances of their fertility treatment, their mothers state that they were told (based on their history of infertility) that the sperm would come from their husbands or anonymous medical residents resembling their husbands. Doctor-conceived individuals and their parents have sought accountability through a number of routes, including speaking with journalists and other media personalities, seeking state law reform, filing a complaint with a state medical board, reporting the physician to a prosecutor or a state Attorney General, pursuing a private legal settlement, and filing a civil tort suit." (*Id.*)

Although the crimes are rare, the offense of using or implanting reproductive material in a manner that is inconsistent with the will of the donor is one that, by its very nature, is difficult to detect at the time the offense occurs. As indicated by the SART, the typical offense is not likely to be discovered until a person discovers a previously-unknown familial relationship through genetic testing. Such testing may not occur for years or even decades after the moment when a doctor or medical professional fraudulently implanted sperm or an embryo without the consent of the donor. This bill would allow a criminal complaint to be filed within one year of the discovery of the offense and would not require that a criminal complaint be filed within three years of the commission of the fraudulent implantation. This would appear to be consistent with other extended limitation periods for offenses that are unlikely to be discovered until some number of years after the offense is committed.

4) **Ex Post Facto**: In *Stogner v. United States*, *supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.) Under these principles, the extended statute of limitations provided for in this bill could not be applied to cases in which the period has expired. This bill includes a provision that specifies that it is not intended to apply retroactively, which is consistent with the holding of the

United States Supreme Court in *Stogner*.

5) **Expanded Statute of Limitation in Civil Lawsuits**: In addition to the expansion of the statute of limitations for criminal offenses pertaining to the misuse of sperm, ova, and embryos, this bill would expand the statute of limitations for civil lawsuits resulting from similar conduct. This bill was double-referred to the Assembly Judiciary Committee. A more complete analysis of the civil lawsuit portion of this bill will be completed in that committee.

6) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*: "This bill would extend the statute of limitations for crimes involving the misuse of sperm, ova or embryos. The current limitations period is three years, but AB 2014 would extend this period for forty years or more.

"By using the word, "knowingly," this statute requires the prosecution to prove that the person using the assisted reproduction technology actually knew that the donor had not consented to the way the sperm, ova or embryo were used. In addition, the person using the assisted reproduction technology must have actually known that the recipient of implanted sperm, ova or embryos had not consented to the implantation.

"The best evidence of whether someone actually knew whether consent had been given is the records of the fertility clinic where the procedure was performed. Either there is a written consent form on file, or there is not.

"However, as time passes, records can disappear. Computer storage devices can be damaged or lost or their files can be erased. Paper records can be lost or destroyed. And of course, human memory degrades over time.

"The current statute of limitations period of three years is appropriate for violations of Penal Code Section 367g. Records of consent can be expected to last that long.

"However, AB 2014 would extend the limitations period to 'within three years after the discovery of the offense.' There is no maximum period."

7) **Related Legislation**: SB 239 (Chang), would allow a criminal complaint to be filed within three years after the discovery of offense, for a crime involving the unauthorized access to computers.

8) **Prior Legislation**: SB 1555 (Hayden), Chapter 865, Statutes of 1996, made it a felony for anyone to knowingly use sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider's signature on a written consent form, or to implant sperm, ova, or embryos, through the use of assisted reproduction technology, into a recipient who is not the sperm, ova, or embryo provider, without the signed written consent of the sperm, ova, or embryo provider and recipient.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California

Oppose

California Attorneys for Criminal Justice

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

Date of Hearing: March 10, 2020
Chief Counsel: Gregory Pagan

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

AB 2061 (Limón) – As Amended March 4, 2020

SUMMARY: Authorizes the Department of Justice (DOJ) to inspect firearms dealers, ammunition vendors, or manufacturers in order to ensure compliance with state and federal firearms laws. Specifically, **this bill**:

1) Provides that DOJ may inspect firearms dealers, ammunition vendors, or manufacturers participating in a gun show or event in order to ensure compliance with state and federal firearms law.

2) Allows the DOJ to inspect ammunition vendors to ensure compliance with state and federal firearms law.

3) Provides that the DOJ may adopt regulations to administer the application and enforcement of laws relating to gun shows and ammunition vendors.

4) Delays implementation of the above provisions until July 1, 2022.

EXISTING LAW:

1) Requires the producer of a gun show or event, prior to the show or event, upon written request by the law enforcement agency with jurisdiction over the facility, to provide a list of all persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms, as specified. (Pen. Code § 27205, subd. (a).)

2) Requires the producer of a gun show or event, for every day the gun show or event operates, upon written request by the law enforcement agency, to provide an accurate, complete, and current list of the persons, entities, and organizations that have leased or rented, or are known to the producer to intend to lease or rent, any table, display space, or area at the gun show or event for the purpose of selling, leasing, or transferring firearms. (Pen. Code § 27205, subd. (b).)

3) States that the following information may be requested by the law enforcement agency in regards to any firearms dealer:

   a) The vendor's complete name; and

   b) A driver's license or identification card number. (Pen. Code § 27205, subd. (d).)

4) States that the producer and facility's manager of a gun show or event shall prepare an annual event and security plan and schedule that shall include, at a minimum, the following information for each show or event:

   a) The type of show or event, including, but not limited to, antique or general firearms; and

   b) The estimated number of vendors offering firearms for sale or display. (Pen. Code § 27210.)

5) Requires that within seven calendar days of the commencement of a gun show or event, but not later than noon on Friday for a show or event held on a weekend, the producer shall submit a list of all prospective firearms dealers to the Department of Justice (DOJ) for the purpose of determining whether these prospective vendors and designated firearms transfer agents possess valid licenses and are thus eligible to participate as firearms dealers at the show or event. (Pen. Code § 27220, subd. (a).)

6) Requires DOJ to examine its records and if it determines that a vendor's license is not valid, it shall notify the show or event producer of that fact before the show or event commences. (Pen. Code § 27220, subd. (b).)

7) Prohibits a firearms dealer who fails to cooperate with a producer of a gun show or event, or fails to comply with gun show regulations, from participating in the show or event. (Pen. Code § 27225.)

8) Requires every producer of a gun show or event to have a written contract with each gun show vendor selling firearms at the show or event. (Pen Code § 27235.)

9) Requires the producer of a gun show or event to post signs in a readily visible location at each public entrance to the show containing the following notices, among others:

   a) This gun show follows all federal, state, and local firearms and weapons laws, without exception; and

   b) Persons possessing firearms at this facility shall have in their immediate possession government-issued photo identification, and display it upon request to any security officer or any peace officer, as defined. (Pen. Code, § 27240, subd. (a).)

10) Requires the show producer to post, in a readily visible location at each entrance to the parking lot at the show, signage that states: "The transfer of firearms in the parking lot of this facility is a crime." (Pen. Code, § 27240, subd. (b).)

11) Requires all gun show or event vendors to certify in writing to the producer that they, among other things:

   a) Will not display, possess, or offer for sale any firearms, knives, or weapons for which possession or sale is prohibited;

b) Acknowledge that they are responsible for knowing and complying with all applicable federal, state, and local laws dealing with the possession and transfer of firearms; and,

c) Will process all sales or transfers of firearms through licensed firearms dealers as required by state law. (Pen. Code § 27305.)

12) Requires each ammunition vendor, before commencement of a gun show or event, to provide to the producer all of the following information relative to the vendor, the vendor's employees, and other persons, compensated or not, who will be working or otherwise providing services to the public at the vendor's display space:

a) The person's complete name;

b) The person's driver's license or state-issued identification card number; and,

c) The person's date of birth. (Pen. Code, § 27320.)

13) Provides that any firearm carried onto the premises of a gun show or event by members of the public shall be checked and secured in a manner that prevents the firearm from being discharged. (Pen. Code, § 27340, subd. (a).)

14) Provides that an identification tag or sticker shall be attached to the firearm prior to the person being allowed admittance to the show and the identification tag or sticker shall state that all firearm transfers between private parties at the show or event shall be conducted through a licensed dealer or firearm dealer in accordance with applicable state and federal laws. (Pen. Code, § 27340, subd. (b).)

15) Provides that all firearms carried onto the premises of a gun show or event by members of the public shall be checked, cleared of any ammunition, secured in a manner that prevents them from being operated, and an identification tag or sticker shall be attached to the firearm, prior to the person being allowed admittance to the show. The identification tag or sticker shall state that all firearms transfers between private parties at the show or event shall be conducted through a licensed dealer in accordance with applicable state and federal laws. The person possessing the firearm shall complete the following information on the tag before it is attached to the firearm:

a) The gun owner's signature;

b) The gun owner's printed name; and,

16) The identification number from the gun owner's government-issued photo. (Pen. Code, § 27340.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2061 ensures that all vendors at California gun shows are subject to the DOJ's inspection authority. Current law allows the

DOJ to inspect the records of some firearms dealers and ammunition vendors at gun shows, but not all. For example, DOJ lacks inspection authority over vendors who hold a federal firearms license but are not required to obtain California licenses. This bill closes a Proposition 63, the Safety and Justice for Act, loophole and ensures that all firearms dealers and ammunition vendors conducting business in California are operating under the same rules.

2) **Gun Shows:** A "gun show" is a trade show for firearms. At gun shows, individuals may buy, sell, and trade firearms and firearms-related accessories. These events typically attract several thousand people, and a single gun show can have sales of over 1,000 firearms over the course of one weekend. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999, available at: https://www.atf.gov/file/57506/download, [as of March 18, 2019].)

According to the NRA's Institute for Legislative Action (NRA-ILA), less than one percent of inmates incarcerated in state prisons for gun crimes acquired their firearms at a gun show. (NRA-ILA, https://www.nraila.org/get-the-facts/background-checks-nics.) However, according to a report published by UC Davis, gun shows have been identified as a source for illegally trafficked firearms. (https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf, [as of March 20, 2019].) Though violent criminals do not appear to regularly purchase their guns directly from gun shows, gun shows have received criticism as being "the critical moment in the chain of custody for many guns, the point at which they move from the somewhat-regulated legal market to the shadowy, no-questions-asked illegal market." (Gerney, *The Gun Debate 1 Year After Newtown*, Center for American Progress, December 13, 2013, available at: http://www.americanprogress.org/issues/guns-crime/report/2013/12/13/80795/the-gun-debate-1-year-after-newtown/, [as of March 18, 2019].)

A report by the Government Accountability Office regarding gun trafficking to Mexico confirmed that many traffickers buy guns at gun shows. (https://www.gao.gov/assets/680/674570.pdf, [as of March 15].) 87 percent of firearms seized by Mexican authorities and traced in the last 5 years originated in the United States, according to data from Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives. According to United States and Mexican government officials, these firearms have been increasingly more powerful and lethal in recent years. Many of these firearms come from gun shops and gun shows in south-west border states. (https://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGS1web.pdf, [as of March 15].)

3) **Gun Show Regulations in California**: In 1999, California enacted the nation's broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that they are familiar with existing law regarding gun shows; obtain at least $1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor's employee; prepare an annual event and security plan; and require

all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer's willful failure to comply with the specified requirements.

In California, gun transactions at gun shows are treated no differently than any other private party transaction. This means that such transfers must be completed through a licensed California dealer. Such a transfer requires a background check and is subject to the mandatory ten day waiting period prior to delivering the firearm to the purchaser.

California's strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., "In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries," Annals of Internal Medicine (2017) Vol. 1 Iss. 8.)

4) **Prior Legislation**.

a) AB 1064 (Muratsuchi), of the 2019 Legislative Session, would have allowed DOJ to adopt regulation to set fine amounts which can be levied against firearms dealers that breach specified provisions related to the sale of firearms. AB 1064 was held on the Assembly Appropriations Committee suspense file.

b) AB 893 (Gloria), Chapter 791, Statutes of 2019, prohibited, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar and thereby creates a misdemeanor offense for a violation of that prohibition.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady United Against Gun Violence
City of Ventura
Indivisible Ventura

4 Private Individuals

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: March 10, 2020
Counsel: Nikki Moore

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

AB 2105 (Quirk-Silva) – As Introduced February 6, 2020

SUMMARY: Permits a court to order a defendant charged with a felony and deemed to be incompetent to stand trial (IST) who is not in the custody of the sheriff to self-surrender to a Department of State Hospitals (DSH) facility at a specific date and time, as directed by the DSH; and requires upon release that the DSH provide notice to the defendant directing them to appear in court at a specific date and time, as ordered by the court.

EXISTING LAW:

1) States that a person cannot be tried or adjudged to punishment or have their probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

2) Requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is incompetent to stand trial (IST). (Pen. Code, § 1368, subd. (b).)

3) Provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code, § 1368, subd. (c).)

4) Specifies how the trial on the issue of mental competency shall proceed. (Pen. Code, § 1369.)

5) Provides that if the defendant is found mentally competent, the criminal process shall resume. If the defendant has been found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent. (Pen. Code, § 1370, subd. (a).)

6) Requires the court, if the defendant is found IST, to order the defendant be delivered by the sheriff to a Department of State Hospitals (DSH) facility, as directed by the DSH for the care and treatment of the mentally disordered, or to any other available public or private treatment facility that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, as specified. (Pen. Code, § 1370, subd. (a)(1)(B)(i).)

7) States when the court orders a defendant to be committed to a DSH facility or other public or private treatment facility, the court must provide specified documents prior to admission including a computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment. (Pen. Code, § 1370, subd. (a)(3)(C).)

8) States that a "treatment facility" includes a county jail and upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. (Pen. Code, § 1369.1.)

9) Requires a medical director of the DSH facility or other treatment facility to which the defendant is confined, or the outpatient treatment staff if the defendant is on outpatient status, to make a written report to the court and the community program director for the county or region of commitment concerning the defendant's progress toward recovery of mental competence within 90 days of commitment, or placement on outpatient status, made pursuant to the above provisions and at six-month intervals thereafter. A copy of these reports shall be provided to the prosecutor and defense attorney by the court. (Pen. Code, § 1370, subd. (b)(1).)

10) Requires the committing court to order the defendant to be returned to the court for conservatorship proceedings, as specified, if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future. (Pen. Code, § 1370, subd. (b)(1).)

11) Requires a defendant who has not recovered mental competence to be returned to the committing court within 90 days prior to the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment for violation of probation or mandatory supervision, whichever is shorter. The court shall notify the community program director or a designee of the return and of any resulting court orders. (Pen. Code § 1370, subd. (c)(1).)

12) Specifies procedures following a finding that a defendant is mentally incompetent and is developmentally disabled and provides a two year maximum term of commitment to restore a defendant's mental competence. (Pen. Code, § 1370.1.)

13) States that it is the intent of the Legislature that if all days are earned, as specified, for time in the county a jail, a term of four days will be deemed to have been served for every two days spent in actual custody. (Pen. Code, § 4019, subd. (f).)

14) Provides that time spent by a defendant in a hospital or other facility as a result of a commitment therein as mentally incompetent to stand trial shall be credited on the term of imprisonment, if any, for which the defendant is sentenced in the criminal case which was suspended. (Pen. Code, § 1375.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under existing law, when a person charged with a felony is found incompetent to stand trial, the court must order the person into treatment at a California Department of State Hospitals facility, or any other available public or private treatment facility that meets certain requirements or placed on outpatient status.

   "If the court chooses a State Hospitals facility, and the person is not in the sheriff's custody, current law requires the person to be remanded to jail so the person can be transported to the facility by the sheriff. Remanding a person to county jail for transportation to a state hospital facility presents a number of problems. First, entering a county jail can be extremely challenging for a person with mental illness. The environment is typically far from therapeutic and can exacerbate the symptoms being suffered by the person which resulted in the person being found incompetent to stand trial. There can be a significant delay in the person receiving much-needed assessment and/or medication. Second, due to the long waiting time for a state hospital bed, the person could be in jail for several months. Finally, a person who is out of custody on bail or own recognizance release has been released because a judge decided that it was appropriate for the person to remain out of custody. It is unfair to require the person to be remanded to jail solely for purposes of transportation to a state hospital facility. This unfairness is compounded by the fact that the person suffers from a mental illness. The sole reason the person is being committed to a state hospital is to receive treatment due to the mental illness.

   "AB 2105 would allow a judge to decide, in his or her discretion, whether to order the person to self-surrender at the State Hospitals facility, rather than being remanded to jail so the person can be transported to the facility by the sheriff."

2) **Purpose of DSH Commitment**: A defendant who is deemed IST must be returned to competency before being tried. In most misdemeanor cases, an IST defendant is sent to an outpatient or diversion program. In most felony cases, an IST defendant is sent to a DSH hospital. The defendant receives treatment until they have achieved competency, at which time the court is notified that the defendant is ready to be tried. A sheriff then transports the defendant back to the originating jurisdiction.

3) **Need for the Bill**: This measure would give judges discretion to allow a person who is deemed IST but who is released on their own recognizance to self-surrender to a DSH facility when a bed becomes available. This arises from two different issues: 1) the increasingly limited availability of beds in the DSH system, and 2) changes to the criminal system including consideration of pre-release without bail which results in a higher percentage of individuals being released from custody.

   According to the DSH, the number of people they must place in the state hospital system has increased at 10 percent, year over year, since 2013. As a result, the already limited resources and space for IST individuals has decreased. This has resulted in longer wait times before a person is able to be housed by DSH. Typically, in felony cases, the person will be detained in custody until space is available. This wait could be a matter of days, weeks or months before an IST defendant is moved to a DSH facility. As a result, judges who have already ordered the release of a person pre-trial are reluctant to order that person into the sheriff's custody until a bed is available if that person is released by the court on their own recognizance.

Some jurisdictions like Los Angeles County only transport IST victims on certain days of the week. This means a person might have to remain in sheriff's custody for up to six days for transport to a DSH facility. If that person is able to self-surrender at a DSH facility, it may be preferable to allow the person to remain out of custody until they can get to DSH.

Proponents of this measure concede that only a small portion of the felony[1] defendant IST population would be released on their own recognizance. However, in those cases where it is appropriate and feasible to release a person and expect that they will self-surrender to a DSH facility, judges should be permitted to make that order. Proponents report that this was the state of operations until the last few years, when DSH began denying entry to a facility a person who is ordered by the court to self-surrender. However, DSH states that this has never been the case, and both proponents and DSH acknowledge that the law has never authorized self-surrender.[2]

4) **Logistical Issues Raised by Authorizing Self-Surrender**: DSH oversees five state hospitals: Atascadero, Coalinga, Metropolitan (in Los Angeles County), Napa and Patton. These are secure facilities. For example, the secured perimeter at Patton is controlled by the California Department of Corrections and Rehabilitation. When a sheriff delivers an IST defendant to a DSH facility, security protocols are followed including delivery of the defendant by a sheriff to the facility, a search of the sheriff's vehicle, and an intake procedure which can include a full day assessment of the individual. When the defendant is determined to have regained mental competence to stand trial, the defendant is released from DSH back into the sheriff's control, and delivered back to the originating jurisdiction, typically into the court's custody for further proceedings. (Penal Code, Sec. 1372, subd. (a)(2).)

   This bill would permit a court to order a defendant to self-surrender to a DSH facility. However, it appears that these facilities are not prepared to accept individuals dropped off or driving themselves to these facilities. There is no intake lobby, signage for the public to navigate the facilities, or procedure for coordinating with the defendant or their escort an appropriate arrival at a DSH facility.

   Additionally, this bill appears to provide that a person who self-surrenders to a facility should also be permitted to leave the facility without a sheriff's escort, presumably by being permitted to contact a family member or conservator to arrange for transportation. Proponents of this measure state that this furthers the purpose of this bill — to keep people from being placed in jail when they are fit to remain in the community if and until that person is found guilty of a crime. This raises additional logistical concerns.

5) **Potential Alternatives**: This bill contemplates the rare cases where a felony IST defendant is released on their own recognizance. Rather than ordering that person to a DSH facility, it may be appropriate to send that defendant to an outpatient treatment or diversion program.

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[1]Many felony offenses are bail-eligible under current law, or if SB 10 (Hertzberg), Chapter 244, Statutes of 2018, goes into effect, allow for pre-trial release. Release, with bail or under a new scheme, is more likely when the felony charged is non-violent or low violence. In cases where a defendant is released pre-trail, proponents of the bill assert that those defendants may be candidates for self-surrender and should not be forced into custody solely for transport.

[2] The only apparent policy change in the last few years is that DSH no longer immediately designates a hospital for a defendant to be placed in, but requires defendants to wait for a bed to become available before assignation.

Obviously, the appropriate resources must be available for this option, and it is unclear whether there are sufficient resources on the local level in these cases. Additionally, in the case of Los Angeles County where defendants are only transported once a week, early in the morning, the courts may order a defendant to return to the court the day prior to that travel day so that the defendant does not spend an excessive amount of time in sheriff's custody.

6) **Argument in Support**: According to the *California Public Defenders Association*, "AB 2105 would allow (but not require) courts to order incompetent defendants to report to a mental health facility without first requiring that defendant be jailed and transported to that facility by the local Sheriff.

"Under current law, a court is required to order incompetent defendants to undergo treatment at a mental health facility. The problem that the relevant statute also requires the court to jail each defendant and then order the sheriff to transport the defendant to the treatment facility, even when the defendant is out of custody, poses no threat to the public, and is perfectly capable of travelling to the facility on his or her own.

"Under the current statute, for example, an incompetent but non-violent regional center defendant who appears in court with his case worker, and who can go with that case worker to the treatment facility must be jailed, solely for the purpose of transporting that defendant to the facility. This 'one size fits all' requirement wastes law enforcement resources, and can cause significant harm to defendants whose housing, stability, or treatment may be negatively impacted by a stay in county jail.

"AB 2105 addresses this problem by allowing the court, where appropriate, to order an out of custody defendant to report to the mental health facility on his or her own, instead of ordering the sheriff to jail and then transport the defendant."

7) **Prior Legislation**:

a) SB 557 (Jones), Chapter 251, Statutes of 2019, made documents related to a defendant's competency in criminal proceedings presumptively confidential.

b) SB 1187 (Beall), Chapter 1008, Statutes of 2018, reduced the maximum term of commitment to a treatment facility to restore a defendant's competency from three years to two years and allows a person committed to a facility pending the return of mental competence to earn credits.

c) AB 2186 (Lowenthal), Chapter 733, Statutes of 2014, made changes to the process of involuntary administration of antipsychotic mediation of individuals who are found to be incompetent to stand trial and confined in a state hospital or county jail.

d) AB 2625 (Achadjian), Chapter 742, Statutes of 2014, specifies procedures for returning to the court a defendant who is committed to a state hospital for treatment to regain mental competency, but who has not recovered competence.

e) SB 1412 (Nielsen), Chapter 759, Statutes of 2014, applied procedures relative to persons who are incompetent to stand trial (IST) to persons who may be mentally incompetent

and face revocation of probation, mandatory supervision, postrelease community supervision (PRCS), or parole.

f) SB 586 (Wiggins), Chapter 556, Statutes of 2007, allowed county jails or other county penal facilities to be used as "treatment facilities," as specified, and are designed to restore a criminal defendant's mental competency.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association (Sponsor)
California Public Defenders Association
Disability Rights California
Riverside Sheriffs' Association

Opposition

None

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